

MINUTES OF CONVOCATION

Friday, 28th September, 2001

10:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Arnup, Banack, Bindman, Bobesich, Boyd, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Coffey, Crowe, Diamond, Divinsky, E. Ducharme, T. Ducharme, Epstein, Feinstein, Finkelstein, Furlong, Go, Gottlieb, Hunter, Jarvis, Lamont, Laskin, Lawrence, Legge, MacKenzie, Manes, Marrocco, Martin, Millar, Minor, Mulligan (by telephone), Murray, O'Brien, Ortved, Pilkington, Potter, Puccini (by telephone), Robins, Ruby, Simpson, Swaye, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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MOTION - ELECTION OF BENCHER

WHEREAS Eleanore Cronk, who was elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region, has been appointed a judge of the Ontario Court of Appeal; and

WHEREAS upon being appointed a judge of the Ontario Court of Appeal, Eleanore Cronk became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region;

It was moved by Mr. Feinstein, seconded by Mr. Manes -

THAT under the authority contained in By-Law 5, Earl Cherniak, having satisfied the requirements contained in subsections 49 (2), 49 (3) and 52 (1) of the By-Law, and having consented to the election in accordance with subsection 52 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of bencher elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region.

WHEREAS Earl Cherniak, who was elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors, has been elected by Convocation to fill a vacancy in the office of bencher elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region; and

WHEREAS Earl Cherniak's election to fill a vacancy in the office of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of votes cast by electors residing in that electoral region has created a vacancy in the number of benchers elected from the Province of Ontario "A" Electoral Region (City of Toronto) on the basis of the votes cast by all electors;

It was moved by Mr. Feinstein, seconded by Mr. Manes -

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

Carried

DIRECTOR OF EDUCATION REPORT

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education 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 Friday, September 28th, 2001:

Anne Christina Carbert	Bar Admission Course
Louise Diane Cuillerier	Bar Admission Course
David Lloyd William Francis	Bar Admission Course
Bebi Asha Gafar	Bar Admission Course
Mohammed Mesbahul Islam	Bar Admission Course
Cristin Ann Keller	Bar Admission Course
Linda Lai-Man Lam	Bar Admission Course
Stamatina Margellis	Bar Admission Course
Sherril Joy Marr	Bar Admission Course
Sebastien Muzituka N'Singi	Bar Admission Course
Olatunde Olakunle Olagbaiye	Bar Admission Course
Julia Carmen Ranieri	Bar Admission Course
David John Reble	Bar Admission Course

Amy Elizabeth Reier	Bar Admission Course
Stuart Robert Rosenberg	Bar Admission Course
Lise Marie-Blanche Roy	Bar Admission Course
Megan Elizabeth Telford	Bar Admission Course
Tse-Lynn Faith Teo	Bar Admission Course
Vesna Vojvodic	Bar Admission Course
Daniel Frank Wong	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three 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 Friday, September 28th, 2001:

Valerie Janet Anderson	Province of British Columbia
Jennifer Lynne Davis	Province of Alberta
Tracy Renee Davis	Province of British Columbia
Edward James Dreyer	Province of British Columbia
Lee Anne Graston	Province of Quebec
Howard Jason Hickman	Province of Newfoundland
Rose-Laure Legagneur	Province of Quebec
Nicolas Rodrigo	Province of Quebec
Janine Anne Sharon Thomas	Province of British Columbia
Sean Patrick Tindale	Province of Alberta
Marie-Andrée Vermette	Province of Quebec
Kim Guy Von Arx	Province of Nova Scotia
Ling Fung Wong	Province of British Columbia

B.1.5. (c) Full-Time Member of Faculty of Approved Ontario Law School

B.1.6. The following member of an approved law faculty asks to be called to the Bar and admitted as a solicitor without examination under sec. 5 of By-Law 11 made under the *Law Society Act* on September 28th, 2001. The candidate has filed the necessary documents and complied with the requirements of the Society:

Sujit Choudhry	University of Toronto, Faculty of Law
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B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following apply to be certified as supervised foreign legal consultants in Ontario:

Raziel Zisman	State of New York Skadden, Arps, Slate, Meagher & Flom LLP
Julian Fletcher	State of New York Shearman & Sterling

Stephen Craig Centa

State of New York
Shearman & Sterling

B.2.2. Their applications are complete and they have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 28th day of September, 2001

It was moved by Mr. E. Ducharme, seconded by Mr. Manes that the Report of the Director of Education be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and called to the Bar and the degree of Barrister-at-law was conferred upon each of them. They were then presented by Ms. Ross to Madam Justice Janet M. Wilson to sign the Rolls and take the necessary oaths.

Anne Christina Carbert	Bar Admission Course
Louise Diane Cuillerier	Bar Admission Course
David Lloyd William Francis	Bar Admission Course
Bebi Asha Gafar	Bar Admission Course
Mohammed Mesbahul Islam	Bar Admission Course
Cristin Ann Keller	Bar Admission Course
Linda Lai-Man Lam	Bar Admission Course
Stamatina Margellis	Bar Admission Course
Sherril Joy Marr	Bar Admission Course
Sebastien Muzituka N'Singi	Bar Admission Course
Olatunde Olakunle Olagbaiye	Bar Admission Course
Julia Carmen Ranieri	Bar Admission Course
David John Reble	Bar Admission Course
Amy Elizabeth Reier	Bar Admission Course
Stuart Robert Rosenberg	Bar Admission Course
Lise Marie-Blanche Roy	Bar Admission Course
Megan Elizabeth Telford	Bar Admission Course
Tse-Lynn Faith Teo	Bar Admission Course
Vesna Vojvodic	Bar Admission Course
Daniel Frank Wong	Bar Admission Course
Valerie Janet Anderson	Transfer, Province of British Columbia
Jennifer Lynne Davis	Transfer, Province of Alberta
Tracy Renee Davis	Transfer, Province of British Columbia
Edward James Dreyer	Transfer, Province of British Columbia
Lee Anne Graston	Transfer, Province of Quebec
Howard Jason Hickman	Transfer, Province of Newfoundland
Rose-Laure Legagneur	Transfer, Province of Quebec
Nicolas Rodrigo	Transfer, Province of Quebec

Janine Anne Sharon Thomas
Sean Patrick Tindale
Marie-Andree Vermette
Kim Guy Von Arx
Ling Fung Wong
Sujit Choudhry

Transfer, Province of British Columbia
Transfer, Province of Alberta
Transfer, Province of Quebec
Transfer, Province of Nova Scotia
Transfer, Province of British Columbia
University of Toronto, Faculty of Law

TREASURER'S REMARKS

The Treasurer extended Convocation's condolences to the wife and family of The Honourable Justice Paul Lamek who died on August 29th, 2001. Justice Lamek, a former Treasurer of the Law Society was a leading counsel in the province and a role model for professionalism. A reception in memory of Mr. Justice Lamek was held on September 5th, in Convocation Hall following the funeral at St. James Cathedral and the Treasurer received acknowledgment and thanks from Mr. Justice Lamek's wife and family.

The Treasurer commented on the senseless violence in New York and Washington on September 11th and extended sympathies to all families of all races who continue to suffer in the aftermath of the tragedy. He stated:

"We must remember that terrorism knows neither race nor religion and that we must not vent our anger and frustration on the basis of either race or religion. As lawyers we are committed to the constitutional guaranty of equality before the law and under the law and the right to equal protection without discrimination. We, as Convocation, representing the legal profession remember that lawyers have always spoken fearlessly to defend our fellow citizens and we must continue to do that in these difficult and uncertain times when some would challenge the rule of law and replace it with the law of violence."

Convocation observed a minute of silence.

The Treasurer invited Benchers to sign the book of condolences outside Convocation room and advised that it would then be sent to their colleagues at the New York Bar Association and the American Bar Association.

The Treasurer reported on the major issues discussed at the Annual General Meeting of the Federation of Law Societies of Canada held in Saskatoon from August 16th to 19th, 2001. The topics included the money laundering Bill, the restructure of the Federation and lawyer mobility in Canada. The Law Societies unanimously adopted a resolution to establish a Mobility Task Force to examine full mobility rights and conditions for lawyers and Quebec notaries in Canada. The Treasurer was appointed Chair of the Task Force.

Congratulations were extended to Mr. Todd Ducharme on his recent marriage.

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MOTION - APPOINTMENTS

It was moved by Mr. Feinstein, seconded by Mr. Manes -

THAT Earl Cherniak be appointed Chair of the Professional Development & Competence Committee.

THAT William Simpson be appointed a Vice-Chair of the Professional Development & Competence Committee.

THAT Avvy Go and Roger Yachetti be appointed as members to the Professional Regulation Committee.

THAT Harvey Strosberg and Robert Topp be appointed as members to the Finance & Audit Committee.

THAT George Hunter be appointed as a member to the Access to Justice Committee.

THAT Donald Lamont continue as the Law Society's representative on the Canadian National Exhibition Association.

THAT Julian Porter be appointed as a representative to the Ontario Judicial Council.

Carried

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Feinstein, seconded by Mr. Manes that the Draft Minutes of Special Convocation of July 26th, 2001 be approved.

Carried

MOTION - FRENCH TRANSLATIONS OF BY-LAWS 31 - 36

It was moved by Mr. Feinstein, seconded by Mr. Manes -

THAT By-Laws 31 to 36 in force on September 28, 2001 be amended by adding to each by-law its French version as follows:

RÈGLEMENT ADMINISTRATIF N° 31

FONDS DE FIDUCIE NON RÉCLAMÉS

DEMANDE DE VERSEMENT D'UNE SOMME AU BARREAU

Formulaire de demande

1. (1) Le membre qui présente une demande en vertu du paragraphe 59.6 (1) de la Loi le fait en remplissant un formulaire fourni par le Barreau.

Renseignements à fournir : demande fondée sur l'alinéa 59.6 (1) a)

(2) Le membre qui présente une demande en vertu du paragraphe 59.6 (1) de la Loi en se fondant sur les circonstances visées à l'alinéa 59.6 (1) a) de la Loi fournit au Barreau les renseignements suivants :

1. Ses numéro de membre, adresse, numéro de téléphone et numéro de télécopieur, et, le cas échéant, son adresse électronique.
2. Si le membre détient la somme en fiducie avec une ou plusieurs autres personnes, les nom, numéro de membre, le cas échéant, et les coordonnées de chacune de ces personnes.
3. Le montant de la somme en question.
4. Les conditions éventuelles auxquelles la somme d'argent est détenue en fiducie.
5. Le nom et la dernière adresse et le dernier numéro de téléphone connus, selon le membre et chacune des personnes qui détiennent la somme en fiducie avec celui-ci, de chaque personne qui a droit à cette somme ou à une partie de celle-ci.
6. Le numéro d'assurance sociale, s'il est connu, de chaque personne physique et le numéro de personne morale, s'il est connu, de chaque personne morale qui a droit à la somme ou à une partie de celle-ci.
7. La date de naissance, si elle est connue, de chaque personne physique qui a droit à la somme ou à une partie de celle-ci.
8. Si deux ou plusieurs personnes ont droit à la somme, le montant auquel chacune d'elle a droit, selon les registres financiers du membre et de chaque personne qui détient l'argent en fiducie avec celui-ci.

9. Si une des personnes qui ont droit à la somme est une personne morale, des renseignements établissant si elle existe au moment de la demande, selon les registres officiels du gouvernement ou du territoire de compétence où cette personne morale a été constituée ou maintenue.
10. Si une personne qui a droit à la somme est une personne morale qui existe au moment de la demande, le nom et l'adresse de tous les administrateurs, dirigeants et actionnaires de cette personne morale, selon les registres officiels du gouvernement ou du territoire de compétence où elle a été constituée ou maintenue.
11. Le nom et la dernière adresse connue, selon le membre et chaque personne qui détient la somme en fiducie avec celui-ci, de la personne qui a versé la somme.
12. La date à laquelle la somme a été reçue.
13. Les raisons pour lesquelles la somme a été reçue.
14. Les efforts déployés par le membre et chaque personne qui détient la somme en fiducie avec celui-ci, pour trouver chaque personne qui a droit à la somme.
15. Tout autre renseignement que peut exiger le ou la secrétaire.

Renseignements : demande fondée sur l'alinéa 59.6 (1) b)

(3) Le membre qui présente une demande en vertu du paragraphe 59.6 (1) de la Loi en se fondant sur les circonstances visées à l'alinéa 59.6 (1) b) de la Loi fournit au Barreau les renseignements visés aux dispositions 1 à 4 du paragraphe (2) ainsi que les renseignements suivants :

1. La durée pendant laquelle la somme a été détenue en fiducie.
2. Les raisons pour lesquelles le membre est incapable de déterminer qui a droit à cette somme.
3. Tout autre renseignement que peut exiger le ou la secrétaire.

Documents à l'appui de la demande

(4) Le membre qui présente une demande en vertu du paragraphe 59.6 (1) de la Loi fournit au Barreau des copies des documents qui sont en sa possession et sous son contrôle et que le ou la secrétaire peut exiger pour étayer les renseignements fournis en application du paragraphe (2) ou (3).

Attestation

(5) Le membre qui présente une demande en vertu du paragraphe 59.6 (1) de la Loi atteste que tous les renseignements fournis en application du paragraphe (2) ou (3) sont à sa connaissance exacts.

Examen de la demande par le ou la secrétaire

2. (1) Le ou la secrétaire examine chaque demande présentée en vertu du paragraphe 59.6 (1) de la Loi et conformément à l'article 1 du présent règlement administratif et, en se fondant sur les renseignements fournis en application du paragraphe 1 (2) ou 1 (3) du présent règlement administratif et tous les documents fournis en application du paragraphe 1 (4) du présent règlement administratif, prend l'une ou l'autre des mesures suivantes :

- a) si elle ou il est convaincu que la condition prévue à l'alinéa 59.6 (1) a) ou b) de la Loi pour la présentation de la demande est remplie, approuver la demande;
- b) si elle ou il n'est pas convaincu que la condition prévue à l'alinéa 59.6 (1) a) ou b) de la Loi pour la présentation de la demande est remplie, refuser d'approuver la demande.

Demande fondée sur l'alinéa 59.6 (1) a)

(2) Si la demande présentée en vertu du paragraphe 59.6 (1) de la Loi est fondée sur les circonstances visées à l'alinéa 59.6 (1) a) de la Loi, le ou la secrétaire examine cette demande en tenant compte des facteurs suivants :

- a) les efforts que le membre a déployés pour trouver la personne qui a droit à la somme;
- b) le fait qu'il existe ou non une possibilité raisonnable de trouver la personne qui a droit à la somme.

Demande fondée sur l'alinéa 59.6 (1) b)

(3) Si la demande présentée en vertu du paragraphe 59.6 (1) de la Loi est fondée sur les circonstances visées à l'alinéa 59.6 (1) b) de la Loi, le ou la secrétaire examine cette demande en tenant compte de la nature de la fiducie dans laquelle la somme a été détenue et des circonstances ayant donné lieu à cette fiducie.

DEMANDES DE VERSEMENT

Définition : « auteur de la demande »

3. Pour l'application de l'article 4, « auteur de la demande » s'entend d'une personne qui présente une demande en vertu du paragraphe 59.10 (1) de la Loi.

Présentation d'une demande de versement

4. (1) L'auteur de la demande remplit le formulaire de demande fourni par le Barreau.

Renseignements

(2) L'auteur de la demande fournit au Barreau les renseignements suivants :

- 1. Ses nom, adresse et numéro de téléphone.
- 2. S'il s'agit d'une personne morale, son numéro de personne morale.
- 3. Le montant visé par la demande de versement.
- 4. Le nom du membre auquel la somme a été versée en fiducie et, si la somme a été versée au membre et à une ou plusieurs autres personnes afin qu'ils la détiennent ensemble en fiducie, le nom de chacune de ces autres personnes.
- 5. La dernière adresse connue, selon l'auteur de la demande, du membre auquel la somme a été versée en fiducie et, si la somme a été versée au membre et à une ou plusieurs autres personnes afin qu'ils la détiennent ensemble en fiducie, la dernière adresse connue, selon l'auteur de la demande, de chacune de ces autres personnes.
- 6. La date à laquelle la somme a été versée au membre ou au membre et à une ou plusieurs autres personnes ou, si, la somme a été payée en plusieurs versements, la date de chacun de ceux-ci.
- 7. La ou les raisons pour lesquelles la somme a été versée en fiducie au membre ou au membre et à une ou plusieurs autres personnes.
- 8. La ou les raisons pour lesquelles l'auteur de la demande n'a pas demandé le versement de la somme par le membre ou le membre et la ou les autres personnes qui la détenaient en fiducie.
- 9. Tout autre renseignement que peut exiger le ou la secrétaire.

Documents à l'appui de la demande de versement

(3) L'auteur de la demande fournit au Barreau des copies des documents qui sont en sa possession et sous son contrôle et que peut exiger le ou la secrétaire pour étayer la demande présentée en vertu du paragraphe (2).

Attestation

(4) L'auteur de la demande atteste que tous les renseignements fournis en application du paragraphe (2) sont à sa connaissance exacts.

Examen de la demande de versement

5. (1) Le ou la secrétaire examine chaque demande présentée en vertu du paragraphe 59.10 (1) de la Loi et conformément à l'article 4 du présent règlement administratif et, en se fondant sur les renseignements fournis en application du paragraphe 4 (2) du présent règlement administratif et tous les autres documents fournis en application du paragraphe 4 (3) du présent règlement administratif, prend l'une ou l'autre des mesures suivantes :

- a) faire droit à la demande;
- b) rejeter la demande.

Rejet de la demande par le ou la secrétaire

(2) Si le ou la secrétaire rejette la demande en application de l'alinéa (1) b), il ou elle en avise l'auteur de la demande et cette personne peut demander, par voie de requête, au comité de conseillers et de conseillères nommé en application de l'article 6 de réexaminer sa demande.

Moment où doit être présentée la requête en réexamen

(3) Pour solliciter un réexamen en vertu du paragraphe (2), l'auteur de la demande présente une requête écrite en ce sens au ou à la secrétaire dans les trente jours suivant le jour précisé dans l'avis du ou de la secrétaire l'informant du rejet de sa demande.

Comité de conseillers et de conseillères

6. (1) Le Conseil charge un comité d'au moins trois conseillers ou conseillères d'examiner les requêtes en réexamen présentées en vertu du paragraphe 5 (2).

Mandat

(2) Les conseillers et conseillères nommés en application du paragraphe (1) restent en fonction jusqu'à la nomination de leurs successeurs.

Quorum

7. (1) Trois membres du comité constitué en application de l'article 6 forment le quorum pour l'examen d'une requête en réexamen présentée en vertu du paragraphe 5 (2).

Procédure

(2) Sous réserve du paragraphe (3), le comité de conseillers et de conseillères nommé en application de l'article 6 qui est chargé d'étudier une requête en réexamen présentée en vertu du paragraphe 5 (2) établit la procédure qui s'applique à ce réexamen.

Observations écrites

(3) Sauf si le comité autorise une personne à lui présenter des observations orales, toutes les observations présentées au comité sont écrites.

Pouvoirs

8. (1) Le comité nommé en application de l'article 6 examine chaque requête en réexamen présentée en vertu du paragraphe 5 (2) et prend l'une ou l'autre des mesures suivantes :

- a) faire droit à la demande de versement;
- b) rejeter la demande de versement.

Décision définitive

(2) Sous réserve de l'article 59.11 de la Loi, la décision du comité à l'égard d'une requête en réexamen est définitive.

ANCIENS MEMBRES

9. Le présent règlement administratif s'applique, avec les adaptations nécessaires, aux anciens membres.

RÈGLEMENT ADMINISTRATIF N° 32

AFFILIATION À DES NON-MEMBRES

Définition : « entité affiliée »

1. (1) Pour l'application du présent règlement administratif, « entité affiliée » s'entend d'une personne ou d'un groupe de personnes autre qu'une personne ou un groupe de personnes autorisé à exercer le droit en Ontario ou à l'extérieur de l'Ontario.

Définition : « affiliation »

(2) Pour l'application du présent règlement administratif, un membre ou un groupe de membres s'affilie à une entité affiliée lorsque ce membre ou ce groupe se joint de façon régulière à l'entité affiliée pour la prestation ou la promotion et la prestation des services juridiques du membre ou du groupe et des services non juridiques de l'entité affiliée.

Propriété du cabinet, etc.

2. Le membre ou le groupe de membres qui s'affilie à une entité affiliée doit, seul ou avec d'autres personnes autorisées à exercer le droit en Ontario ou à l'extérieur de l'Ontario :

- a) être propriétaire du cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public ou se conformer au Règlement administratif n° 25;
- b) conserver le contrôle du cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public;
- c) exploiter le cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public, à l'exception de ceux qui sont fournis conjointement avec les services non juridiques de l'entité affiliée, dans des locaux autres que ceux utilisés par l'entité affiliée pour la prestation de ses services non juridiques, à l'exception de ceux qui sont fournis par l'entité affiliée conjointement avec les services juridiques du membre ou du groupe.

Avis au Barreau

3. (1) Le membre ou le groupe de membres qui s'engage à s'affilier ou qui s'affilie à une entité affiliée en avise immédiatement le Barreau.

Contenu de l'avis

(2) L'avis prévu au paragraphe (1) est rédigé selon le formulaire 32A et comprend les renseignements suivants :

1. Les accords financiers qui existent entre le membre ou le groupe de membres et l'entité affiliée.
2. Les accords qui existent entre le membre ou le groupe de membres et l'entité affiliée à l'égard des aspects suivants :
 - i. la propriété, le contrôle et la gestion du cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public;
 - ii. le respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients et clientes du membre ou du groupe qui sont également clients de l'entité affiliée;
 - iii. le respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur le caractère confidentiel des renseignements fournis aux membres ou à un membre du groupe par leurs clients et clientes qui sont aussi clients de l'entité affiliée.

Ententes

(3) Au moment où un membre ou un groupe de membres donne l'avis prévu au paragraphe (1), il dépose auprès du Barreau une copie des parties de toute entente passée entre le membre ou le groupe et l'entité affiliée ou de tous les autres documents abordant les questions visées au paragraphe (2) qui sont exigés par le Barreau.

Dépôt de documents

4. (1) Le membre ou le groupe de membres qui s'affilie à une entité affiliée présente au Barreau, pour toute année entière ou partie d'année pendant laquelle l'affiliation se poursuit, un rapport à l'égard de celle-ci.

Formulaire 32B

(2) Le rapport exigé au paragraphe (1) est rédigé selon le formulaire 32B.

Date d'échéance

(3) Le rapport exigé au paragraphe (1) est présenté au Barreau au plus tard le 31 janvier de l'année suivant immédiatement l'année entière ou la partie d'année pour laquelle le membre ou groupe de membres présente un rapport.

Responsabilité conjointe et individuelle

(4) Chaque membre d'un groupe de membres est responsable conjointement avec les autres membres du groupe et individuellement à l'égard de la présentation du rapport exigé au paragraphe (1).

Période prescrite

(5) Pour l'application de l'alinéa 47 (1) a) de la Loi, la période prescrite en ce qui a trait à l'omission de remplir ou de déposer le rapport exigé au paragraphe 4 (1) du présent règlement administratif est de 120 jours à compter du jour où il doit être présenté.

Rétablissement des droits et privilèges

(6) Pour l'application du paragraphe 47 (2) de la Loi, le membre dont les droits et privilèges ont été suspendus en application de l'alinéa 47 (1) a) de la Loi parce qu'il n'a pas rempli le rapport exigé au paragraphe 4 (1) du présent règlement administratif ou qu'il ne l'a pas déposé est tenu de le remplir et de le déposer en le rédigeant selon le formulaire 32B en vigueur au moment où il le dépose.

Modification des renseignements

5. (1) Le membre ou le groupe de membres qui s'affilie à une entité affiliée avise immédiatement le Barreau par écrit :

- a) de toute modification des renseignements qu'il a fournis en application de l'article 3 ou de l'article 4;
- b) de toute modification d'une entente entre le membre ou le groupe et l'entité affiliée ou de tout autre document qui aborde les questions visées au paragraphe 3 (2).

Renseignements requis

(2) L'avis exigé par le paragraphe (1) indique les détails de la modification et, en cas de modification d'une entente entre le membre ou le groupe et l'entité affiliée ou de tout autre document qui aborde les questions visées au paragraphe 3 (2), comprend des copies des parties de l'entente ou du document qui ont été modifiées.

Formulaire 32A

Avis d'affiliation

AVIS D'AFFILIATION

1. RENSEIGNEMENTS SUR LE MEMBRE OU LE GROUPE

Nom : *(S'il s'agit d'un groupe, indiquer le nom du groupe – p. ex., la raison ou dénomination sociale – et le nom de tous les membres du groupe.)*

Adresse : *(Indiquer l'adresse à laquelle le membre ou le groupe exerce le droit. Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque adresse.)*

Numéro de téléphone : *(Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque numéro de téléphone.)*

Numéro de télécopieur : *(Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque numéro de télécopieur.)*

Personne à contacter : *(S'il s'agit d'un groupe, indiquer le nom, l'adresse, le numéro de téléphone et le numéro de télécopieur du membre du groupe avec lequel le Barreau devrait communiquer, verbalement ou par écrit, à l'égard de l'avis.)*

Domaines d'exercice du droit : *(Indiquer les domaines du droit dans lesquels le membre ou le groupe exerce et indiquer la proportion de temps consacrée à chacun de ces domaines.)*

2. RENSEIGNEMENTS SUR L'ENTITÉ AFFILIÉE

Nom : *(Si l'entité affiliée n'est pas une personne physique, indiquer le nom de l'entité affiliée – p. ex., la raison ou dénomination sociale – et le nom de chaque personne qui fournit des services non juridiques par l'intermédiaire de l'entité affiliée.)*

Renseignements sur la prestation de services par l'entité affiliée

Types de services fournis par l'entité affiliée :

Endroits où sont fournis les services : *(Indiquer les endroits où l'entité affiliée fournit ses services non juridiques. Indiquer chaque adresse, numéro de téléphone et numéro de télécopieur.)*

3. RENSEIGNEMENTS SUR L'AFFILIATION

Types de services juridiques que le membre ou le groupe fournira conjointement avec les services non juridiques de l'entité affiliée :

Types de services non juridiques que l'entité affiliée fournira conjointement avec les services juridiques du membre ou du groupe :

Endroits où sont fournis les services juridiques : *(Indiquer les endroits où les services juridiques du membre ou du groupe seront fournis conjointement avec les services non juridiques de l'entité affiliée. Indiquer chaque adresse, numéro de téléphone et numéro de télécopieur.)*

Renseignements sur les accords financiers conclus entre le membre ou le groupe et l'entité affiliée : *(Fournir une description détaillée des accords financiers. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard de la propriété, du contrôle et de la gestion du cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public : *(Fournir une description détaillée des accords. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard du respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients et clientes du membre ou du groupe qui sont également clients de l'entité affiliée : *(Fournir une description détaillée des accords. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard du respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur le caractère confidentiel des renseignements fournis aux membres ou à un membre du groupe par leurs clients et clientes qui sont aussi clients de l'entité affiliée : *(Fournir une description détaillée des accords. Joindre des copies des ententes écrites ou autres documents qui attestent ces accords.)*

JE CERTIFIE (ou NOUS CERTIFIONS) que les renseignements contenus dans le présent avis sont à ma (ou notre) connaissance exacts.

Date :

(Signature du membre ou de chaque membre du groupe)

Formulaire 32B

Rapport annuel sur l'affiliation

RAPPORT ANNUEL SUR L'AFFILIATION

RAPPORT POUR L'ANNÉE (*INDIQUER L'ANNÉE CIVILE*) (*OU RAPPORT POUR LA PÉRIODE (INDIQUER LA PÉRIODE COUVERTE PAR LE RAPPORT S'IL NE S'AGIT PAS D'UNE ANNÉE CIVILE ENTIÈRE)*)

Voici le rapport annuel de (*nom du membre ou groupe de membres*)

Aucune modification n'est intervenue dans les renseignements fournis par le membre (*ou le groupe*) dans l'avis d'affiliation daté du (*indiquer la date de l'avis*) (*ou dans l'avis d'affiliation daté du (indiquer la date de l'avis) modifié par l'avis (les avis) de modification de renseignements daté(s) du (indiquer la ou les dates de l'avis ou des avis) déposé(s) conformément à l'article 5 du Règlement administratif n° 32 (ou dans le dernier rapport annuel sur l'affiliation présenté au Barreau) (ou dans le dernier rapport annuel sur l'affiliation présenté au Barreau et modifié par l'avis (les avis) de modification des renseignements daté(s) (indiquer la ou les dates de l'avis ou des avis) déposé(s) conformément à l'article 5 du Règlement administratif n° 32).*

(*OU, si les renseignements ont changé, remplir toutes les sections suivantes :*

1. RENSEIGNEMENTS SUR LE MEMBRE OU LE GROUPE

Nom : (*S'il s'agit d'un groupe, indiquer le nom du groupe – p. ex., la raison ou dénomination sociale – et le nom de tous les membres du groupe.*)

Adresse : (*Indiquer l'adresse à laquelle le membre ou le groupe exerce le droit. Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque adresse.*)

Numéro de téléphone : (*Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque numéro de téléphone.*)

Numéro de télécopieur : (*Si le membre ou le groupe exerce le droit à plus d'un endroit, indiquer chaque numéro de télécopieur.*)

Personne à contacter : (*S'il s'agit d'un groupe, indiquer le nom, l'adresse, le numéro de téléphone et le numéro de télécopieur du membre du groupe avec lequel le Barreau devrait communiquer, verbalement ou par écrit, à l'égard de l'avis.*)

Domaines d'exercice du droit : (*Indiquer les domaines du droit dans lesquels le membre ou le groupe exerce et indiquer la proportion de temps consacrée à chacun de ces domaines.*)

2. RENSEIGNEMENTS SUR L'ENTITÉ AFFILIÉE

Nom : (*Si l'entité affiliée n'est pas une personne physique, indiquer le nom de l'entité affiliée – p. ex., la raison ou dénomination sociale – et le nom de chaque personne qui fournit des services non juridiques par l'intermédiaire de l'entité affiliée.*)

Renseignements sur la prestation de services par l'entité affiliée

Types de services fournis par l'entité affiliée :

Endroits où sont fournis les services : (*Indiquer les endroits où l'entité affiliée fournit ses services non juridiques. Indiquer chaque adresse, numéro de téléphone et numéro de télécopieur.*)

3. RENSEIGNEMENTS SUR L'AFFILIATION

Types de services juridiques que le membre ou le groupe fournira conjointement avec les services non juridiques de l'entité affiliée :

Types de services non juridiques que l'entité affiliée fournira conjointement avec les services juridiques du membre ou du groupe :

Endroits où sont fournis les services juridiques : *(Indiquer les endroits où les services juridiques du membre ou du groupe seront fournis conjointement avec les services non juridiques de l'entité affiliée. Indiquer chaque adresse, numéro de téléphone et numéro de télécopieur.)*

Renseignements sur les accords financiers conclus entre le membre ou le groupe et l'entité affiliée : *(Fournir une description détaillée des accords financiers. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard de la propriété, du contrôle et de la gestion du cabinet par l'intermédiaire duquel le membre ou le groupe fournit des services juridiques au public : *(Fournir une description détaillée des accords. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard du respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients et clientes du membre ou du groupe qui sont également clients de l'entité affiliée : *(Fournir une description détaillée des accords. Joindre des copies de toutes les ententes écrites et de tous les autres documents qui attestent ces accords.)*

Renseignements sur les accords conclus entre le membre ou le groupe et l'entité affiliée à l'égard du respect, par le membre ou le groupe, des règles, politiques et directives du Barreau sur le caractère confidentiel des renseignements fournis aux membres ou à un membre du groupe par leurs clients et clientes qui sont aussi clients de l'entité affiliée : *(Fournir une description détaillée des accords. Joindre des copies des ententes écrites ou autres documents qui attestent ces accords.)*

JE CERTIFIE (ou NOUS CERTIFIONS) que les renseignements contenus dans le présent avis sont à ma (ou notre) connaissance exacts.

Date :

(Signature du membre ou de chaque membre du groupe)

RÈGLEMENT ADMINISTRATIF N° 33

EXERCICE INTERPROVINCIAL DU DROIT

PARTIE I

EXERCICE OCCASIONNEL DU DROIT

Définition : exercice occasionnel du droit

1. (1) Pour l'application de la présente partie :

- a) exercent le droit les personnes qui rendent des services professionnels en qualité d'avocat ou d'avocate ou qui offrent des conseils juridiques;

- b) exercent le droit à titre occasionnel les personnes qui, au cours d'une période de 12 mois consécutifs :
 - (i) exercent le droit à l'égard d'au plus dix affaires,
 - (ii) exercent le droit pendant un total d'au plus 20 jours.

Définition : « régime d'assurance du Barreau »

(2) Pour l'application de la présente partie, « régime d'assurance du Barreau » s'entend au sens du Règlement administratif n° 16.

Définition : « droit propre à l'Ontario »

(3) Pour l'application de la présente partie, « droit propre à l'Ontario » s'entend des règles juridiques de fond ou des règles de procédure qui s'appliquent spécifiquement l'Ontario.

Définition : « responsable du Barreau »

(4) Pour l'application de la présente partie, « responsable du Barreau » s'entend de la personne que le directeur général ou la directrice générale charge d'appliquer les dispositions de la présente partie.

Interdiction d'exercer le droit à titre occasionnel

2. La personne qui n'est pas un membre ne doit pas exercer le droit en Ontario à titre occasionnel si ce n'est conformément à la présente partie.

Autorisation préalable non requise pour les comparutions devant certains tribunaux

3. La personne qui n'est pas un membre mais qui est habilitée à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario et qui est en règle auprès de l'organisme de réglementation de la profession juridique dans tous les territoires et provinces où elle est habilitée à exercer le droit peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel si cet exercice se limite à comparaître à titre d'avocat ou d'avocate dans une instance devant la Cour suprême du Canada, la Cour fédérale du Canada, la Cour canadienne de l'impôt, un tribunal administratif établi en application d'une loi du Parlement ou un tribunal administratif établi en application d'une loi de l'Assemblée législative de l'Ontario qui autorise les parties à se faire représenter par un ou une mandataire.

Autorisation préalable non requise pour les fonctionnaires

4. La personne qui n'est pas un membre mais qui est habilitée à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario et qui est en règle auprès de l'organisme de réglementation de la profession juridique dans tous les territoires et provinces où elle est habilitée à exercer le droit peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel si cet exercice se limite exclusivement à s'acquitter de ses responsabilités de fonctionnaire de la Couronne du chef du Canada ou d'un ministère au sens de la *Loi sur la gestion des finances publiques* (Canada).

Autorisation préalable non requise : dispositions générales

5. (1) Sous réserve des paragraphes (2) et (3), la personne qui n'est pas un membre peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel si elle répond aux conditions suivantes :

- a) elle est habilitée à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario;
- b) elle est en règle auprès de l'organisme de réglementation de la profession juridique dans tous les territoires et provinces où elle est habilitée à exercer le droit;
- c) elle ne fait l'objet d'une instance criminelle dans aucun ressort;
- d) elle ne fait l'objet d'une instance portant sur sa conduite, sa capacité ou sa compétence dans aucun ressort;

- e) elle n'a d'antécédents judiciaires dans aucun ressort;
- f) aucune ordonnance n'a été rendue contre elle dans un ressort à l'égard de sa conduite, de sa capacité ou de sa compétence.

Assurance et garantie contre les détournements de fonds

- (2) Nul ne doit exercer le droit en Ontario à titre occasionnel à moins de remplir les conditions suivantes :
 - a) avoir une assurance-responsabilité professionnelle couvrant son exercice du droit en Ontario qui est au moins équivalente à celle exigée des membres par le régime d'assurance du Barreau;
 - b) avoir une garantie contre les détournements de fonds, autre que celle prévue par le Plan national d'indemnisation, qui couvre expressément son exercice du droit en Ontario et est au moins équivalente à la garantie offerte aux membres.

Compétence

- (3) Nul ne doit exercer le droit en Ontario à titre occasionnel si cet exercice comprend l'exercice du droit propre à l'Ontario à moins d'avoir les compétences nécessaires pour exercer le droit propre à l'Ontario.

Preuve de conformité

- 6. À la demande d'un ou d'une responsable du Barreau, la personne qui est habilitée à exercer le droit en Ontario en vertu de l'article 3, 4 ou 5 fournit une preuve de nature à convaincre le ou la responsable qu'elle se conforme à l'article qui l'autorise à exercer le droit en Ontario.

Permission d'exercer le droit à titre occasionnel

- 7. (1) La personne qui n'est pas un membre mais qui est habilitée à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario, à l'exclusion d'une personne habilitée à exercer le droit en Ontario en vertu de l'article 3, 4 ou 5, peut, sans l'autorisation préalable du Barreau, exercer le droit en Ontario à titre occasionnel si elle remplit les conditions suivantes :

- 1. Elle est en règle auprès de l'organisme de réglementation de la profession juridique dans tous les territoires et provinces où elle est habilitée à exercer le droit.
- 2. Elle a une assurance-responsabilité professionnelle couvrant son exercice du droit en Ontario qui est au moins équivalente à celle exigée des membres par le régime d'assurance du Barreau.
- 3. Elle a une garantie contre les détournements de fonds, autre que celle prévue par le Plan national d'indemnisation, qui couvre expressément son exercice du droit en Ontario et qui est au moins équivalente à la garantie offerte aux membres.
- 4. Si son exercice du droit en Ontario comprend l'exercice du droit propre à l'Ontario, elle a les compétences nécessaires pour exercer le droit propre à l'Ontario.
- 5. Elle paie des droits de permis dont le montant est fixé par le conseil.

Demande présentée au Barreau

- (2) La personne qui désire exercer le droit en Ontario à titre occasionnel en vertu du présent article présente une demande écrite au Barreau pour obtenir l'autorisation de le faire.

Idem

- (3) La demande prévue au paragraphe (2) est présentée sur un formulaire fourni par le Barreau.

Examen de la demande par le ou la responsable du Barreau

(4) Un ou une responsable du Barreau examine chaque demande présentée en application du paragraphe (2) et :

- a) si le ou la responsable est d'avis que les conditions prévues aux dispositions 1 à 4 du paragraphe (1) sont remplies, il ou elle avise par écrit l'auteur de la demande que, sur paiement des droits de permis, il ou elle pourra exercer le droit en Ontario à titre occasionnel;
- b) si la ou le responsable n'est pas convaincu que les conditions prévues aux dispositions 1 à 4 du paragraphe (1) sont remplies mais qu'elle ou il est convaincu que, dans les circonstances, il ne serait pas contraire à l'intérêt public d'autoriser l'auteur de la demande à exercer le droit en Ontario à titre occasionnel, il ou elle avise par écrit l'auteur de la demande que, sur paiement des droits de permis, il ou elle pourra exercer le droit en Ontario à titre occasionnel, sous réserve des conditions que le ou la responsable peut imposer;
- c) si la ou le responsable n'est pas convaincu que les conditions prévues aux dispositions 1 à 4 du paragraphe (1) sont remplies et qu'elle ou il n'est pas convaincu que, dans les circonstances, il ne serait pas contraire à l'intérêt public d'autoriser l'auteur de la demande à exercer le droit en Ontario à titre occasionnel, il ou elle avise par écrit l'auteur de la demande qu'il ou elle ne peut exercer le droit en Ontario à titre occasionnel.

Documents, explications, renonciations, etc.

(5) Pour faciliter l'examen, par le ou la responsable du Barreau, d'une demande présentée en application du paragraphe (2), l'auteur de la demande :

- a) lui fournit tous les documents et explications qu'il peut exiger;
- b) fournit à la personne nommément désignée par le ou la responsable les renonciations, directives et consentements nécessaires pour permettre à cette personne de communiquer au ou à la responsable les informations qu'il ou elle peut exiger.

Demande présentée à un comité de conseillers et de conseillères

(6) Si, en application du paragraphe (4), le ou la responsable du Barreau refuse d'autoriser une personne à exercer le droit en Ontario à titre occasionnel ou lui impose des conditions, cette personne peut demander, par voie de requête, à un comité de conseillers et de conseillères nommé à cet effet par le Conseil de décider si elle peut exercer le droit en Ontario à titre occasionnel ou si les conditions sont appropriées.

Moment où doit être présentée la requête

(7) Pour présenter une requête en vertu du paragraphe (6), la personne en avise par écrit le ou la responsable du Barreau dans les 30 jours suivant le jour où elle reçoit l'avis de la décision qu'a prise le ou la responsable en application du paragraphe (4).

Parties

- (8) Sont parties à une requête présentée en vertu du paragraphe (6) l'auteur de la demande et le Barreau.

Quorum

(9) Au moins trois membres du comité de conseillers et de conseillères examinent la requête présentée en vertu du paragraphe (6) et rendent une décision à son égard.

Procédure

(10) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen par le comité de conseillers et de conseillères, d'une requête présentée en vertu du paragraphe (6), comme si l'examen de la requête était une audience portant sur une demande d'admission présentée en application de l'article 27 de la Loi.

Idem

(11) Si les règles de pratique et de procédure n'abordent pas un point de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen, par le comité de conseillers et de conseillères, d'une requête présentée en vertu du paragraphe (6).

Décision

(12) Après avoir examiné la requête présentée en vertu du paragraphe (6), le comité de conseillers et de conseillères rend l'une des décisions suivantes :

- a) il décide que, sur paiement des droits de permis, l'auteur de la demande peut exercer le droit en Ontario à titre occasionnel, sous réserve des conditions que le comité peut imposer;
- b) il décide que l'auteur de la demande ne peut exercer le droit en Ontario à titre occasionnel.

Décision définitive

(13) La décision du comité de conseillers et de conseillères à l'égard d'une requête présentée en vertu du paragraphe (6) est définitive.

Durée de l'autorisation

(14) À moins d'être retirée, l'autorisation d'exercer le droit en Ontario à titre occasionnel accordée à une personne en application du présent article reste en vigueur pendant un an après le jour où elle entre en vigueur.

Retrait de l'autorisation

(15) L'autorisation d'exercer le droit en Ontario à titre occasionnel accordée à une personne en application du présent article est automatiquement retirée dès que la personne ne se conforme pas à une des conditions prévues au paragraphe (1) ou ne se conforme pas à une condition imposée par un ou une responsable du Barreau ou le comité de conseillers et de conseillères.

Renouvellement de l'autorisation

(16) Avant l'expiration de l'autorisation d'exercer le droit en Ontario à titre occasionnel accordée à une personne en application du présent article, cette personne peut demander son renouvellement et les paragraphes (1) à (13) s'appliquent, avec les adaptations nécessaires, à une demande de renouvellement.

Conformité

(17) À la demande d'un ou d'une responsable du Barreau, la personne qui est autorisée, en vertu du présent article, à exercer le droit en Ontario à titre occasionnel, fournit une preuve de nature à convaincre le ou la responsable qu'elle se conforme à cet article.

Exercice du droit plus souvent qu'à titre occasionnel

8. (1) Sur demande écrite d'une personne habilitée à exercer le droit en Ontario à titre occasionnel en vertu de l'article 3, 4 ou 5 ou autorisée à exercer le droit en Ontario en vertu de l'article 7, un ou une responsable du Barreau peut autoriser cette personne à exercer le droit en Ontario plus souvent qu'à titre occasionnel mais moins souvent que de façon régulière si, à son avis, cette autorisation n'est pas contraire à l'intérêt public.

Droit propre à l'Ontario

(2) Malgré le paragraphe (1), le ou la responsable du Barreau ne doit pas autoriser une personne à exercer le droit propre à l'Ontario plus souvent qu'à titre occasionnel.

Application de la Loi

9. (1) Les dispositions suivantes de la Loi s'appliquent, avec les adaptations nécessaires, aux personnes habilitées ou autorisées en vertu de la présente partie à exercer le droit en Ontario :

1. Le paragraphe 33 (1).
2. Les paragraphes 34 (1) et (2).
3. Les dispositions 1, 4, 19, 20 et 21 du paragraphe 35 (1).
4. Les paragraphes 49.3 (1) et (1.1).
5. Les articles 49.8 à 49.13.
6. Les articles 49.20 à 49.41.

Application des règlements administratifs

(2) Le Règlement administratif n° 21 s'applique, avec les adaptations nécessaires, aux personnes habilitées ou autorisées en vertu de la présente partie à exercer le droit en Ontario.

Code de déontologie

(3) Le Code de déontologie du Barreau s'applique, avec les adaptations nécessaires, aux personnes habilitées ou autorisées en vertu de la présente partie à exercer le droit en Ontario.

Opérations touchant des fonds et d'autres biens

10. (1) Sous réserve du paragraphe (2), la personne habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario ne doit pas recevoir de fonds ni d'autres biens en fiducie pour un client ou une cliente dans le cadre de son exercice du droit en Ontario.

Honoraires

(2) La personne habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario peut recevoir des fonds d'un client ou d'une cliente ou d'une autre personne à titre d'honoraires pour des services qui n'ont pas encore été rendus au client ou à la cliente.

Transfert de fonds

(3) La personne qui reçoit des fonds conformément au paragraphe (2) les verse immédiatement dans un compte en fiducie dans une institution financière située dans la province ou le territoire du Canada autre que l'Ontario où elle est habilitée à exercer le droit.

Exercice du droit nécessitant des opérations touchant des fonds et d'autres biens

(4) La personne habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario qui doit, dans le cadre de son exercice du droit en Ontario, effectuer des opérations touchant des fonds ou d'autres biens autres que celles autorisées par le paragraphe (2) doit s'assurer que ces opérations sont effectuées par un membre conformément au Règlement administratif n° 19.

Preuve de conformité

(5) À la demande d'un ou d'une responsable du Barreau, la personne qui est habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario fournit une preuve de nature à convaincre le ou la responsable qu'elle se conforme au présent article.

Interdiction

11. (1) La personne habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario ne peut se présenter comme prête ou apte à exercer le droit en Ontario autrement que selon ce que prévoit la présente partie, ni se faire passer pour telle.

Preuve de conformité

(2) À la demande d'un ou d'une responsable du Barreau, la personne habilitée ou autorisée en vertu de la présente partie à exercer le droit en Ontario fournit une preuve de nature à convaincre le ou la responsable qu'elle se conforme au présent article.

PARTIE II
DISPOSITIONS GÉNÉRALES

Définitions

12. (1) Les définitions qui suivent s'appliquent au présent article et aux articles 5 et 7.

« Protocole sur l'exercice interjuridictionnel du droit » L'entente, avec ses modifications successives, conclue par le Barreau, la Law Society of British Columbia, la Law Society of Alberta, la Law Society of Saskatchewan, la Société du Barreau du Manitoba, le Barreau du Québec, le Barreau du Nouveau-Brunswick, la Law Society of Prince Edward Island, The Nova Scotia Barristers' Society et la Law Society of Newfoundland à l'égard de l'exercice interprovincial du droit.

« Plan national d'indemnisation » Le régime établi aux termes du Protocole sur l'exercice interjuridictionnel du droit pour l'indemnisation de toute personne qui subit une perte financière par suite d'un détournement de fonds ou d'autres biens par une personne apte à exercer le droit dans une province ou un territoire du Canada pendant que cette personne se livre à l'exercice interprovincial du droit.

Cotisation du Barreau

(2) Au plus tard le 31 décembre de chaque année, le Barreau verse à la Fédération des ordres professionnels de juristes du Canada, au titre du Plan national d'indemnisation, le montant dont ont convenu le Barreau et la Fédération.

Idem

(3) Malgré le paragraphe (2), le Barreau n'est pas tenu de verser un montant à la Fédération des ordres professionnels de juristes du Canada au titre du Plan national d'indemnisation si le Plan national d'indemnisation détient des fonds totalisant 1 million de dollars ou plus.

Divulgaration de renseignements

13. Si un membre fait l'objet d'une enquête ou d'une instance à l'initiative de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario résultant de l'exercice interprovincial du droit par le membre dans cette province ou ce territoire, le Barreau fournit, à la demande de l'organisme de réglementation, tous les renseignements concernant le membre qu'il peut raisonnablement fournir dans les circonstances.

RÈGLEMENT ADMINISTRATIF N° 34

SOCIÉTÉS PROFESSIONNELLES

DÉNOMINATION SOCIALE

Nom des actionnaires

1. (1) Sous réserve du paragraphe (6), la dénomination sociale d'une société professionnelle peut comprendre le nom de n'importe lequel ou laquelle des actionnaires mais elle doit comprendre le nom d'au moins un ou une actionnaire qui exercera le droit par l'intermédiaire de la société.

Actionnaire défunt

(2) La société professionnelle peut conserver dans sa dénomination sociale le nom d'un ou d'une actionnaire décédé.

Utilisation de certaines expressions

(3) Pourvu qu'au moins trois personnes exercent le droit par l'intermédiaire de la société professionnelle, la dénomination sociale de celle-ci peut comprendre des expressions telles que « et associés » ou « et compagnie ».

Utilisation du titre honorifique « c.r. »

(4) La société professionnelle qui a un seul ou une seule actionnaire peut inclure, dans sa dénomination sociale, le titre honorifique « c.r. » dont est dûment titulaire cette personne.

Interdiction : nom commercial, etc.

(5) La dénomination sociale d'une société professionnelle ne doit pas comprendre une dénomination ou marque commerciale ni une figure de style.

Interdiction : actionnaire

(6) La dénomination sociale d'une société professionnelle ne doit pas comprendre le nom d'un ou d'une actionnaire qui occupe la charge de membre d'un tribunal administratif ou toute autre charge dont les fonctions sont incompatibles avec l'exercice du droit.

Interdiction : dispositions générales

(7) La dénomination sociale d'une société professionnelle ne doit pas comprendre un libellé qui n'est pas expressément autorisé par le présent règlement administratif ou par les dispositions de la *Loi sur les sociétés commerciales* ou par les règlements pris en application de celle-ci qui s'appliquent aux sociétés professionnelles.

Interdiction : dénomination sociale identique ou semblable

(8) Une société professionnelle ne doit pas utiliser une dénomination sociale qui, selon le cas :

- a) est utilisée par une autre société professionnelle;
- b) ressemble tellement à la dénomination sociale utilisée par une autre société professionnelle qu'elle risque de dérouter ou de tromper le public.

Utilisation de l'ancienne raison sociale

(9) Malgré toute autre disposition du présent article, la société professionnelle qui est établie par au moins deux membres qui, avant la date de constitution de la société, exerçaient le droit dans le cadre d'une société en nom collectif peut utiliser la raison sociale de celle-ci comme dénomination sociale.

Interprétation : nom d'un actionnaire

(10) Pour l'application du présent article, le nom d'un ou d'une actionnaire s'entend de son nom et, au choix de l'actionnaire, de son prénom ou de ses initiales.

Attestation

2. (1) Les membres peuvent demander par écrit au Barreau de leur délivrer une attestation certifiant que le Barreau ne s'oppose pas à la création d'une société professionnelle sous la dénomination sociale proposée.

Décision du responsable du Barreau

(2) Un ou une responsable du Barreau examine chaque demande présentée en vertu du paragraphe (1) et, selon le cas :

- a) si le ou la responsable est d'avis que la dénomination sociale proposée est conforme à l'article 1, il ou elle délivre une attestation au membre;
- b) si le ou la responsable n'est pas convaincu que la dénomination sociale proposée est conforme à l'article 1, il ou elle rejette la demande.

Avis au membre et requête en réexamen

(3) Le ou la responsable du Barreau qui rejette une demande présentée en vertu du paragraphe (1) en avise le membre et celui-ci peut demander, par voie de requête, au comité de conseillers et de conseillères formé en application de l'article 11 de réexaminer sa demande.

CERTIFICAT D'AUTORISATION

Demande de certificat

3. (1) La société qui désire exercer le droit demande au Barreau de lui délivrer un certificat d'autorisation.

Idem

(2) La demande présentée en application du paragraphe (1) comprend ce qui suit :

- a) un formulaire de demande fourni par le Barreau dûment rempli;
- b) une copie des documents suivants :
 - (i) les statuts constitutifs et le certificat de constitution, les statuts de fusion et le certificat de fusion ou les statuts de maintien et le certificat de maintien, selon le cas, de la société,
 - (ii) les statuts de modification, le cas échéant, et le certificat de modification de la société;
- c) les droits de demande dont le Conseil fixe le montant.

Examen par le responsable du Barreau

4. (1) Un ou une responsable du Barreau examine chaque demande présentée en application du paragraphe 3 (1) et conformément au paragraphe 3 (2).

Délivrance du certificat

(2) Si le ou la responsable du Barreau est d'avis que les conditions suivantes sont remplies, il ou elle délivre un certificat d'autorisation à la société :

- a) la société existe toujours aux termes de la *Loi sur les sociétés par actions* et satisfait aux conditions s'appliquant aux sociétés professionnelles précisées dans cette loi et dans les règlements pris en application de celle-ci;
- b) la dénomination sociale de la société est conforme à l'article 1 du présent règlement administratif;
- c) les administrateurs et administratrices de la société sont des membres dont les droits et privilèges ne sont pas suspendus;

- d) les personnes qui exerceront le droit par l'intermédiaire de la société sont des membres habilités à se livrer à l'exercice du droit à titre privé en Ontario, des membres étudiants qui ne font pas l'objet d'une ordonnance rendue en vertu de l'article 35 ou de l'article 40 ou d'autres personnes habilitées à exercer le droit en vertu de la *Loi sur le Barreau* et des règlements pris en application de celle-ci.

Refus de délivrer le certificat

(3) Si le ou la responsable du Barreau n'est pas convaincu qu'une des conditions prévues au paragraphe (2) est remplie, il ou elle en avise la société et celle-ci peut satisfaire à cette condition ou interjeter appel devant le comité de conseillers et de conseillères formé en application de l'article 11 si elle croit que la condition est remplie.

Idem

(4) Malgré le paragraphe (2), le ou la responsable du Barreau peut refuser de délivrer un certificat d'autorisation à une société dans les cas suivants :

- a) la société a vu son certificat d'autorisation révoqué;
- b) un administrateur ou une administratrice, un dirigeant ou une dirigeante ou un ou une actionnaire de la société est ou a été administrateur ou administratrice, dirigeant ou dirigeante, ou actionnaire d'une société dont le certificat d'autorisation a été révoqué.

Avis et appel

(5) Le ou la responsable du Barreau qui refuse de délivrer un certificat d'autorisation à une société en vertu de l'alinéa (4) a) en avise la société et celle-ci peut interjeter appel de ce refus devant le comité de conseillers et de conseillères formé en application de l'article 11.

Idem

(6) Le ou la responsable du Barreau qui refuse de délivrer un certificat d'autorisation à une société en vertu de l'alinéa (4) b) en avise la société et celle-ci peut dûment nommer d'autres administrateurs ou administratrices et dirigeants ou dirigeantes ou modifier sa liste d'actionnaires ou interjeter appel du refus devant le comité de conseillers et de conseillères formé en application de l'article 11.

Durée du certificat

(7) Sous réserve de sa révocation, le certificat d'autorisation délivré en vertu du présent article est valide depuis la date de sa délivrance, telle qu'elle est indiquée sur le certificat, jusqu'au 31 décembre de l'année où il est délivré.

Renouvellement

5. (1) Une société professionnelle peut demander au Barreau de renouveler son certificat d'autorisation.

Demande

- (2) La demande présentée en vertu du paragraphe (1) comprend ce qui suit :
 - a) un formulaire de demande fourni par le Barreau dûment rempli;
 - b) les droits de renouvellement dont le Conseil fixe le montant.

Examen par le responsable du Barreau

(3) Un ou une responsable du Barreau examine chaque demande présentée en vertu du paragraphe (1) et conformément au paragraphe (2) et, selon le cas :

- a) si le ou la responsable est d'avis que la société professionnelle continue de remplir les conditions de délivrance d'un certificat d'autorisation prévues au paragraphe 4 (2), il ou elle renouvelle le certificat d'autorisation de la société;
- b) si le ou la responsable n'est pas convaincu que la société professionnelle continue de remplir les conditions de délivrance d'un certificat d'autorisation prévues au paragraphe 4 (2), il ou elle refuse de renouveler le certificat d'autorisation de la société.

Refus de renouvellement

(4) Malgré l'alinéa (3) a), le ou la responsable du Barreau peut refuser de renouveler le certificat d'autorisation d'une société professionnelle si un administrateur ou une administratrice, un dirigeant ou une dirigeante, ou un ou une actionnaire de celle-ci est ou a été administrateur ou administratrice, dirigeant ou dirigeante, ou actionnaire d'une société dont le certificat d'autorisation a été révoqué.

Avis et appel

(5) Le ou la responsable du Barreau qui refuse de renouveler un certificat d'autorisation en avise la société professionnelle et celle-ci peut interjeter appel du refus devant le comité de conseillers et de conseillères formé en application de l'article 11.

Durée du renouvellement

(6) Sous réserve de sa révocation, le certificat d'autorisation renouvelé en vertu du présent article est valide jusqu'au 31 décembre de l'année pour laquelle il a été renouvelé.

Expiration du certificat

(7) La société professionnelle dont le certificat d'autorisation a expiré ne doit pas exercer le droit.

Moment de la demande de renouvellement

(8) La société professionnelle qui désire renouveler son certificat d'autorisation sans cesser d'être habilitée à exercer le droit en attendant le renouvellement présente sa demande de renouvellement au plus tard 90 jours avant la date d'expiration de son certificat.

Révocation du certificat

(9) Si, pour une raison quelconque, le certificat d'autorisation d'une société professionnelle n'est pas renouvelé dans les 12 mois suivant son expiration, il est automatiquement révoqué.

Renouvellement d'un certificat révoqué

(10) Une société professionnelle ne peut demander le renouvellement d'un certificat d'autorisation qui a été révoqué mais elle peut demander un nouveau certificat d'autorisation.

Certificat d'autorisation erroné ou incomplet

6. (1) Le ou la responsable du Barreau qui reçoit des renseignements selon lesquels un certificat d'autorisation détenu par une société professionnelle contient une erreur ou est incomplet peut, en en avisant la société par écrit, exiger que celle-ci renvoie son certificat d'autorisation au Barreau au plus tard à la date précisée dans l'avis, afin de le faire corriger, compléter ou remplacer.

Certificat de remplacement

(2) Si le Barreau remplace un certificat d'autorisation erroné ou incomplet par un nouveau certificat d'autorisation, celui-ci porte la date de délivrance du certificat d'autorisation qu'il remplace et la mention qu'il s'agit d'un certificat de remplacement.

Détention ininterrompue du certificat

(3) Le renvoi d'un certificat d'autorisation prévu au présent article n'entraîne pas une interruption de la détention de ce certificat par la société professionnelle.

Durée du certificat de remplacement

(4) Sous réserve de sa révocation, le certificat d'autorisation de remplacement délivré en vertu du présent article est valide jusqu'au 31 décembre de l'année où il est délivré.

Correction ou autre mesure faisant suite à un avis de modification

(5) Si le remplacement d'un certificat d'autorisation prévu au présent article est rendu nécessaire par une modification que signale la société professionnelle en application de l'article 10, celle-ci paie au Barreau des droits de remplacement du certificat dont le Conseil fixe le montant.

Perte ou destruction du certificat

7. (1) En cas de perte ou de destruction du certificat d'autorisation d'une société professionnelle, celle-ci peut demander par écrit au Barreau un certificat de remplacement.

Délivrance d'un certificat de remplacement par le responsable du Barreau

(2) Sur paiement des droits dont le Conseil fixe le montant, un ou une responsable du Barreau peut délivrer un certificat d'autorisation de remplacement à la société professionnelle.

Certificat de remplacement

(3) Le certificat d'autorisation de remplacement délivré en vertu du présent article porte la date de délivrance du certificat d'autorisation qu'il remplace et la mention qu'il s'agit d'un certificat de remplacement.

Durée du certificat de remplacement

(4) Sous réserve de sa révocation, le certificat d'autorisation de remplacement délivré en vertu du présent article est valide jusqu'au 31 décembre de l'année où il est délivré.

Formulaire 34A

8. Les certificats d'autorisation délivrés en vertu du présent règlement administratif sont rédigés selon le formulaire 34A.

Remise du certificat

9. (1) Une société professionnelle demande au Barreau la permission de rendre son certificat d'autorisation dans les cas suivants :

- a) la société ne désire pas renouveler son certificat ou ne désire plus exercer le droit;
- b) une liquidation volontaire ou une dissolution volontaire de la société va s'effectuer.

Idem

(2) La demande présentée en application du paragraphe (1) est écrite et accompagnée d'une déclaration solennelle signée par les administrateurs et administratrices de la société professionnelle précisant :

- a) la dénomination sociale de la société professionnelle, son numéro de personne morale en Ontario, l'adresse de son siège social, l'adresse de son bureau commercial, le numéro du certificat d'autorisation de la société et la date de sa délivrance;
- b) les raisons de la demande;

- c) que la société professionnelle a rendu compte de tous les fonds et biens détenus en fiducie dont elle était responsable et qu'elle les a remis aux personnes y ayant droit ou, selon le cas, que la société n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie;
- d) que la société professionnelle a réglé toutes les affaires qui lui avaient été confiées par ses clients et clientes ou qu'elle a pris les mesures nécessaires, à la satisfaction de ces derniers, pour leur rendre leurs documents ou pour les transmettre à un autre avocat ou une autre avocate ou, selon le cas, que la société professionnelle ne s'est pas livrée à l'exercice du droit;
- e) que les administrateurs et administratrices de la société professionnelle n'ont connaissance d'aucune réclamation contre celle-ci à l'égard de ses services professionnels ou dans le cadre de son exercice de la profession;
- f) tous les renseignements ou explications supplémentaires concernant ce qui précède.

Idem

(3) L'attestation d'un ou d'une comptable, certifiant que la société professionnelle a rendu compte de tous les fonds et biens détenus en fiducie dont elle était responsable et qu'elle les a remis aux personnes y ayant droit, est jointe en annexe à la demande, à titre de pièce à l'appui de la déclaration solennelle exigée au paragraphe (2).

Publication de l'avis d'intention de rendre le certificat

(4) Sous réserve du paragraphe (5), la société professionnelle qui désire rendre son certificat d'autorisation fait paraître dans le *Recueil de jurisprudence de l'Ontario*, au moins 30 jours avant la date de la demande qu'elle présente au Barreau en application du paragraphe (1), un avis d'intention de rendre un certificat d'autorisation.

Dispense de l'obligation de publier l'avis

(5) Sur demande écrite de la société professionnelle, un ou une responsable du Barreau peut dispenser celle-ci de l'obligation de publier un avis d'intention de rendre un certificat d'autorisation.

Avis d'intention de rendre un certificat

(6) L'avis d'intention de rendre un certificat d'autorisation que la société professionnelle est tenue de publier en application du paragraphe (4) est rédigé selon le formulaire 34B [Avis d'intention de rendre un certificat d'autorisation].

Preuve de publication de l'avis d'intention de rendre un certificat

(7) À moins que la société professionnelle ne soit dispensée de l'obligation de publier un avis d'intention de rendre un certificat d'autorisation, la demande prévue au paragraphe (1) est accompagnée de la preuve de publication de l'avis d'intention de rendre un certificat d'autorisation, conformément au paragraphe (4).

Examen de la demande par le responsable du Barreau

(8) Sous réserve du paragraphe (9), un ou une responsable du Barreau examine chaque demande présentée en application du paragraphe (1) à l'égard de laquelle les conditions prévues aux paragraphes (2), (3) et (7) ont été remplies et peut examiner une demande présentée en application du paragraphe (1) à l'égard de laquelle les conditions des paragraphes (2), (3) et (7) n'ont pas été remplies et, selon le cas :

- a) la demande est acceptée si le ou la responsable du Barreau est convaincu :
 - (i) que la société professionnelle a rendu compte de tous les fonds et biens détenus en fiducie dont elle était responsable et qu'elle les a remis aux personnes y ayant droit ou, selon le cas, que la société n'est responsable d'aucune somme ou d'aucun bien détenu en fiducie,

- (ii) que la société a réglé toutes les affaires qui lui avaient été confiées par ses clients et clientes ou qu'elle a pris les mesures nécessaires, à la satisfaction de ces derniers, pour leur rendre leurs documents ou pour les transmettre à un autre avocat ou une autre avocate ou, selon le cas, que la société professionnelle ne s'est pas livrée à l'exercice du droit,
 - (iii) qu'il n'existe aucune réclamation contre la société à l'égard de ses services professionnels ou dans le cadre de son exercice de la profession,
 - (iv) que la société professionnelle n'est plus assujettie ou s'est pleinement conformée à toutes les conditions d'une ordonnance rendue en vertu de la partie II de la Loi,
 - (v) que la société professionnelle, si elle n'est pas dispensée de l'obligation de publier un avis d'intention de rendre un certificat d'autorisation, s'est conformée au paragraphe (4);
- b) sous réserve du paragraphe (9), la demande est rejetée si le ou la responsable du Barreau n'est pas convaincu que les conditions prévues à l'alinéa a) sont remplies.

Acceptation de la demande

(9) Si le ou la responsable du Barreau n'est pas convaincu que la condition prévue au sous-alinéa (8) a) (iv) est remplie mais qu'il ou elle est d'avis que les conditions prévues aux sous-alinéas (8) a) (i), (ii), (iii) et (v) sont remplies, il ou elle peut accepter la demande.

Cas où le responsable du Barreau n'examine pas la demande

(10) Le ou la responsable du Barreau n'examine pas la demande présentée en application du paragraphe (1) si la société professionnelle ou une personne qui exerce le droit par l'intermédiaire de celle-ci se trouve dans l'une des situations suivantes :

- a) elle fait l'objet d'une vérification, d'une enquête, d'une perquisition ou d'une saisie effectuée ou menée par le Barreau;
- b) elle est partie à une instance introduite sous le régime de la partie II de la Loi.

Documents et explications

(11) Afin d'aider le ou la responsable du Barreau à examiner sa demande, la société professionnelle lui fournit tous les documents et explications qu'il ou elle peut exiger.

Rejet de la demande

(12) Le ou la responsable du Barreau qui rejette la demande de la société professionnelle peut préciser les modalités à remplir pour que la demande soit acceptée; une fois que le ou la responsable est d'avis que la société s'est conformée à ces modalités, il ou elle accepte la demande.

MODIFICATION DES RENSEIGNEMENTS

Modification des renseignements

10. (1) La société professionnelle avise immédiatement le Barreau par écrit :

- a) de toute modification des renseignements qu'elle a fournis dans sa demande de certificat d'autorisation ou sa demande de renouvellement de son certificat d'autorisation;
- b) de toute modification de ses statuts constitutifs.

Renseignements requis

(2) L'avis exigé par le paragraphe (1) indique les détails de la modification et, en cas de modification des statuts constitutifs de la société professionnelle, comprend les statuts de modification et le certificat de modification.

COMITÉ DE CONSEILLERS : EXAMENS ET APPELS

Comité de conseillers

11. (1) Le Conseil charge un comité d'au moins trois conseillers et conseillères d'examiner les requêtes en réexamen ou en appel présentées en vertu du présent règlement administratif.

Mandat

(2) Les conseillers et conseillères nommés en application du paragraphe (1) restent en fonction jusqu'à la nomination de leurs successeurs.

Examen de la requête en réexamen ou en appel : quorum

(3) Trois membres du comité formé en application du paragraphe (1) forment le quorum pour l'étude d'une requête en réexamen ou d'un appel interjeté en vertu du présent règlement administratif.

Moment où doit être présentée la requête en réexamen

12. (1) Pour solliciter un réexamen en vertu du paragraphe 2 (3), l'auteur de la demande présente une requête écrite en ce sens au ou à la responsable du Barreau dans les 30 jours suivant le jour où le ou la responsable du Barreau l'avise du rejet de sa demande de certificat.

Moment où doit être présentée la requête en appel : appels interjetés en vertu des paragraphes 4 (3), (5) et (6)

(2) Sous réserve du paragraphe (4), la société professionnelle interjette appel en vertu du paragraphe 4 (3), (5) ou (6) en avisant le ou la responsable du Barreau par écrit de l'appel dans les 30 jours suivant, selon le cas :

- a) le jour où le ou la responsable avise la société, en application du paragraphe 4 (3), qu'une condition n'a pas été remplie;
- b) le jour où le ou la responsable avise la société, en application du paragraphe 4 (5) ou (6), de son refus de délivrer un certificat d'autorisation.

Délai d'appel : appel interjeté en vertu du paragraphe 5 (6)

(3) Sous réserve du paragraphe (4), la société professionnelle interjette appel en vertu du paragraphe 5 (6) en avisant par écrit le ou la responsable du Barreau de l'appel dans les 30 jours suivant le jour où le ou la responsable avise la société de son refus de renouveler le certificat d'autorisation de la société.

Prorogation du délai d'appel

(4) À la demande écrite de la société professionnelle, présentée au plus tard le dernier jour du délai d'appel précisé au paragraphe (2) ou (3), un ou une responsable du Barreau peut proroger le délai d'appel.

Remise de l'avis

(5) Pour l'application du présent article, le ou la responsable du Barreau est réputé avoir avisé une personne de son rejet ou de son refus :

- a) dans le cas d'un avis oral, le jour où le ou la responsable a donné cet avis à la personne;
- b) dans le cas d'un avis écrit :

- (i) s'il a été envoyé par courrier ordinaire, le cinquième jour suivant son envoi par la poste,
- (ii) s'il a été envoyé par télécopieur, le jour de son envoi.

Procédure : réexamen et appel

13. (1) Sous réserve du paragraphe (2), le comité de conseillers et de conseillères formé en application de l'article 11 établit la procédure qui s'applique à l'étude par ce comité d'une requête en réexamen présentée en vertu du paragraphe 2 (3) ou d'un appel interjeté en vertu du paragraphe 4 (3), 4 (5), 4 (6) ou 5 (6). Le comité peut notamment décider qui peut lui présenter des observations, à quel moment et de quelle manière.

Idem

(2) Sauf si le comité de conseillers et de conseillères formé en application de l'article 11 autorise une personne à lui présenter des observations orales, toutes les observations présentées au comité sont écrites.

Pouvoirs

14. (1) Le comité de conseillers et de conseillères formé en application de l'article 11 étudie chaque requête en réexamen présentée en vertu du paragraphe 2 (3) et prend l'une ou l'autre des mesures suivantes :

- a) s'il est convaincu que la dénomination sociale proposée est conforme à l'article 1, il ordonne à un ou une responsable du Barreau de délivrer un certificat au membre;
- b) s'il n'est pas convaincu que la dénomination sociale proposée se conforme à l'article 1, il rejette la requête.

Pouvoirs en cas d'appel interjeté en vertu du paragraphe 4 (3)

(2) Le comité de conseillers et de conseillères formé en application de l'article 11 étudie l'appel interjeté en vertu du paragraphe 4 (3) et prend l'une ou l'autre des mesures suivantes :

- a) s'il décide que la condition a été remplie, il ordonne à un ou une responsable du Barreau de délivrer un certificat d'autorisation à la société;
- b) s'il décide que la condition n'a pas été remplie, il avise la société qu'elle n'a pas satisfait à la condition et que le Barreau ne lui délivrera pas de certificat d'autorisation.

Pouvoirs en cas d'appel interjeté en vertu du paragraphe 4 (5) ou (6)

(3) Le comité de conseillers et de conseillères formé en application de l'article 11 étudie l'appel interjeté en vertu du paragraphe 4 (5) ou (6) et rend la décision qu'il juge appropriée dans les circonstances.

Pouvoirs en cas d'appel interjeté en vertu du paragraphe 5 (6)

(4) Le comité de conseillers et de conseillères formé en application de l'article 11 étudie l'appel interjeté en vertu du paragraphe 5 (6) et prend l'une ou l'autre des mesures suivantes :

- a) il ordonne à un ou une responsable du Barreau de renouveler le certificat d'autorisation de la société s'il est convaincu que :
 - (i) la société continue de satisfaire aux conditions de délivrance d'un certificat d'autorisation qui sont prévues au paragraphe 4 (2),
 - (ii) malgré l'existence de la situation visée au paragraphe (5), il est approprié de renouveler le certificat d'autorisation de la société;

- b) il refuse de renouveler le certificat d'autorisation de la société professionnelle dans l'un ou l'autre des cas suivants :
- (i) il n'est pas convaincu que la société continue de satisfaire aux conditions de délivrance d'un certificat d'autorisation qui sont précisées au paragraphe 4 (2),
 - (ii) il décide qu'il est inapproprié de renouveler le certificat d'autorisation de la société à cause de la situation visée au paragraphe (5).

Décisions définitives

- (5) Les décisions du comité de conseillers et de conseillères formé en application de l'article 11 sont définitives.

DISPOSITIONS GÉNÉRALES

Tableau

15. Les renseignements suivants figurent dans le tableau des sociétés professionnelles prévu à l'article 61.0.2 de la Loi :

- 1. La dénomination sociale de la société professionnelle.
- 2. L'adresse du siège social de la société professionnelle.
- 3. L'adresse commerciale de la société professionnelle si elle est différente de celle de son siège social.
- 4. Le numéro du certificat d'autorisation délivré à la société professionnelle.
- 5. La date à laquelle le certificat d'autorisation a été délivré à la société professionnelle.
- 6. Les conditions ou restrictions qui s'appliquent au certificat d'autorisation de la société professionnelle.
- 7. La date à laquelle le certificat d'autorisation de la société professionnelle a été suspendu, assujetti à une condition ou à une restriction, révoqué ou rendu.

Application des règlements administratifs

16. (1) Les règlements administratifs suivants s'appliquent, avec les adaptations nécessaires, aux sociétés professionnelles :

- 1. Règlement administratif n° 17 [Déclarations obligatoires].
- 2. Règlement administratif n° 18 [Tenue de registres].
- 3. Règlement administratif n° 19 [Opérations touchant des fonds et d'autres biens].
- 4. Règlement administratif n° 25 [Cabinets multidisciplinaires].
- 5. Règlement administratif n° 29 [Paiement des frais].
- 6. Règlement administratif n° 35 [Faillite d'un membre].

Interdiction de procéder à une liquidation ou dissolution volontaire

17. Les actionnaires d'une société professionnelle ne doivent pas demander la liquidation volontaire de la société ni en autoriser la dissolution volontaire avant que la société ait reçu, en application de l'article 9, la permission de rendre son certificat d'autorisation.

Définition : « responsable du Barreau »

18. Pour l'application du présent règlement administratif, « responsable du Barreau » s'entend de la personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

Délégation des pouvoirs et fonctions du secrétaire au directeur du service à la clientèle

19. La personne qui occupe la charge de directeur ou directrice du service à la clientèle peut exercer les pouvoirs et les fonctions que le paragraphe 61.0.2 (1) et l'article 61.0.3 de la Loi attribuent au ou à la secrétaire.

Formulaire 34A

Certificat d'autorisation

Numéro du certificat : *(Indiquer le numéro)*

BARREAU DU HAUT-CANADA

(Armoiries du Barreau)

CERTIFICAT D'AUTORISATION

Délivré en vertu du Règlement administratif n° 34 pris en application de la disposition 28.1 du paragraphe 62 (0.1) de la *Loi sur le Barreau*

Le présent certificat autorise (*dénomination sociale de la société*), numéro de personne morale en Ontario (*indiquer le numéro*), à exercer le droit à titre d'avocat conformément à la *Loi sur le Barreau*, aux règlements administratifs pris en application de celle-ci et au *Code de déontologie* du Barreau du Haut-Canada.

(Date)

(Signature du ou de la responsable du Barreau)

Formulaire 34B

Avis d'intention de rendre un certificat d'autorisation

AVIS D'INTENTION DE RENDRE UN CERTIFICAT D'AUTORISATION

(Dénomination sociale de la société professionnelle qui demande la permission de rendre un certificat d'autorisation, en majuscules)

Conformément à l'article 9 du Règlement administratif n° 34 adopté en vertu de la disposition 28.1 du paragraphe 62 (0.1) de la *Loi sur le Barreau*, la société susnommée donne avis de son intention de rendre son certificat d'autorisation.

La société susnommée se livre à l'exercice du droit à (*indiquer où la société susnommée se livre à l'exercice du droit*) (*ou ne se livre pas à l'exercice du droit depuis le (date)*) (*ou ne s'est jamais livrée à l'exercice du droit en Ontario*).

Fait à (*endroit*)

(*Date*)

(*Nom de la société professionnelle*)

(*Signatures de tous les administrateurs et administratrices*)

RÈGLEMENT ADMINISTRATIF N° 35

FAILLITE D'UN MEMBRE

Délégation des pouvoirs et fonctions du secrétaire à l'avocat principal du service de la discipline

1. (1) La personne qui occupe la charge d'avocat principal du service de la discipline peut exercer les pouvoirs et les fonctions que le présent règlement administratif attribue au ou à la secrétaire, en son absence et sous réserve des conditions qu'il ou elle impose.

Délégation des pouvoirs et fonctions du secrétaire à l'avocat du service de la discipline

(2) La personne qui occupe la charge d'avocat du service de la discipline peut exercer les pouvoirs et les fonctions que le présent règlement administratif attribue au ou à la secrétaire, en son absence et sous réserve des conditions qu'il ou elle impose.

Obligation d'aviser le Barreau

2. Dans l'un ou l'autre des cas suivants, le membre en cause doit immédiatement aviser le Barreau :

1. Le membre reçoit avis ou signification d'une pétition en vue d'une ordonnance de séquestre déposée contre lui au tribunal en vertu du paragraphe 43 (1) de la *Loi sur la faillite et l'insolvabilité* (Canada).
2. Le membre fait une cession de tous ses biens au profit de ses créanciers en général en vertu de l'article 49 de la *Loi sur la faillite et l'insolvabilité* (Canada).

Interdiction d'effectuer des opérations touchant des fonds

3. (1) Sous réserve des paragraphes (2) et (3), le membre failli, au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), ne doit pas recevoir de fonds ni d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom ni effectuer d'autres opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes.

Exception

(2) Le membre failli, au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), peut recevoir des fonds d'une personne ou d'un groupe de personnes ou en leur nom dans les cas suivants :

- a) il s'agit du paiement d'honoraires pour des services qu'il a fournis à cette personne ou à ce groupe de personnes;
- b) il s'agit du remboursement de fonds légitimement dépensés ou de frais légitimement engagés au nom de cette personne ou de ce groupe.

Idem

(3) Le membre failli, au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), peut adresser une demande écrite au ou à la secrétaire ou, en l'absence de cette personne et de toutes celles qui sont autorisées à exercer les pouvoirs et les fonctions que le présent règlement administratif attribue au ou à la secrétaire, au directeur général ou à la directrice générale, pour solliciter l'autorisation de recevoir des fonds ou d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom, autrement que dans les cas prévus au paragraphe (2), ou la permission d'effectuer des opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes. Après avoir examiné la demande du membre, le ou la secrétaire ou le directeur général ou la directrice générale peut l'autoriser à le faire, sous réserve des conditions qu'il ou elle impose.

RÈGLEMENT ADMINISTRATIF N° 36

CONSEILLER OU CONSEILLÈRE JURIDIQUE EN MATIÈRE DE DISCRIMINATION ET DE HARCÈLEMENT

Nomination

1. (1) Le Conseil nomme une personne au poste de conseiller ou conseillère juridique en matière de discrimination et de harcèlement conformément à l'article 2.

Mandat

(2) Le conseiller ou la conseillère est nommé pour un mandat renouvelable d'une durée maximale de trois ans.

Amovibilité

(3) Le conseiller ou la conseillère exerce ses fonctions au gré du Conseil.

Recommandation préalable

2. (1) Le Conseil ne doit pas nommer une personne sans que cette nomination soit recommandée par le comité permanent du Conseil responsable des questions concernant l'équité et la diversité dans la profession juridique.

Vacance

(2) En cas de vacance au poste de conseiller ou conseillère, le comité procède au recrutement de candidats et candidates en vue d'une nomination par le Conseil conformément aux procédures et critères établis par le comité.

Liste des candidats

(3) À la conclusion du recrutement, le comité remet au Conseil une liste indiquant, par ordre préférentiel, au moins deux personnes que le comité recommande de nommer conseiller ou conseillère, en motivant de façon concise sa recommandation.

Candidats supplémentaires

(4) Si le comité remet au Conseil une liste de personnes qu'il recommande en vue d'une nomination, le Conseil peut lui demander de lui remettre une liste de personnes supplémentaires que le comité recommande.

Examen des recommandations à huis clos

(5) Le Conseil examine les recommandations du comité à huis clos.

Application de l'article 2

3. L'article 2 ne s'applique pas si le Conseil renouvelle le mandat du conseiller ou de la conseillère en vertu du paragraphe 1 (2).

Fonctions du conseiller

4. (1) Le conseiller ou la conseillère a pour mandat :

- a) d'aider, de la manière qu'il ou elle juge opportune, toute personne qui croit avoir fait l'objet de discrimination ou de harcèlement de la part d'un membre ou d'un membre étudiant;
- b) d'aider le Barreau, au besoin, à élaborer et à offrir aux membres et aux membres étudiants des programmes d'information et d'éducation sur la discrimination et le harcèlement;
- c) de s'acquitter de toutes les autres fonctions que peut lui assigner le Conseil.

Aucun pouvoir de mener des enquêtes

(2) Malgré l'alinéa (1) a), le conseiller ou la conseillère n'a pas le pouvoir d'effectuer ou d'exiger que soit effectuée une enquête en vertu de l'article 49.3 de la Loi.

Accès aux renseignements

(3) Sauf avec la permission préalable du ou de la secrétaire, le conseiller ou la conseillère n'a pas le droit d'avoir accès à des renseignements qui se trouvent dans les dossiers du Barreau ou que celui-ci possède et qui concernent un membre ou un membre étudiant.

Rapports au comité

5. (1) Le conseiller ou la conseillère présente au comité :

- a) au plus tard le 31 janvier de chaque année, un rapport sur ses affaires au cours de la période allant du 1^{er} juillet au 31 décembre de l'année précédente;
- b) au plus tard le 1^{er} septembre de chaque année, un rapport sur ses affaires au cours de la période allant du 1^{er} janvier au 30 juin de l'année en cours.

Rapport au conseil

(2) Le comité présente chaque rapport qu'il a reçu du conseiller ou de la conseillère le premier jour suivant la date limite de réception du rapport par le comité où le Conseil tient une assemblée ordinaire.

Confidentialité

6. (1) Le conseiller ou la conseillère ne doit divulguer :

- a) aucun renseignement qui vient à sa connaissance par suite de l'exercice de ses fonctions visées à l'alinéa 4 (1) a);
- b) aucun renseignement qui vient à sa connaissance de la manière prévue au paragraphe 4 (3) et que l'article 49.12 de la Loi interdit aux conseillers, dirigeants, employés, mandataires et représentants du Barreau de divulguer.

Code de déontologie

(2) Il est entendu que l'alinéa (1) a) l'emporte sur le Code de déontologie du Barreau dans la mesure où celui-ci exige que le conseiller ou la conseillère divulgue au Barreau les renseignements visés à l'alinéa (1) a).

Exceptions

(3) Le paragraphe (1) n'interdit pas ce qui suit :

- a) la divulgation de renseignements exigés dans le cadre de l'application de la Loi, des règlements, des règlements administratifs ou des règles de pratique et de procédure;
- b) la divulgation de renseignements qui sont du domaine public;
- c) la divulgation de renseignements lorsque le conseiller ou la conseillère a des motifs raisonnables de croire qu'une personne ou un groupe de personnes identifiable court un risque imminent de mort ou de préjudice physique ou psychologique grave qui nuit considérablement à la santé ou au bien-être de cette personne ou de ce groupe et que la divulgation est nécessaire pour empêcher la mort ou le préjudice;
- d) la divulgation de renseignements par le conseiller ou la conseillère à son avocat;
- e) la divulgation de renseignements avec le consentement écrit de toutes les personnes dont il est raisonnable de croire que les intérêts seront touchés par la divulgation.

Carried

REPORT ON THE ANNUAL MEETING OF THE FEDERATION OF LAW SOCIETIES OF CANADA

Mr. Feinstein reported on the meetings he had attended over the summer and the various activities underway including the restructuring of the Federation, money laundering and the Virtual Law Library.

Report on the Annual Meeting of the
Federation of Law Societies of Canada
September 28, 2001

Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat

Background

1. The Annual General Meeting of the Federation of Law Societies of Canada was held in Saskatoon from August 16 to 19, 2001. The Treasurer, Vern Krishna, Gerry Swaye, George Hunter, Malcolm Heins, Janine Miller and Katherine Corrick attended for the Law Society of Upper Canada.
2. The purpose of this report is to provide Convocation with a brief synopsis of the major issues discussed at the meeting.

Lawyer Mobility

3. The topic of lawyer mobility in Canada dominated the agenda of the meeting. There is clearly a will among all Canadian law societies to co-operate to achieve greater mobility for Canadian lawyers.

4. Recently, the four Western provinces have adopted rules permitting lawyers in those provinces to practise in any Western province for up to six months in any one-year period. Those provinces are continuing to work on harmonizing their compensation funds, trust account rules, and bar admission programs.
5. At the meeting, the law societies unanimously adopted a resolution to establish a Mobility Task Force to examine full mobility rights and conditions for lawyers and Quebec notaries in Canada. Attached at TAB 1 is the complete text of the resolution.
6. The Treasurer, Vern Krishna, has been appointed chair of the Task Force. Members are Francis Gervais, Bâtonnier of the Barreau du Québec, Eric Macklin, President of the Law Society of Alberta, George Hunter, Benchler, Law Society of Upper Canada, and Mark McCrea, President, Nova Scotia Barristers' Society.
7. A budget of \$100,000 for the Task Force was approved in Saskatoon. A request for funding (\$1.50 per full-time equivalent member) will be coming forward to Convocation through the regular budget process.

Challenge to *Proceeds of Crime Act*

8. The law societies passed a further resolution appointing a committee to retain and instruct counsel to initiate a legal challenge to the *Proceeds of Crime Act* and proposed regulations, which will require lawyers to report specified information acquired within the solicitor-client relationship to a federal agency.
9. Richard Gibbs, First Vice-President of the Law Society of British Columbia, has been appointed chair of that committee. Neil Finkelstein is the Law Society of Upper Canada's representative on the committee.

Restructuring of the Federation of Law Societies

10. The Federation of Law Societies of Canada was established in 1972 to provide a forum for information sharing among law societies. Since that time, and particularly since 1985, the Federation has undertaken projects and initiatives affecting all law societies, and has effectively moved beyond its original mandate.
11. Some of the national initiatives undertaken by the Federation include the Inter-Jurisdictional Practice Protocol (which was adopted by Ontario in May 2001), the oversight of the National Committee on Accreditation, and CANLII.
12. It is becoming increasingly clear that institutions such as the federal government do not want to deal with fourteen different law societies but would prefer to deal with a national entity that can speak for all law societies. The Federation could be well positioned to be the national voice of law societies in such matters as the negotiations surrounding WTO and GATS.
13. If the Federation were effective at the national and international level for law societies, it would permit individual law societies to achieve certain efficiencies. For example, the Federation would be responsible for expenses related to lobbying efforts, rather than individual law societies.
14. The Federation has been resourced at the same level since 1985. Each law society contributes \$8.00 for each full-time equivalent member. To become an effective national organization for law societies, the Federation must be more adequately resourced.
15. Prior to determining what resources are required for the Federation, a Special Committee has been struck with the mandate to study new objects for the Federation; to review the governance and administration of the Federation; and to make recommendations for the reform of the Federation to permit it to effectively achieve its objects. This study will include the budgetary consequences that will arise from any reforms.

16. Abe Feinstein, benchers of the Law Society of Upper Canada, and past-president of the Federation of Law Societies of Canada will chair the special committee.

Issues of National Interest

17. The following issues of interest to all law societies were identified by those attending the meeting.
- regulation of paralegals
 - multi-disciplinary practices
 - lawyer mobility
 - home closing services
 - money laundering
 - e-commerce legislation
 - privacy legislation
 - multiple representation rules
 - limited liability partnerships
 - access to justice issues
 - class action legislation
 - regulating law firms
 - prepaid legal services
 - copyright
 - PIPEDA
 - admission requirements
 - uniform code of conduct

CanLII

18. The Canadian Legal Information Institute (CANLII) is a project of the Federation, the ultimate goal of which is to provide free Internet access to federal, provincial, and territorial statutes and case law.
19. The 2000/2001 budget for CANLII was approved at the Federation meeting. In July 2001, Convocation approved Ontario's contribution of between \$10 and \$15 per member over the next three years.

Juricert and Supreme Court of Canada e-filing

20. Juricert has recently undertaken a joint project with QuickLaw, and the Supreme Court of Canada to create a uniform system of e-filing documents in the Supreme Court of Canada. The system will avoid the problems associated with the Court and lawyers using a variety of systems that require different software.
21. The e-filing system will permit lawyers from anywhere in the country to file pleadings in the Supreme Court of Canada. It will no longer be necessary to retain an agent in Ottawa to do the filing. In addition, lawyers will be required to file only one copy of pleadings, rather than multiple copies.
22. The system will be tested throughout the fall of 2001.

National Database

23. Juricert has developed a database of members of the western law societies. It is known as the National Lawyer Registry and is intended to allow the western law societies to know who in the western provinces is eligible to take advantage of the new lawyer mobility rules in Western Canada.

24. The National Lawyer Registry has no real-time connection to the databases of the law societies. Rather, it is the responsibility of each individual law society to update its data in the Registry on a regular basis.
25. The database allows a host law society to search and determine whether a lawyer from another province is eligible to be practising in the host province.
26. Ontario is currently engaged in discussions with Juricert with a view to joining the National Registry. There is no fee to join the Registry, as it has been funded by the law societies' original financial contributions to Juricert.

Home Closing Services

27. The Law Society of Alberta reported on Home Closing Services, a product offered by First Canadian Title through the Bank of Montreal and CIBC. This product has allowed the banks to outsource their mortgage administration functions.
28. Once a bank has decided to advance mortgage funds, the bank sends the client to Home Closing Services. The Home Closing Service send the client to specified lawyers who perform the necessary legal work on the instructions of First Canadian Title. The lawyer does the work for a fixed fee, and then reports to the First Canadian Title. First Canadian Title pays a \$25 referral fee to the bank who refers the client to the Home Closing Service.
29. The Law Society of Alberta has held a hearing to determine whether the lawyers performing the legal work in the transactions are acting in a conflict of interest. A decision from that hearing is pending.
30. The Law Society of Manitoba has retained counsel to provide an opinion about whether the payment of a referral fee to the bank violates any of its rules.

.....

It was moved by Mr. Hunter, seconded by Mr. Millar that Convocation express its gratitude to Mr. Feinstein for his service as President of the Federation of Law Societies of Canada.

The motion carried unanimously.

PROFESSIONAL DEVELOPMENT & COMPETENCE COMMITTEE REPORT

Mr. Cherniak presented the Report of the Professional Development & Competence Committee for approval by Convocation.

Professional Development & Competence Committee
September 28, 2001

Report to Convocation

Purpose of Report: Policy - Decision Making
Information

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

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The former members of the Professional Development and Competence Committee ("the Committee") met on July 25, 2001. Committee members in attendance were Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Stephen Bindman, Kim Carpenter-Gunn, Seymour Epstein, Greg Mulligan, Ron Manes, Judith Potter, and Bill Simpson. Staff in attendance were Bob Bernhardt, Lorne Giacomelli, Felecia Smith, Sophia Sperdakos, and Paul Truster. The CEO, Malcolm Heins, attended part of the meeting.
2. The current members of the Professional Development and Competence Committee ("the Committee") met on September 20, 2001. Committee members in attendance were Earl Cherniak (Vice-Chair), Kim Carpenter-Gunn, (Vice-Chair), Carole Curtis, Barbara Laskin, Janet Minor, Helene Puccini, Bill Simpson, and Rich Wilson. Greg Mulligan attended a portion of the meeting.
3. The Committee is reporting on the following matters:
Policy - For Decision
 - The proposed Private Practice Refresher Program (formerly Requalification)Information
 - Report on LibraryCo. activities.

POLICY - FOR DECISION

PROPOSED PRIVATE PRACTICE REFRESHER PROGRAM

Summary

1. In September 2000 Convocation approved a recommendation that the current requalification program be placed in abeyance pending a review of the program by the Professional Development and Competence Committee.
2. The Committee has completed its review and is providing Convocation with a unanimous proposal for changes to the current program.
3. The purpose of the Committee's report, set out at Appendix 1, is to,
 - a) provide background, setting out the history of the issue;
 - b) outline the considerations underlying the proposal;
 - c) describe the proposal;
 - d) provide an outline of the proposed course; and
 - e) set out the transitional issue.

Request to Convocation

4. Convocation is requested to consider the report and recommendations set out at *Appendix 1* and, if appropriate,
 - a) approve the proposal set out in paragraphs 21-34 and 37;
 - b) approve the recommendations for dealing with the transitional issue, set out in paragraphs 41 and 42.

INFORMATION

LIBRARYCO.

1. LibraryCo. has provided an information report to Convocation, set out at Appendix 2, describing the role of LibraryCo., its activities to date, and its upcoming work.

APPENDIX 1

PROPOSAL FOR THE PRIVATE PRACTICE REFRESHER PROGRAM

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EXECUTIVE SUMMARY

In September 2000 Convocation placed the requalification program in abeyance and directed the Professional Development and Competence Committee to review the current program and make recommendations to Convocation that would address the concerns identified. The Committee proposes a new approach that,

- more effectively addresses the goals of the original program, to ensure that those members who have been away from private practice for five years or more are provided with a refresher program for those areas in which their skills may have eroded. The focus is on practice management and client relationships. There is no requirement to redo the Bar Admission Course, or any aspect of it.
- provides a fair and transparent process, by,
 - replacing the subjective test of “making substantial use of legal skills on a regular basis” with an objective test that is clear, simple, and consistently and more appropriately applied; and
 - removing the requirement that “prohibition orders” be issued against members, thereby avoiding the possible stigma of such orders.
- preserves the self-study nature of the original program, and recognizes that members subject to the requirement are refreshing, not re-acquiring, skills. It also recognizes the individual circumstances of members’ experiences while out of private practice, requiring members to complete only those modules of the program that reflect gaps in their experience during the absence from private practice. In appropriate cases a member may not have to take any of the modules.
- is administratively simple because it does not require monitoring of all members each year.
- more effectively balances the need to protect the public, while being fair to members, and not raising unreasonable barriers to entering/re-entering private practice after an absence of five years or more.

The highlights of the proposal are:

- All members will belong in one of two categories: (1) those members eligible for and required to have insurance (namely those members in private practice), and (2) all other members.
- When a members seeks to move into Category 1, after having been out of the category for five years or more, the member will be subject to the “Private Practice Refresher Program”.
- The program is a self-study program of eight (8) modules, focused on practice management and client relationships, and professional responsibility.
- A determination will be made as to which, if any, of the modules a member must take, based on guidelines and the nature of the work he or she has done while in Category 2. This approach recognizes that within Category 2 there will be many members whose work involves the use of many of the skills addressed by the modules, making it unnecessary for them to complete every module, and, in some cases, any modules.

- Guidelines will be developed to provide illustrations of the likely modules that members will have to complete, reflecting the nature of their experience.

BACKGROUND TO THE ISSUE

1. In March 1994 Convocation approved a policy requiring lawyers to requalify if they have “not made substantial use of their legal skills on a regular basis” for five years or more and wish to engage in the private practice of law. The policy is not retroactive. According to the policy, the earliest point in time at which members would have to meet requalification requirements was July 1999. In April 1999, however, Convocation postponed the commencement to January 2000.
2. Prior to the commencement of the requalification program in January 2000, the Committee discussed a number of concerns about its implementation including,
 - a. issues related to delayed notification of members who might be subject to the requalification program;
 - b. the lack of introduction of a pre-emptive regime, as had been contemplated in the original policy; and
 - c. the effectiveness of the test chosen by Convocation in 1994 to trigger requalification requirements.
3. Despite some reservations, it was felt that the commencement of the program, which had been delayed from July 1999 to January 2000, should not be delayed again and that issues could be examined as they arose.
4. With the benefit of experience attained through eight months of implementation of the program, a number of issues, both transitional and long-term, were addressed in September 2000, including,
 - a. the effectiveness of the current program in attaining the goals of the original policy;
 - b. the fairness to members of the process; and
 - c. the cost of administering the program balanced against its effectiveness.
5. Pursuant to the 1994 Convocation policy, each member is required to provide the Law Society with information concerning “qualification status”. Currently the Members’ Annual Report (MAR) (incorporating the former Membership Information Form [MIF]) asks members whether they made substantial use of legal skills on a regular basis during the previous calendar year. If the answer is “yes” members are asked to indicate in what capacity(ies) in the detailed profile sections of the filing. Members coming within these categories are *deemed* to be making substantial use of their legal skills. Members whose activities do not fit within any of the deemed categories set out in the profile sections either,
 - a) answer “no”, indicating that they have not made substantial use of their legal skills on a regular basis; or
 - b) answer “yes - other” and provide an explanation of how they made substantial use of their legal skills on a regular basis in the work in which they were engaged. Law Society staff must then read each explanation to assess whether the member’s work is similar to work in the deemed categories or if the work is such that the member is making substantial use of legal skills while engaging in it, based on factors set out in the requalification By-law (By-law 28) and the definition of the competent lawyer.
6. The original policy contemplated the following processes:

- a) Members would complete the qualification section of the annual report each year;
 - b) The Professional Standards Committee (now the Professional Development & Competence Committee) would review all responses as described in paragraph 5(b), above, to determine if members' activities qualified;
 - c) Members would be notified "immediately", rather than at the end of five years, if their activities did not qualify as making substantial use of their legal skills;
 - d) A pre-emptive regime would be established so that members not making substantial use of their legal skills could undertake steps to avoid having to requalify; and
 - e) Members would be entitled to a review from a determination of the Professional Standards Committee.
7. When Convocation approved the 1994 requalification policy it did so on a prospective basis. Convocation also indicated that it would seek amendments to the *Law Society Act* to specify the Society's authority to require members to requalify under specified circumstances. These amendments did not come into force until February 1999. Although a number of steps were taken to ready the policy for implementation, a number of other steps contemplated by the original policy were not implemented between 1994 and 1998. In particular,
- a) the pre-emptive regime was not created, at least in part because the actual requalification requirements that were being contemplated were not as onerous as may have been contemplated by the original policy and it became difficult to determine a pre-emptive regime that could meaningfully replace the actual course.
 - b) the Professional Standards Committee did not undertake the evaluation of responses, as originally contemplated. Staff resources to do so were extremely limited, although there was some correspondence and telephone communication over the years with some members.
 - c) notices were not sent to members who had answered "yes-other", with a determination of whether they were considered to be making substantial use of their legal skills in the years 1994 to 1998.
8. In September 1999, a letter was sent to members who reported in their annual filings for 1995, 1996, 1997, and 1998 that they had not been making substantial use of their legal skills on a regular basis. The letter informed these members that if they also reported on their 1999 filing that they had not made substantial use of their legal skills they would be subject to requalification.
9. In December 1999 and January 2000, notices were served on members who the Secretary determined had not made substantial use of legal skills on a regular basis during some or all of the years 1995 to 1998. In the case of members who, in the Secretary's opinion, had not maintained qualification status in all of those years, the notice informed these members that if they had not made substantial use of legal skills on a regular basis in the year 1999, they may be subject to a prohibition order, as provided in section 49.1 of the Act, in the year 2000.¹

¹If members reported "yes-other" in one or more of the years 1995-1998, but did not file the annual report or did not complete the qualification question in the report in one or more of the years, they did not receive notice regarding their qualification status in respect of any of those years since, pursuant to the By-law, the Society's requalification notice obligation is deferred until filings for 1995 to 1998 are complete.

10. By the fall of 2000 implementation of the program had revealed a number of concerns, the most significant of which related to the giving of notices to those who answered "yes-other" and the nature of the test used for determining whether a member is subject to requalification.

Notice Issues

11. Issues of fairness were raised by some members who answered "yes-other". Contrary to Convocation's 1994 policy, they were not notified of their qualification status in the years 1995 to 1998. They were first formally notified of the Law Society's position on their qualification status when Notices were served, in accordance with subsections 7(3) and 7(4) of By-law 28, in December 1999 and January 2000. Given the timing of service of Notices under subsections 7(3) and 7(4), these members did not have the opportunity to make changes in their activities in their fifth year, 1999, in order to avoid requalification requirements.
12. A number of members responded to the Notices, taking the position that the Society failed to provide them with timely notice of its position regarding their qualification status and arguing, among other things, that the By-law conflicts with Convocation's 1994 policy, which stated that members would be notified immediately rather than at the end of the five year period. As Convocation was advised in September 2000, the fairness concerns raised by the Notices were exacerbated by the fact that computer problems and human error resulted in incomplete retrieval of data on members who should have received Notices. Notification problems exist for the entire period 1995 to 1998.

The Nature of the Requalification Test

13. The wide range of people deemed to be making substantial use of their legal skills on a regular basis raises issues about whether the program actually reaches the members it was originally intended to reach. This is because, although the program was intended to address the erosion of certain skills that may occur when a lawyer is not in private practice, many lawyers not in private practice are deemed to be exempt from the current requirement.
14. The Committee was of the view that in addition to the practical problems and fairness concerns created by the notice issues, the test for triggering requalification and the program itself were in need of re-consideration.
15. Convocation agreed with the Committee's recommendation that the program be reviewed. As an interim approach to the requalification program Convocation approved the following:
 - a) Subject to the exceptions set out in (b) and (c) below, the requalification program is placed in abeyance pending further study of the issues and in light of the competence initiative;²
 - b) Those members who answer "no" with respect to their qualification status for a continuous period of five years or more, thereby acknowledging that they have not made substantial use of their legal skills should continue to be subject to the current requalification requirements should they wish to engage in private practice; and
 - c) Those members who fall within section 5(2) of By-law 28, namely legal secretaries, paralegals, and law clerks should continue to be subject to the current requalification requirements should they wish to engage in private practice.

²Where applicable, the Law Society withdrew requalification notices sent to members and Notices have not been issued since the program has been in abeyance.

CONSIDERATIONS UNDERLYING THE COMMITTEE'S PROPOSAL

16. Since the fall of 2000 the Committee has been considering both section 49.1 of the *Law Society Act*, which sets out the requalification policy, and the provisions of By-law 28, which define the test for requalification, the notice provisions and the content of the requalification program. It has reviewed the goals of the original 1994 requalification policy and has examined the nature of the program in the context of the competence initiative. It has considered the concerns raised by members and staff during the implementation process.
17. It has completed its review and is, unanimously, of the view that the current program, under section 49.1 of the Act, should not be continued. The reason for recommending against the continuation of the current approach is because of the difficulties inherent in the language of section 49.1, which have been demonstrated during the implementation process, and the impact that approach has had on accomplishing the intention of the policy. The difficulties include,
 - a) the "substantial use of legal skills on a regular basis" test;
 - b) the existence of prohibition orders;
 - c) the acceptance of undertakings to avoid prohibition orders; and
 - d) the use of the term "requalification", which inaccurately describes the process.

The Purpose of the Program

18. The requalification program was intended to address the erosion of certain skills that may occur when a member is absent from private practice for five years or more. In examining the 1994 report to Convocation, the nature of the current requalification course, and the larger discussions that have occurred with respect to implementing the Law Society's competence mandate, the Committee agrees that the requirement should ensure that those members who have not engaged in the private practice of law for five or more years, and who wish to return to it, have addressed the gaps or erosion of certain skills that may have occurred as a result of that absence from private practice. Specifically, the Committee is of the view that such members should be provided with exposure to,
 - a) "acceptable performance" practice management and client relationship information and techniques/tools;
 - b) relevant ethical and professional conduct information; and
 - c) recent developments in those areas;

for those areas in which their exposure has been limited or non-existent, because of the nature of their work experience.

Focus of the Requirement

19. The Committee is of the view that the focus of the revised requirement and program should be on practice management and client relationships, rather than substantive law, for the following reasons:
 - a) Complaints and LPIC information reveal that a significant proportion of complaints and claims relate to practice management and client relationship issues. Accordingly, a program that addresses these areas is in the public interest.

- b) Those entering/re-entering private practice may choose to work in any of a vast array of substantive practice areas, but all will deal with practice management and client relationships. The Law Society is better able to develop a program that has broad relevance and consistency if it focuses on practice management and client relationships.
- c) There has, in the past, been criticism that mandating a program for a narrowly defined group, while allowing members in private practice to change practice areas with no qualification requirements is unfair. By focusing on practice management the goals of the program are clearer and the unfairness issue described here is minimized.
- d) The definition of who should become subject to requirement becomes much simpler when it applies only to those not in private practice for the requisite period. There is no debate about which category members are in. This is in contrast to the current situation in which the large number of deemed categories of activities exempt from the requirement and the subjectivity of the test result in the goals of the program being unclear and the test difficult to apply consistently.
- e) Since there does not appear to be a preference for creating a significantly more rigorous type of program, focusing on practice management represents a manageable and justifiable approach. The modular approach being proposed also allows flexibility in determining what aspects of the program a member will have to complete, the focus being on those areas in which there may be "gaps", based on the specific nature of the member's activities.
- f) The development of the competence model to address competence-related issues on an ongoing basis contains continuing legal education and guideline components to complement this requirement. Members entering/re-entering private practice will be subject to the competence model once it is implemented.

Addressing Convocation's Concerns

20. The proposal and approach discussed below are designed to address the concerns raised by members, staff implementing the program, the Committee, and Convocation about the current program, particularly as they relate to issues of fairness, transparency of the requirement, and clarity and simplicity of the test for determining who is subject to the requirement. The proposal addresses the following features:
- a) Administrative simplicity including,
 - i) no requirement that the Law Society gather large amounts of information and advise members annually as to whether they are subject to the requirement; the onus is on members to notify the Law Society of changes to status;
 - ii) a modular program that can be adapted to greater or lesser needs based on activities during absence from private practice. This is a significant feature of the program that recognizes that lawyers seeking to enter private practice from Category 2 do so from a host of activities and experiences that should be considered in assessing which modules they would have to complete.
 - iii) no pre-emptive regime; and
 - iv) orders/undertakings are no longer necessary.³

³The enforcement mechanism would most probably involve a conduct proceeding for breach of obligation to inform the Society of a change in status.

- b) Straightforward Test/ Clear applicability:
- i) Clarity for members as to whether they will be subject to the requirements; no need to use section 49.1 of the Act (the requalification section) as well as the structure introduced by the original policy, which have proven to be highly bureaucratic.⁴ This is possible because section 49.1 is a permissive, not mandatory section. The Law Society is not obliged to use it to address the need for a skills refresher course, as contemplated by the proposal.
- c) Simplification of the MAR:
- i) Because of the nature of the current test under section 49.1 approximately three pages of the MAR are designed to identify the “deemed” categories and address the “substantial use of legal skills” test. These pages would be unnecessary under the proposal.⁵

THE PROPOSAL ⁶

21. The Law Society would define member categories with the rights, privileges and obligations that flow under the each category. A new By-Law would be developed to address these categories. There would be two categories of members:
- Category 1: Any member who is “eligible for insurance under the Society’s insurance plan” and who is required to have insurance because he or she “engages in the practice of law (performs professional services for others in the capacity of a barrister or solicitor or gives legal advice to others.)”⁷
- Category 2: Any member not in Category 1. (Including suspended members)
22. For the purpose of fees as currently structured, those members in Category 1 pay 100%. Those in Category 2 may pay 100%, 50% or 25% depending upon what they do. There are also some members who are exempt from fees. If, in the future, the Law Society were to develop a nominal fee category, these people would also be in Category 2. The new By-law that would be developed to define member categories would not address fees. There is, therefore, nothing in the proposed changes to the requalification program that currently has implications for members’ fees.

⁴Because the provision for requalification is articulated in a particular way in section 49.1 of the legislation, any amendments to the requirement under that section and the by-law would still have to reflect the language of the legislative provisions:

The MAR would ask members to report what they did in the calendar year (i.e. which category) and whether they were in that category for (a) at least 600 hours or more or (b) less than 600 hours in the year. Making substantial use of legal skills on a regular basis would be defined in the by-laws as “private practice - 600 hours or more”. This would mean that a large percentage of the profession including in-house counsel, government lawyers acting as barristers and solicitors, and counsel to administrative tribunals will not, for the purpose of the section, be considered to be “making substantial use of their legal skills on a regular basis” at least until the Law Society can obtain an amendment to the legislation.

⁵Some information about practice categories is collected on behalf of LPIC. None of this information would be removed.

⁶The Committee has developed this proposal with the assistance of Elliot Spears, Senior Counsel, Legal Affairs, at the Law Society.

⁷The language is taken from By-Law 16 on Professional Liability Insurance Levies.

23. The By-law would set out the basic member categories. It would not break Category 2 down to elaborate on levels within it based on the type of work the member does. However, it is important to note that guidelines would be prepared for members' information and assistance, to illustrate this breakdown. The guidelines might be prepared along the following lines:
- Category 2A: A member who,
is employed by a single employer, and

provides legal service only for and on behalf of the employer as,
a) Counsel or solicitor to the Government of Canada or the Government of Ontario,
b) a Crown Attorney,
c) counsel to a corporation other than a law corporation, or
d) a city solicitor; and

does not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.
- Category 2B: A member who is employed (whether part-time or full-time), but does not come within Category 2A, or a member who is a full-time student in a law program. This might include policy advisors, Members of Parliament, law professors, mediators or arbitrators, etc...
- Category 2C: A member who is unemployed, on parental leave, suspended, or does not otherwise come within Category 2A or 2B.
24. The reason for illustrating the range of sub-categories within Category 2 is to provide guidance to members on what aspects of the course they might have to complete, depending upon the nature of the activities or work in which they engaged within Category 2. So, for example, it is clear that members coming within Category 2A and some in Category 2B, as described above, engage in many activities that mirror those of members in private practice, in many cases providing legal services, but only for and on behalf of one employer. Such members use most of the skills the program envisions addressing and as such would not be obliged to complete those aspects of the program. Guidelines would set out general expectations for which modules members in each of the subcategories would take, subject to consideration of individual circumstances.
25. The By-law would provide that members moving from Category 2 to Category 1 may have to meet certain practice management and client relationship requirements. Those moving within Category 2 would not.
26. Members would report their category or categories annually. They would continue to be required to notify the Society of any changes to their status during the year. Specifically, the By-law would require members to contact the Society in advance of any change from Category 2 to Category 1.
27. At the stage of notification a calculation would be done to determine how long a member has been out of Category 1. For any absence from Category 1 of five or more years, a calculation would be done to determine whether the member has been in Category 2, cumulatively for 80% or more of that time. (This is to avoid a member moving into Category 1 for a very brief period before the five year deadline in order to avoid the requirement). If the member has been in Category 2 for this period, he or she will be "subject to" the practice management requirement.

28. Once it is determined that a member is subject to the requirement there would be a determination of what aspects of the course, if any, he or she would have to take, based on the guidelines described above and the consideration of individual circumstances. The Law Society would consider the nature and scope of activities the member has undertaken over the period he or she was in Category 2 and the nature and length of the member's previous experience in Category 1. This approach is fundamental to an underlying assumption of the proposal that the program is intended to "refresh" those practice management and client relations skills that have not been used for five years or more. Where a member's activities or work have involved exposure to such skills, it will not be necessary for members to complete those aspects of the course.
29. Generally speaking, those in Category 2A would do the fewest components, such as financial management, those in Category 2C the most. In certain circumstances a member may not have to meet any requirements, based on the nature of his or her activities over the period.⁸
30. Unlike the current system where "the clock stops running" the minute a person has done at least 600 hours of private practice in any given calendar year, this proposal involves a moving time line and is based as much on the nature of the activities a member has undertaken as it is on the passage of time.
31. There would be a provision permitting a review to a benchler of the staff determination of the program requirements.
32. The proposal contained in this report defines the requirement in terms of private practice and insurance. Using private practice as the benchmark is the simplest approach and allows the program rationale to be directed at the need to enhance practice management skills. No exceptions to the test have been recommended as these may undermine the credibility of the approach and result in a debate about why one category is excepted and others are not.
33. The Committee is of the unanimous view that no exception should be made and that any special circumstances can be addressed when determining what, if any, components of the program the member would be obliged to take.

Name of the Program

34. The term "requalification" would no longer be used. The term itself did not accurately reflect the nature of the requirement, which has been more of a refresher program than a re-testing of the member's qualifications to practice. Under the proposal the new program would be called the *Private Practice Refresher Program*.

Costs

35. The costs of administering the program under this option will be substantially less than under the current approach and will be absorbed within current department budgets. This is in large part because staff time necessary under the current program to,
 - a) evaluate thousands of forms to determine whether members who have responded "yes-other" are making substantial use of legal skills on a regular basis;
 - b) draft and send out notices, prohibition orders, and undertakings; and

⁸For example, if a member is in private practice (Category 1) for 15 years as a sole practitioner during which time he or she is responsible for all practice management decisions and has no substantial complaints or LPIC history and is then in Category 2A for six years as corporate counsel, upon seeking to return to private practice he or she might be required to do only one or two modules or perhaps none.

- c) answer telephone calls from concerned members long before the member has the intention to return to practice;

would be unnecessary under the proposal.

- 36. Under the proposal any questions about the program generally, requests for guidelines, and notification of an intention to change membership categories would be handled by staff in the Client Service Centre. In future, legal staff would be trained to apply the guidelines and determine which modules a member would have to complete.

THE COURSE

- 37. It is proposed that the current program be revised in the following broad ways:

- a) The CLE requirement is removed to reflect the focus on practice management and client relationships, rather than substantive law, as set out in paragraph 19 above. Candidates would be reminded of the minimum CLE expectation of which all members will be advised under the Law Society's competence model, the framework of which was approved by Convocation in March 2001.
- b) The program continues to be a "self-study" approach. The self-study approach recognizes that members subject to the requirement have already been called to bar and are refreshing, not re-acquiring, skills. There is no requirement to redo the bar admission course or any aspect of it.
- c) The program is designed in module form so that it will be fairly easy to advise candidates what they need to do to meet the requirement. The modules will address the following subjects:
 - (i) time management;
 - (ii) file management;
 - (iii) financial management;
 - (iv) client relationships/communication
 - (v) technology and equipment
 - (vi) professional management
 - (vii) personal management
- d) There continues to be a professional responsibility component that members may or may not have to complete depending upon the nature of their activities in Category 2.
- e) The program continues to include some methods of evaluation, such as a written assessment or test.

- 38. An outline for the content of program modules follows this report. The full program will be developed in the coming months. The member required to take one or more modules would be able to complete the module on his or her own schedule, entirely through self study.

TRANSITIONAL ISSUE

- 39. Currently there are a number of members who are subject to the program because they,
 - a) answered "no" for five years or more; or
 - b) have been working as paralegals, law clerks or legal secretaries for five years or more, and have a prohibition order against them or have signed an undertaking under the current requirement.

40. When the program was put in abeyance those people continued to be subject to the program. In September 2000, Convocation determined that since those members had known they were subject to the program and understood that they would be obliged to meet requalification requirements should they choose to enter private practice after five years, it was appropriate that they continue to be subject to the program during its review.
41. Based on Convocation's reasoning in September 2000, the Committee is of the view that if the proposal for revising the program is adopted, the group of people referred to in paragraph 39 should continue to have to meet the requirements under By-law 28. The By-law would, however, be amended to say it applies only to this group of members and the course requirements section would be amended to be the same as the requirements under the new program. In this way members subject to By-law 28 would not have to meet more onerous requirements than those who become subject to the program in the future, and there would be discretion to determine that, based on their activities, they do not have to complete all of the modules.
42. The Committee proposes that all members be advised of the program modules, the benefits of voluntarily reading the modules, and their ongoing competence responsibilities.
43. Under the proposal more members, in the future, will be exposed to important practice management and client relationships issues, subject to the discretion to excuse members from completion of certain modules based upon their work or activities.

REQUEST TO CONVOCATION

44. Convocation is requested to consider this report and, if appropriate,
 - a) approve the proposal set out in paragraphs 21-34 and 37; and
 - b) approve the recommendations for dealing with the transitional issue set out in paragraphs 41 and 42.
45. If Convocation approves the proposal and transitional provisions, draft amendments to By-law 28 and a draft new By-law will be provided to a subsequent Convocation.

POSSIBLE COURSE MODULES TOPICS

Time Management Module

Introduction

1. Why time management skills are important
 - 1.1 Part of risk management, malpractice and misconduct
 - 1.2 Component of personal management
 - 1.3 Effective Time management results in increased productivity and profitability
2. Purpose or Objective of time management system and skills
 - 2.1 Ensures that all deadlines are met
Distinction between what is urgent and what is important
 - 2.2 Time management geared to ensuring that both urgent and important matters are appropriately managed and dealt with

Effective Time Management Skills

1. Blocking off daily interruption - free work periods
2. Efficient preparation
 - 2.1 Handling meetings effectively - planning ahead and setting agenda (with clients, with the other side, and appearances in court)
 - 2.2 Recording fruits of a work session - avoiding duplication of work next time file is taken up

3. Avoiding procrastination
4. Effective delegation
5. Effective use of precedents - systemizing routine tasks
6. Making daily plans
7. Controlling your time - not allowing other members of the firm and clients to do so

Effective Time Management Systems

1. Time docketing systems
 - 1.1 Advantages of docketing
 - 1.2 Available systems
2. Calendar control systems
 - 2.1 Prioritizing
 - 2.2 Distinguishing urgency from importance
 - 2.3 "To Do" Lists
 - 2.4 Setting up and maintaining tickler systems
3. Professional Development
 - 3.1 Allocating time for professional development reading
 - 3.2 CLE courses
 - 3.3 Mentoring and networking
 - 3.4 Maintaining subscriptions to legal newspapers, digests, regulatory and legislative summaries

Managing Communications

1. *Rules of Professional Conduct*, subrule 2.01(1) on Competence and the requirements for timeliness.
2. Law Society of Upper Canada's *Guidelines on Ethics and the New Technology*
3. Telephone
 - (i) Returning calls
 - (ii) Arranging telephone meetings
4. Mail
 1. "Never touch a paper twice" rule
 - (ii) Setting regular time for reviewing incoming mail
5. E-mail
 - (i) Netiquette
 - (ii) "Never click open an e-mail twice" rule
 - (iii) Setting regular time for reviewing incoming e-mail
6. Meetings
 - (i) Meeting does not necessarily equal working
 - (ii) Setting agendas and organizing meetings

File Management Module

Introduction

Reasons to develop effective file management skills

2. Supports good client relations
3. Risk Management, malpractice and misconduct
4. Increase and maintain profitability
5. Gain control over practice thereby reducing stress

Essential Components and Objectives of File Management System

1. Opening Files and Client/File Identification: client and file identification

2. Individual File Organization: efficient retrieval and location of contents of each file
3. Storage and Filing System: safe and easy retrieval of files
4. File Closing System: ensures documents returned to proper owner, lawyer retains documents required by regulator, law or to defend himself herself
5. Tickler or Reminder System: ensures that crucial deadlines are met, manages work flow
6. Conflicts Checking System: ensures that conflicts are managed, part of risk management

Opening Files and Client/File Identification Systems

1. Opening files
 - 1.1 Establish firm policy to open a file whenever firm or lawyer is consulted on any matter regardless of whether client retains the lawyer/firm.
 - 1.2 new matter, existing client
 - 1.3 new client who retains firm
 - 1.4 client single consultation
 - 1.5 contact but not retained
2. File Identification System
 - 2.1 code each file (numerically and/or alphabetically)
 - 2.2 list each file in central index of client files
 - 2.3 at minimum index files both by code (numerical or alphabetical) and by client name

Individual File Organization

1. Organize file internally into sub files by class or nature of document
 - 0.1 Examples of common sub files
 - correspondence
 - original client documents
 - undertakings
 - accounts and billing information
2. Use clips or if files are larger, use file folders which may be colour coded for ease of reference
3. Coordinate paper sub files with electronic files stored on computer hard drive or other disks, floppy, compact discs

Storage and Filing System

1. Store active and closed files in separate locations
2. Store files in secure file cabinet organized either by file code or client name
3. Train lawyer and staff to return files to cabinet and immediately after use

File Closing System

1. Transfer of files from active file cabinet to file storage area
2. Return client documents and property to client see also rule 2.08(9) obligations when lawyer discharged or services are withdrawn
3. Retain copies of documents lawyer requires
 - 3.1 pursuant to Law Society rule or regulations, other statutes (such as Income Tax Act, Proceeds of Crime Money Laundering Act)
 - 3.2 to defend against any potential future allegations of malpractice or misconduct
4. Assign closed file code to inactive closed files.

Reminder or Tickler Systems

1. Purpose of tickler system
2. Essential elements of tickler system
3. Formal systems available, manual and electronic

4. Back up tickler system involving another person ie. secretary
5. "Informal" system, physical review of files regularly

Conflicts Checking Systems

1. Importance of having and using system
2. Objectives of proper conflicts system
3. Essential elements of system
 - ▶ when to check - at what stages in the retainer
 - ▶ who to check
 - ▶ what to do if conflict detected

Financial Management Module

Member Obligations

1. special obligations regarding trust funds which are set out in
 - ▶ *Law Society Act*
 - ▶ *by-laws under the Law Society Act*
 - ▶ *Rules of Professional Conduct*

Record Keeping Requirements

1. ledgers
 - 1.1 clients' general accounts ledger
 - 1.2 general ledger
 - 1.3 client's trust accounts ledger
2. books of original entry
 - 2.1 fees journal
 - 2.2 general disbursement journal
 - 2.3 general receipts journal
 - 2.4 trust receipts journal
 - 2.5 trust disbursements journal
3. original information
 - 3.1 copies of billings
 - 3.2 payments from clients
 - 3.3 suppliers' invoices
 - 3.4 retainers from clients
 - 3.5 client instructions
4. record retention (paper vs. electronic)

Trust accounts

1. monies paid into trust
2. monies *not* to be paid into trust
3. withdrawal of trust monies
4. mixed trust vs. special trust
 - which to use
 - procedures to use
5. inactive accounts and unclaimed trust funds
6. power of attorney for sole practitioners

Private Mortgages

1. forms 18A & 18B
2. MAR reporting

Compliance & Reporting

1. LSUC
 - 1.1 by-laws 18 and 19
 - 1.2 MAR
2. Law Foundation
3. LPIC transaction levies
4. Other Legislation
 - 4.1 Proceeds of Crime Money Laundering Act
 - 4.2 Canadian Customs and Revenue Agency - GST

Internal Control - Self Assessment for accounts payable & receivable

1. cheque requisitions
2. cheque signing policies
3. billings
4. trust records
5. reconciliations
6. valuable property
7. staffing policies
8. segregation of duties and receipt of money
9. computer controls

Credit Cards

Electronic funds transfers

Partnership/Associate Agreements

Client Relationships Module

The Solicitor Client Relationship

1. The relationship is complex
 - 1.1 fiduciary relationship, lawyer is a fiduciary
 - 1.2 agency relationship, lawyer is an agent of the client
 - 1.3 contractual relationship
 - 1.4 professional relationship, lawyer as member of self governing profession to the Rules of Professional Conduct
 - 1.5 business relationship, lawyer is a business person
2. Because the solicitor client relationship is complex, lawyers must plan for and appropriately manage all aspects of the relationship.
3. Any complete plan for managing client relations will incorporate elements of
 - 3.1 Professional Responsibility
 - 3.2 Business Management
 - 3.3 Risk Management

Stages of the Solicitor Client Relationship

1. The stages of the solicitor client relationship are
 - 1.1 Initial Client - Case screening
 - 1.2 Non engagement or Engagement
 - 1.3 Implementation
 - 1.4 Disengagement

Planning and Management for Each Stage of the Relationship

1. Initial Client - Case screening
 - 1.1 Importance of screening
 - 1.2 Screen for
 1. Conflicts
 2. Competence to handle matter
 3. Timeliness
 4. Lawyer's ability or willingness to deal with difficult client
2. Non Engagement or Engagement
 - 2.1 Non Engagement
 1. Advise the prospective client immediately
 2. Confirm non engagement in writing
 - 2.2 Engagement
 1. Retainer agreement
 2. Billing and financial issues
 3. Enter client information in office systems
3. Implementation Stage
 - 3.1 Client Service Primary Objective
 1. ascertaining client objectives
 2. communicating with the client
4. Competence
 1. knowledge of legal principles and procedures
 2. investigating the facts
 3. identifying the issues
 4. considering possible options
 5. developing appropriate courses of action
 6. advising client on appropriate courses of action
 7. implementing the chosen course of action
5. Termination
 - 5.1 Mandatory Withdrawal
 - 5.2 Optional withdrawal
 - (i) Non payment of fees
 - (ii) Criminal Proceedings
 - 5.3 Notice of Withdrawal
 - 5.4 Matters to address at Termination
 - 5.5 File Ownership and Transfer of File
 - 5.6 Undertakings to Protect Account

The Difficult Client or Incompetent Client

Fees and Billings

1. Objectives for appropriate billing policy and procedures
2. Elements of billing policies and procedures
 - 2.1 communicating with client

- 2.2 estimates
- 2.3 written explanation of billing
- 2.4 frequency of billing
- 2.5 statement of account
- 2.6 joint retainer
- 3. Money Retainers
 - 3.1 appropriation of clients trust funds and By laws
- 4. Division of Fees and Referral Fees
 - 4.1 Referral fees
 - 4.2 Division of Fees
 - exceptions for MDP and International Law firms
- 5. Prohibited practices
 - 5.1 Purchasing interest in litigation
 - 5.2 Contingency fees as allowed by the *Solicitor's Act* and *Class Proceedings Act*
 - 5.3 Interest in accordance with *Solicitor's Act*

Confidentiality

- 1. Obligation of confidentiality as a result of fiduciary relationship and the Rules of Professional Conduct
- 2. The Rules of Professional Conduct
 - 2.1 Scope
 - 2.2 rule of conduct distinguished from the legal rule of solicitor - client privilege
 - 2.3 Mandatory Disclosure
 - 2.4 Justified or Permitted Disclosure
- 3. Practice Tips

Advising Clients

- 1. Honesty and Candour
- 2. Duty to Disclose all information relevant to the client matter

Conflicts

- 1. Definition of a Conflict of Interest
- 2. Common Conflict Situations
 - 2.1 Acting Against a Former Client
 - 2.2 Joint Retainers
 - 2.3 Prohibition against acting for Borrower and Lender
 - 2.4 Affiliation Between Lawyers and Affiliated Entities
- 3. Obligations if Conflict of interest arises
 - 3.1 Lawyer shall not act
 - 3.2 Lawyer should not act
 - 3.3 Lawyer may be able to act
- 4. Managing Conflicts, the necessary conditions
 - 4.1 disclosure
 - 4.2 informed consent
 - 4.3 consent reduced to writing

Independent Legal Advice

1. When the need for independent legal advice may arise
 - 1.1 conflicts between the lawyer and his client
Rules of Professional Conduct may require ILA
definition of Independent Legal Advice in the Rules of Conduct
 - 1.2 conflicts between the client and other parties

Technology and Equipment Module

Obligations to Use Technology

1. Rules of Professional Conduct - rule 3.01 and rule 2.01

Benefits of Using Technology

3. Legal Research
4. Improved communication between lawyer and client
5. Efficient information gathering
6. Risk management
7. Increase Efficiency and Profitability of the Law Firm
8. Standardize Service Delivery
9. Marketing Legal Services
10. E-commerce

Technology Relevant to Lawyers

1. Hardware
2. Software
 - operating systems
 - network operating systems
 - word processing
 - speech recognition
 - spreadsheets
 - database management
 - presentation
 - personal information managers
 - document management
 - web publishing
3. Legal software
 - on-line legal research
 - accounting software

time/billing systems
case management software
document assembly software
litigation support systems
e-Registration and e-filing
electronic signatures and documents
extranets

Problems to Avoid in Using Technology

1. Security Concerns
2. Misuse of Electronic Communications
3. Backup and Disaster Recovery
4. Errors or Omissions

Ethical Issues and Technology

1. Legal information/advice over the Internet
2. E-commerce
3. Confidentiality
see Client Relationships module
4. Conflicts of Interest
see Client Relationships module
5. Jurisdictional Concerns
6. Software Piracy
7. Advertising
see Professional Management module

Professional Management Module

Law Practice Options

1. employee or associate
2. in house counsel, private or public sector
3. sole practice or sole practitioner
own self contained unit, or
sharing space
4. partnership

5. Limited Liability Partnerships
6. professional corporation
7. interprovincial law firm
8. interprovincial law firm
9. MDP
10. affiliations

Professional Liability Insurance

1. minimum mandatory requirements
2. innocent party coverage
3. other options

Law Society Fees and Reporting Requirements
See module on Financial Management

Setting up practice

1. As sole practitioner
2. In Partnerships, Corporations or MDP's
partnership agreements shareholders agreements
knowing who your partners are
3. Planning for business interruptions

Staff and Delegation

1. Supervision of non lawyer employees

Advertising and Making legal services available

1. Letterhead
2. Advertising
3. Law Firm Name
4. Advertising Nature of Practice
5. Offering Legal Services

Maintaining Competence and Professional Development

1. Substantive areas
2. Skills

3. Professional responsibility
Personal Management Module

1. Professional Balance
Why is it an Issue
What is it?
2. Stress
3. Procrastination
4. Isolation
5. Chemical Abuse
6. Depression
7. Financial Problems
8. Strategies for Achieving Balance
Managing Your Body
Managing Your Personal and Emotional Life
Managing Relations with your Client
Managing Relations with your Co-Workers
9. Where to go for help
LINK
OBAP
Other

Professional Responsibility Module

Overview of the *Rules of Professional Conduct*

1. Rule versus Commentary
5. Scheme of Rules

Definitions - Rule 1.02

1. affiliated entity
2. affiliation
3. conduct unbecoming
4. consent
5. independent legal advice
6. independent legal representation
7. interprovincial law firm

Focus on Individual Rules

Relationship to the Client

1. *Competence* - rule 2.01
 - 1.1 Definition of Competent Lawyer - subrule 2.01(1)
 - 1.2 Obligation to perform legal services to the standard of a competent lawyer - subrule 2.01(2)
2. *Confidentiality* - rule 2.03
 - 2.1 Duty of Confidentiality - subrule 2.03(1), commentary subrule 2.03(6)
 - 2.2 Justified or Permitted Disclosure - subrules 2.03 (2) - (5)
3. *Conflicts of Interest* - rule 2.04
 - Generally
 - 3.1 Definition - subrule 2.04(1)
 - 3.2 Lawyer's obligations where there is or there is likely to be a conflicting interest- subrules 2.04 (2) and (3)
 - 3.3 Joint Retainers - subrules 2.04(6) - (10) and commentaries
 - 3.4 Acting against a Client- subrule 2.04(4) and (5) and commentary
 - 3.5 Prohibition against acting for Borrower and Lender - subrules 2.04(11) and (12)
 - Conflicts From Transfer Between Law Firms - rule 2.05
 - 3.6 Definition of client in this rule - subrule 2.05(1)
 - 3.7 Definition of Confidential Information in this rule -subrule 2.05(1)
 - 3.8 Application of the Rule - subrules 2.05(2) and (3) and commentary
 - 3.9 Disqualification of the
 - law firm - subrules 2.05(4) and (5)
 - transferring lawyer - subrules 2.05(6) and (7)
 - 3.10 Compliance with the rule - subrules 2.05(9) and (10) and commentary
 - Doing Business With a Client- rule 2.06
 - 3.11 Investment by Client where lawyer has an interest - subrules 2.06(2) and (2.1) and commentary
 - 3.12 Certificate of Independent Legal Advice - subrule 2.06(3)
 - 3.13 Borrowing From Clients - subrules 2.06(4) and (5) and commentary
 - 3.14 Lawyers in Loan or Mortgage Transactions - subrules 2.06(6) - (8) and commentary
 - 3.15 Guarantees by a Lawyer- subrules 2.06 (9) - (10)

Unrepresented Persons - subrule 2.04(14)

Client Under a Disability - subrule 2.02(6) and commentary

Fees and Disbursements - rule 2.08

1. Reasonable Fees and Disbursements- subrule 2.08(1) and (2) and commentary
2. Hidden Fees - subrule 2.08(2) commentary
3. Division of Fees and Referral Fees- subrules 2.08 (7) - (9)
4. Appropriation of Funds - subrule 2.08(11)

Withdrawal From Representation - rule 2.09

1. Withdrawal From Representation - subrule 2.09(1) and commentary
 - (i) Optional- subrule 2.09(2) and commentary
 - (ii) Mandatory- subrule 2.09(7) and commentary
 - (iii) Criminal Proceedings -subrules 2.09 (4) - (6) and commentaries
2. Non-payment of Fees- subrule 2.09(3)
3. Manner of Withdrawal - subrules 2.09(8) and (9) and commentary
4. Duty of Successor Lawyer - subrule 2.09(10)

The Practice of Law

Making Legal Services Available - rule 3.01

1. Law Firm Name - rule 3.02
2. Letterhead - rule 3.03
3. Advertising - rule 3.04
4. Advertising Nature of Practice - rule 3.05
5. Offering Professional Services - rule 3.06

Multi-Discipline Practice

1. Compliance with Rules - rule 6.10
2. Advertising - subrule 3.05(6)
3. Letterhead - subrule 3.03(3)
4. Conflict of Interest - subrule 2.04(13)
5. Fees and Disbursements - subrule 2.08(10)

Affiliations

1. Avoidance of Conflicts of Interest - commentary to Rule 2.04(1)
2. Affiliations between Lawyers and Affiliated Entities - subrule 2.04(10.1 - 10.3)
3. Supervision - subrule 5.01 (6)

Interprovincial Law Firm

1. Requirements - rule 3.07
2. Fees and Disbursements - subrule 2.08(10)

Incorporations

1. By-law

The Administration of Justice

1. The Lawyer as Advocate - rule 4.01

1. Duty as

Advocate - subrules 4.01(1) - (2) and commentaries

Prosecutor- subrule 4.01 (3) and commentary

1.2 Discovery Obligations - subrule 4.01(4)

1.3 Disclosure of Error or Omission - subrule 4.01(5) and commentary

1.4 Courtesy - subrule 4.01(6)

1.5 Undertakings - subrule 4.01(7)

1.6 Agreement on a Guilty Plea - subrules 4.01(8) and (9)

The Lawyer as Witness- rule 4.02

1. Submission of

Affidavit -subrule 4.02(1)

Testimony-subrule 4.02(2)

2. Appeals - subrule 4.02(3)

3. Interviewing Witnesses - rule 4.03 and commentary

4. Communication with Witness Giving Evidence - rule 4.04

5. Relations with Jurors - rule 4.05

The Lawyer and the Administration of Justice - rule 4.06

1. Encouraging Respect for the Administration of Justice - rule 4.06(1) and commentary

2. Security of Court Facilities - rule 4.06(3)

Lawyers as Mediators - rule 4.07 and commentary

Relationship to Students, Employees and Others

Supervision - rule 5.01

1. Application of rule - subrule 5.01(1)

2. Direct Supervision Required - subrule 5.01 (2) and commentary

3. Delegation - 5.01 (3)and (4) and commentaries

Sexual Harassment and Discrimination - rules 5.03 and 5.04

Relationship to the Society and Other Lawyers

Responsibility to the Profession - rule 6.01

1. Integrity - subrule 6.01(1) and commentary

2. Meeting Financial Obligations - subrule 6.01(2) and commentary

3. Duty to Report Misconduct - subrule 6.01(3) and commentary

4. Encouraging Client to Report Dishonest Conduct - subrules 6.01(4) -(7)

Responsibility to the Society - rule 6.02

Responsibility to Lawyers and Others - rule 6.03

1. Courtesy and Good Faith - subrules 6.03(1) - (4)
2. Communications - subrules 6.03 (5)-(7)
3. Undertakings - subrule 6.03(8) and commentary

Outside Interests and the Practice of Law - rule 6.04

Public Appearances and Public Statements - rule 6.06

Preventing Unauthorized Practice - rule 6.07

Errors and Omissions - rule 6.09

1. Informing Client of Error or Omission - subrule 6.09(1)
2. Notice of Claim - subrule 6.09(2) and commentary
3. Cooperation -subrule 6.09(3)
4. Responding to Client's Claim - subrules 6.09(4) and (5)

Title Insurance

Obligations with respect to title insurance in real estate conveyancing - subrule 2.02(10)

Delegation of title insurance obligations - subrule 5.01(4)

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

A copy of an Information Report from LibraryCo. At Appendix 2.

(Pages 43 - 46)

Re: Proposed Private Practice Refresher Program

It was moved by Ms. Pilkington, seconded by Mr. Crowe that the Committee consult with the profession on the recommendations set out in the Report.

Ms. Pilkington withdrew her motion.

It was moved by Mr. Cherniak, seconded by Ms. Potter that the proposal at paragraphs 21 to 34 and paragraph 37 set out in Appendix I of the Report be approved.

Carried

- "21. The Law Society would define member categories with the rights, privileges and obligations that flow under the each category. A new By-Law would be developed to address these categories. There would be two categories of members:

Category 1: Any member who is "eligible for insurance under the Society's insurance plan" and who is required to have insurance because he or she "engages in the practice of law (performs professional services for others in the capacity of a barrister or solicitor or gives legal advice to others.)"⁷

Category 2: Any member not in Category 1. (Including suspended members)

22. For the purpose of fees as currently structured, those members in Category 1 pay 100%. Those in Category 2 may pay 100%, 50% or 25% depending upon what they do. There are also some members who are exempt from fees. If, in the future, the Law Society were to develop a nominal fee category, these people would also be in Category 2. The new By-law that would be developed to define member categories would not address fees. There is, therefore, nothing in the proposed changes to the requalification program that currently has implications for members' fees.

23. The By-law would set out the basic member categories. It would not break Category 2 down to elaborate on levels within it based on the type of work the member does. However, it is important to note that guidelines would be prepared for members' information and assistance, to illustrate this breakdown. The guidelines might be prepared along the following lines:

Category 2A: A member who,
is employed by a single employer, and

provides legal service only for and on behalf of the employer as,
a) Counsel or solicitor to the Government of Canada or the Government of Ontario,
b) a Crown Attorney,
c) counsel to a corporation other than a law corporation, or
d) a city solicitor; and

does not engage in the practice of law in Ontario so as to provide legal services to persons other than the employer.

Category 2B: A member who is employed (whether part-time or full-time), but does not come within Category 2A, or a member who is a full-time student in a law program. This might include policy advisors, Members of Parliament, law professors, mediators or arbitrators, etc..

Category 2C: A member who is unemployed, on parental leave, suspended, or does not otherwise come within Category 2A or 2B.

24. The reason for illustrating the range of sub-categories within Category 2 is to provide guidance to members on what aspects of the course they might have to complete, depending upon the nature of the activities or work in which they engaged within Category 2. So, for example, it is clear that members coming within Category 2A and some in Category 2B, as described above, engage in many activities that mirror those of members in private practice, in many cases providing legal services, but only for and on behalf of one employer. Such members use most of the skills the program envisions addressing and as such would not be obliged to complete those aspects of the program. Guidelines would set out general expectations for which modules members in each of the subcategories would take, subject to consideration of individual circumstances.

⁷The language is taken from By-Law 16 on Professional Liability Insurance Levies.

25. The By-law would provide that members moving from Category 2 to Category 1 may have to meet certain practice management and client relationship requirements. Those moving within Category 2 would not.
26. Members would report their category or categories annually. They would continue to be required to notify the Society of any changes to their status during the year. Specifically, the By-law would require members to contact the Society in advance of any change from Category 2 to Category 1.
27. At the stage of notification a calculation would be done to determine how long a member has been out of Category 1. For any absence from Category 1 of five or more years, a calculation would be done to determine whether the member has been in Category 2, cumulatively for 80% or more of that time. (This is to avoid a member moving into Category 1 for a very brief period before the five year deadline in order to avoid the requirement). If the member has been in Category 2 for this period, he or she will be "subject to" the practice management requirement.
28. Once it is determined that a member is subject to the requirement there would be a determination of what aspects of the course, if any, he or she would have to take, based on the guidelines described above and the consideration of individual circumstances. The Law Society would consider the nature and scope of activities the member has undertaken over the period he or she was in Category 2 and the nature and length of the member's previous experience in Category 1. This approach is fundamental to an underlying assumption of the proposal that the program is intended to "refresh" those practice management and client relations skills that have not been used for five years or more. Where a member's activities or work have involved exposure to such skills, it will not be necessary for members to complete those aspects of the course.
29. Generally speaking, those in Category 2A would do the fewest components, such as financial management, those in Category 2C the most. In certain circumstances a member may not have to meet any requirements, based on the nature of his or her activities over the period.⁸
30. Unlike the current system where "the clock stops running" the minute a person has done at least 600 hours of private practice in any given calendar year, this proposal involves a moving time line and is based as much on the nature of the activities a member has undertaken as it is on the passage of time.
31. There would be a provision permitting a review to a benchler of the staff determination of the program requirements.
32. The proposal contained in this report defines the requirement in terms of private practice and insurance. Using private practice as the benchmark is the simplest approach and allows the program rationale to be directed at the need to enhance practice management skills. No exceptions to the test have been recommended as these may undermine the credibility of the approach and result in a debate about why one category is excepted and others are not.
33. The Committee is of the unanimous view that no exception should be made and that any special circumstances can be addressed when determining what, if any, components of the program the member would be obliged to take.

⁸For example, if a member is in private practice (Category 1) for 15 years as a sole practitioner during which time he or she is responsible for all practice management decisions and has no substantial complaints or LPIC history and is then in Category 2A for six years as corporate counsel, upon seeking to return to private practice he or she might be required to do only one or two modules or perhaps none.

Name of the Program

34. The term "requalification" would no longer be used. The term itself did not accurately reflect the nature of the requirement, which has been more of a refresher program than a re-testing of the member's qualifications to practice. Under the proposal the new program would be called the *Private Practice Refresher Program*.
37. It is proposed that the current program be revised in the following broad ways:
- a) The CLE requirement is removed to reflect the focus on practice management and client relationships, rather than substantive law, as set out in paragraph 19 above. Candidates would be reminded of the minimum CLE expectation of which all members will be advised under the Law Society's competence model, the framework of which was approved by Convocation in March 2001.
 - b) The program continues to be a "self-study" approach. The self-study approach recognizes that members subject to the requirement have already been called to bar and are refreshing, not re-acquiring, skills. There is no requirement to redo the bar admission course or any aspect of it.
 - c) The program is designed in module form so that it will be fairly easy to advise candidates what they need to do to meet the requirement. The modules will address the following subjects:
 - (i) time management;
 - (ii) file management;
 - (iii) financial management;
 - (iv) client relationships/communication
 - (v) technology and equipment
 - (vi) professional management
 - (vii) personal management
 - d) There continues to be a professional responsibility component that members may or may not have to complete depending upon the nature of their activities in Category 2.
 - e) The program continues to include some methods of evaluation, such as a written assessment or test."

It was moved by Mr. Cherniak, seconded by Ms. Potter that the recommendations for dealing with transitional issues set out in paragraphs 41 and 42 at Appendix I of the Report be approved.

Carried

- "41. Based on Convocation's reasoning in September 2000, the Committee is of the view that if the proposal for revising the program is adopted, the group of people referred to in paragraph 39 should continue to have to meet the requirements under By-law 28. The By-law would, however, be amended to say it applies only to this group of members and the course requirements section would be amended to be the same as the requirements under the new program. In this way members subject to By-law 28 would not have to meet more onerous requirements than those who become subject to the program in the future, and there would be discretion to determine that, based on their activities, they do not have to complete all of the modules.
42. The Committee proposes that all members be advised of the program modules, the benefits of voluntarily reading the modules, and their ongoing competence responsibilities."

LPIC REPORT

Mr. Murray presented the Lawyers' Professional Indemnity Company (LPIC) Report for Convocation's approval.

September 2001
LPIC

REPORT TO CONVOCATION

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY (LPIC)
REPORT TO CONVOCATION – SEPTEMBER, 2001

INTRODUCTION

1. Each September since 1995, LPIC's Board of Directors has reported to Convocation its recommendations for the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the need to place and negotiate reinsurance treaties and the logistics of renewing 18,000 policies effective January 1.
2. This report is also an opportunity for LPIC's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Quarterly financial information on LPIC and the program is provided to Convocation throughout the year.
3. Convocation established LPIC's mandate in 1994 with the adoption of the Insurance Committee Task Force Report. The mandate and principles of operation were to be as follows:
 - that LPIC be operated separate and apart from the Law Society by an independent board of directors;
 - that LPIC be operated in a commercially reasonable manner;
 - that LPIC move to a system where the cost of insurance reflected the risk of claims; and
 - that claims be resolved fairly and expeditiously; however this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied.
4. In the view of LPIC's Board, these recommendations have been achieved in LPIC's operations, and the proposed program for the year 2002 continues to operate on these principles.

SUMMARY OF RECOMMENDATIONS

5. The following are the recommendations made by LPIC's Board of Directors for the 2002 professional liability insurance program.
 - (i) That the base premium be reduced by \$100 to \$2,700 per lawyer for the 2002 insurance program (paragraph 35).
 - (ii) That the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2002 (paragraph 9).
 - (iii) That the real estate and civil litigation transaction levies be continued for real estate and civil litigation transactions for which files are opened on or after January 1, 2002, and that these levy revenues be held and applied solely to the professional liability insurance program (paragraph 22[a]).

- (iv) That the claims history levy be continued in the year 2002 for claims paid (meaning a claim with payment made by the insurer pursuant to a judgment, or by way of repair or settlement of a claim) within the last five years, and that these levy revenues be held and applied solely to the professional liability insurance program (paragraph 22[b]).
- (v) That revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claims history levies) under the 2002 program, be budgeted at \$24 million for the purposes of establishing the base premium and other budgetary purposes (paragraph 27[a]).
- (vi) That \$8.2 million be drawn from the Funds Held in Trust built up in previous years (\$25.9 million at December 2000) and applied to the 2002 insurance premium (paragraph 27[b]).
- (vii) That to the extent that levies noted in paragraphs (v) and (vi) above collected in 2002 are different than the budgeted amount, the surplus or shortfall shall flow to/from the Funds Held in Trust (paragraph 27[c]).
- (viii) That other than with respect to multi-discipline practices and Law Corporations, the LPIC Board of Directors recommends that the policy coverage and reasons for exemption under the program be maintained in their current form, and that the existing coverage options continue to be made available for the 2002 program (paragraph 39).
- (ix) That the premium discounts and surcharges remain unchanged for the purposes of the 2002 program, with those expressed as a percentage of the base premium remaining unchanged as a percentage of the base premium, and those expressed as a stated dollar amount remaining unchanged in amount (paragraph 43).
- (x) That for the purposes of section 19 of By-Law No. 25 of the *Law Society Act*, a Law Society member who has entered into a multi-discipline partnership under the by-law shall maintain through the insurer of the Law Society's insurance plan (LPIC) professional liability insurance coverage for the non-lawyer individual(s) in an amount at least equal to that required by Convocation of the Law Society's own practising members (paragraph 56[a]).
- (xi) That changes to the policy wording concerning multi-discipline partnerships be as detailed in paragraphs 44 to 55 of this report (paragraph 56[b]).
- (xii) That Law Corporations, and their officers, directors and shareholders, be included as insureds under the policy with respect to the rendering of professional services by the shareholders and/or employees of the corporation who are named in the declarations. Details of this insurance, restrictions on option selection and coverage, policy obligations and changes in definition, shall be as detailed in paragraphs 57 to 62 of this report (paragraph 63).
- (xiii) That lawyers who complete and submit their 2002 professional liability insurance application form electronically to LPIC prior to November 1, 2001, be provided with a premium discount equal to \$50 per lawyer (paragraph 65).
- (xiv) That the application form be amended as follows (paragraph 79):
 - (1) to inquire about outstanding claims and potential claims;
 - (2) to prepopulate the existing volume billing information question information using a discrete range of billing code and inquire of the most recent fiscal year end for which financial statements are available;
 - (3) to collect key contact information for those electing to file on a firm basis; and
 - (4) to inform that premium payment options will no longer accommodate the payment of instalments by post-dated cheque.

(xv) That upon agreement of LPIC and the Law Society on the mentoring procedures, guidelines and documentation, no deductible or claims history levy surcharge will be applied against a mentoring lawyer for subsequent claims arising out of the mentoring relationship, where the Law Society's mentoring procedures, guidelines and documentation have been applied (paragraph 128).

(xvi) That free access continue to be provided to Law Society members for the Online Coaching Centre in 2002 (paragraph 138[a]).

(xvii) That a \$50 premium credit per course, subject to a \$100 per member maximum amount, be applied to members' 2003 premiums, for pre-approved legal and other educational courses taken in 2002 and successfully completed by the member before September 15, 2002. Courses would be pre-approved by LPIC on the basis described in paragraphs 133 to 137 of this report (paragraph 138[b]).

PART 1 – THE ERRORS & OMISSIONS FUND

6. The Insurance Committee Task Force reported in October 1994 that \$203.6 million would have to be collected to retire the Errors and Omissions Fund's (the Fund) deficit and to capitalize LPIC. The professional liability insurance operations were then moved to LPIC, which assumed contractual responsibility to manage the collection of insurance levies and the runoff of the claims portfolio under the Fund.

7. By February 28, 1999, LPIC was fully capitalized and the deficit retired – with all outstanding liabilities fully funded.

8. As of June 30, 2001, the Fund had outstanding claims liabilities of \$38 million. The number of open files for 1994 and prior years stood at 342. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LPIC Board is again satisfied that the investment income of the Fund can be used by the Law Society for its general purposes. This revenue is estimated to be \$2.6 million and would be available during the year 2002.

9. LPIC's Board recommends to Convocation that the investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund be made available to the Law Society during 2002.

PART 2 – LPIC & THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

Introduction

10. The program appears to be on track for 2001, and LPIC is currently performing better than budget. Premiums are substantially as forecasted while reported claims experience and investment income are better than anticipated for the first half of 2001. LPIC is currently forecasting a profit of \$7.2 million, about \$0.7 million in excess of that originally budgeted.

11. Given apparent satisfaction with the existing insurance program structure, the LPIC Board proposes that the insurance program be continued in its current form for 2002. Notably, the success enjoyed from the current program was a consideration in the authoritative insurance rating and information source, A.M. Best Co., providing LPIC with an A (Excellent) rating in October 2000.

12. A \$100 reduction in the base premium to \$2,700, however, is proposed, appreciating LPIC's forecast of revenues and losses for 2002 and the availability of surplus funds in the revolving E&O Fund. Two offsetting influences – declining transaction premium levies and reduced real estate related claims – are the principal factors used in determining the adjustment to premiums for 2002.

Premium – Costs, Revenues and Pricing

a) *The Anticipated Total Loss Costs*

13. LPIC's revenue requirements for the 2002 insurance program are based on the anticipated cost of claims for the year. The loss cost projections are determined actuarially, in accordance with the historical loss experience of the program. This analysis examines the cost of claims in the most recent years, applying the appropriate underwriting judgment to reflect emerging trends and changes in coverage.

14. Based on the historical loss experience of the program and the consistency in policy coverage proposed, with some measure of conservatism, LPIC anticipates the total loss costs of the insurance program to be \$65 million for the 2002 policy year. This estimate is based on approximately 2,000 new claims for the coming year, which approximates that seen over each of the last six years. As indicated below, this projection is consistent with the anticipated total loss costs for the program in each of the past five years. To the extent that claims costs are less than anticipated, there is a provision in the policy through the mechanism of a return premium endorsement which would transfer the surplus to the revolving E & O Funds Held in Trust for future insurance purposes. The return premium endorsement, first put in place for the 2000 policy period and applicable to all policy periods subsequent to 1994, has generated \$14.7 million in return premiums.

Claims Cost of Ontario Program, by Fund Year (\$000's)

(see graph in Convocation file)

b) *Sources of Premium Revenues*

15. As discussed under the heading "Risk Rating" at paragraph 85 of this report, real estate conveyancing and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. Similarly, lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

16. The application of the transaction levies and the claims history surcharges levies to the insurance premium to supplement the base levy matches the risk of these practice areas with the premium income derived from practitioners in these practice areas. This approach avoided the substantial dislocation which would likely have occurred by simply increasing the base insurance premium levy to reflect the risk, and was agreed to by the affected sectors of the bar as the most equitable way to achieve risk rating.

(i) *The Real Estate Transaction, Civil Litigation Transaction, and Claims History Levies*

17. The LPIC Board proposes the continuation in 2002 of the real estate and civil litigation transaction levy of \$50 for each file opened by or on behalf of the lawyer.

18. The vagaries in the economy, and in the real estate market particularly, continue to make it difficult to predict with certainty the amount of revenues that will be generated by the transaction levies. Receipts from the real estate transaction levy surcharge may also be affected by the increased use of title insurance, since the levy is waived for many title-insured residential real estate transactions.

19. In 2002 levy receipts amounted to \$31.1 million. Receipts for 2001 and 2002 are forecast at \$26.5 million and \$24 million, respectively.

20. The Board also proposes that all receipts from the claims history levy surcharge continue to be applied to the program. The claims history levy surcharge would continue to be charged as follows:

- One claim paid in the last five years \$2,500
- Two claims paid in the last five years \$5,000

• Three claims paid in the last five years	\$10,000
• Four claims paid in the last five years	\$15,000
• Five claims paid in the last five years	\$25,000
• Plus \$10,000 per claim in excess of five.	

21. The financial impact of the deductible and claims levy surcharge on a member with a \$5,000 deductible would be \$17,500, as it has been since the adoption of the Task Force report recommendations for the 1995 insurance program.

22. The LPIC Board of Directors recommends that:

(a) The real estate and civil litigation transaction levies be continued for real estate and civil litigation transactions for which files are opened on or after January 1, 2002, and that these levy revenues be held and applied solely to the professional liability insurance program.

(b) The claims history levy be continued in 2002 for claims paid (meaning a claim with payment made by the insurer pursuant to a judgment, or by way of repair or settlement of a claim) within the last five years, and that these levy revenues be held and applied solely to the professional liability insurance program.

23. Since the introduction of the 1999 program, any excess receipts from the transaction levies and claims history surcharges collected in the year have been held and managed on a revolving account basis and applied to the insurance program. These funds are used to guard against any future shortfall in levy receipts in a given year, appreciating the difficulties in forecasting transaction levy revenues in an changing economic climate, and act as a buffer against the need for sudden increases in base premium revenues.

24. For 2001, an anticipated \$3.5 million will be drawn from the revolving fund to bring the total amount of supplemental premium amounts to \$30 million. The remaining fund balance will in turn be carried forward.

25. For the purposes of the 2002 year, it is proposed that \$24 million be budgeted for transaction and claims history levy surcharge revenues and \$8.2 million drawn from surplus. This would still allow for sufficient Funds Held in Trust to deal with adverse future claims experience.

Real estate levies-Rolling 4 quarter totals

(see graph in Convocation file)

26. Transaction levies would now account for 31% of premium revenue. Because of the variability in the amount actually received, the Board is conservative in its forecasting so as to avoid the problem of a revenue shortfall in the event that the transaction levies do not meet projections.¹

¹ In any year, premium revenue is obtained from three sources as illustrated below:

- 1) Base premiums;
- 2) Supplementary levies, such as transaction and claims history surcharge levies;
- 3) Transfers (to)/from funds held in trust

As illustrated below:

(Millions of \$)	Actual		Projected	
	1999	2000	2001	2002
Base	61.3	52.3	47.3	45.3
Supplemental	22.7	31.1	26.5	24.0
Transfers (to)/from Trust	(5.2)	(6.1)	3.5	8.2
TOTAL	78.8	77.3	77.5	77.5

27. The LPIC Board of Directors recommends that:
- (a) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claims history levies) under the 2002 program, be budgeted at \$24 million for the purposes of establishing the base premium and other budgetary purposes.
 - (b) That \$8.2 million be drawn from the Funds Held in Trust built up in previous years (\$25.9 million at December 2000) and applied to the 2002 insurance premium.
 - (c) To the extent that levies (noted in paragraph (a) above) collected in 2002 are different than the budgeted amount, the surplus or shortfall shall flow to/from the Funds Held in Trust.

(ii) The Base Premium

28. As a practical matter, the premiums and levies must fund the cost of claims in the underwriting year, as well as the cost of applicable taxes and program administration.

29. Accordingly, with some conservatism, the total funds required in 2002 are presently estimated at \$77 million, which approximates the forecasted and actual premiums for 2001, 2000 and 1999 for the mandatory program. Even at this, however, the LPIC Board is confident that a further \$100 reduction in the base premium is warranted based upon the recent program loss experience, and the availability of substantial surplus funds in the revolving E&O fund should transaction and claims history levy revenues fall short of budgeted amounts.

30. Although the number of practising lawyers in Ontario has tended to fluctuate throughout the year as new lawyers are called to the bar and others leave practice, the number of lawyers in practice year over year has grown steadily by about one and a half percent. Notwithstanding this trend, no increase in the practising bar is forecast for 2002 as the economic environment for next year is uncertain. In periods of economic stress, the size of the practising bar tends to remain stable rather than continue to increase. The following chart outlines the growth in the number of practising lawyers in Ontario, with about 18,000 practising lawyers expected for 2002.

Number of Lawyers in Practice by Fund Year

(see graph in Convocation file)

31. Despite the increase in the number of practising lawyers to date, there has not been a corresponding increase in claims costs under the program. Consider, for example, that the program's claims costs approximated \$65 million per year from 1995 to 2001, despite the exposure increase of an additional 1,500 practising lawyers during that time. In fact, the number of claims per thousand practitioners has decreased from 129 per thousand in 1995 to 99 per thousand in 2000.

32. For 2002, the LPIC Board proposes that the base premium be reduced by \$100 to \$2,700 per lawyer. This compares to a base premium of \$2,800 in 2001 (see chart below). The proposed base premium is based on the following assumptions:

- 18,000 practising insured lawyers (full-time equivalents);
- \$65 million in anticipated total loss costs;
- \$24 million in budgeted transaction and claims history levy revenues;
- \$8.2 million drawn from Funds Held in Trust; and
- 5 per cent investment income.

Base Premium, by Fund Year

(see graph in Convocation file)

33. Adjustments for investment income, applicable taxes, the various premium surcharges and discounts under the program, as well as administration costs are also take into account. These assumptions and forecasts are reviewed with LPIC's audit committee and the full Board prior to presentation to Convocation. In reviewing and approving the recommended premiums and levies, LPIC's Board must take into account the solvency requirements for insurance companies as required by the Financial Services Commission of Ontario, LPIC's regulator.

34. The change in base premium will mean that lawyers in Ontario will pay insurance premiums from as low as \$1,218 for restricted area of practice, new calls and part-time practitioners, up to \$2,700 for the mandatory insurance program (depending on the options chosen).

35. The LPIC Board of Directors recommends that the base premium be reduced by \$100 to \$2,700 per lawyer for the 2002 insurance program.

Program Exemptions, Policy Coverage and Options

36. No significant program changes are proposed for 2002, other than those concerning multi-discipline practices and Law Corporations to accommodate these new means of practice. Subject to the recommended changes, it is intended that the insurance program for 2002 remain unchanged from the program now in place.

37. In particular, the criteria under which lawyers can exempt themselves from paying insurance premiums and levies would not change. Subject to the accommodation of multi-discipline practices and Law Corporations, the standard practice coverage (including Mandatory Innocent Party Coverage), existing policy options (including the Innocent Party Buy-Up, Part-Time Practice and Restricted Area of Practice options), and Run-Off Coverage would remain unchanged. (See Appendix A.)

38. No changes in policy coverage are contemplated, subject to the provisions accommodating multi-discipline practices and Law Corporations. No material changes in the policy wording are proposed beyond this, although some refinements in wording are contemplated to better reflect underwriting intention.

39. Other than with respect to multi-discipline practices and Law Corporations, the LPIC Board of Directors recommends that the policy coverage and reasons for exemption under the program be maintained in their current form, and that the existing coverage options continue to be made available for the 2002 program.

Premium Discounts and Surcharges

40. The Board proposes that the premium discounts and surcharges for members remain unchanged from those in place under the 2001 program. In particular, those discounts and surcharges expressed as a percentage of the base premium would remain unchanged as a percentage of the base premium, with any adjustment in the base premium proportionately affecting the amount of the premium discount or surcharge applied. Those premium discounts or surcharges expressed as a stated dollar amount would remain unchanged in amount.

41. The discounts and surcharges expressed as a percentage of the base premium include the new practitioner discount, Part-Time Practice option discount, Restricted Area of Practice option discount, as well as adjustments for deductibles and minimum premiums, and the 'no application form' surcharge. (See Appendix A.)

42. Those discounts and surcharges expressed as a stated dollar amount include the Mandatory Innocent Party and Optional Innocent Party Buy-Up premium charges, premium discounts for early lump sum payment, optional online electronic application form filing, and the Online Coaching Centre premium discount. (See Appendix A.)

43. The LPIC Board recommends that the premium discounts and surcharges remain unchanged for the purposes of the 2002 program, with those expressed as a percentage of the base premium remaining unchanged as a percentage of the base premium, and those expressed as a stated dollar amount remaining unchanged in amount.

Multi-Discipline Practices

44. In accordance with By-Law 25 made under the *Law Society Act*, R.S.O. 1990 c.L.8, members of the Law Society are now permitted to practise in partnership or association with a non-lawyer who practises a profession, trade or occupation that supports or supplements the practice of law, to permit the member to provide to clients the services of the non-lawyer.²

45. The by-law sets out various conditions that must first be satisfied to qualify as a multi-discipline practice partnership or association, including:³

- (a) that the Law Society member shall have effective control over the non-lawyer's practice in so far as it relates to the multi-discipline practice;
- (b) that the member is responsible to ensure that the non-lawyer practises his or her profession, trade or occupation with the appropriate level of skill, judgment and competence; and
- (c) that the non-lawyer complies with the Act, regulations, by-laws, rules of practice and procedure, as well as the Law Society Rules of Professional Conduct, its policies and guidelines.

46. The By-Law also requires that the Law Society member who enters into a multi-discipline partnership with a non-lawyer who practises a profession, trade or occupation that supports or supplements the practice of law, shall maintain through the insurer of the Law Society's insurance plan, professional liability insurance coverage for the non-lawyer partner in an amount determined by Convocation from time to time.⁴

47. In this regard, the LPIC Board proposes that the Law Society member be required to maintain through LPIC, as the program insurer, professional liability insurance coverage for the non-lawyer in an amount at least equal to that required by Convocation of the Law Society's own practising members. Currently, the amount of professional liability insurance required by Convocation of the Law Society's own practising members is \$1 million per claim / \$2 million in the aggregate.

48. By policy endorsement, the non-lawyer partner(s) would be included as "insureds" and "named members" under the policy, where so named in the declarations. No run-off coverage would automatically or ordinarily be provided to the non-lawyer partner after leaving the multi-discipline partnership, nor would the exemption provisions under the program apply to the non-lawyer partner.

49. For Law Society members who are partners or employed in a multi-discipline partnership, coverage would be expanded in scope to include coverage in regard to professional services provided or which ought to have been provided for or on behalf of the multi-discipline partnership. Accordingly, coverage continues to be provided to Law Society members who may also provide or have provided professional services other than through the multi-discipline partnership.

² *Law Society Act*, R.S.O. 1990, c.L.8, By-Law No. 25, s.2-4.

³ *Ibid*, s.4-5.

⁴ *Law Society Act*, R.S.O. 1990, c.L.8, By-Law No. 25, s.19.

50. For the non-lawyer partners, coverage would be provided in regard to professional services provided or which ought to have been provided for or on behalf of the multi-discipline partnership only. Although subject to certain conditions, non-lawyer partners would be permitted to also practise on their own outside of the multi-discipline partnership.⁵ No coverage would ordinarily be provided for this additional exposure under the policy.

51. Coverage under the endorsement is only afforded where the professional services were provided or ought to have been provided on or after By-Law 25 came into force (April 30, 1999), or such date that the multi-discipline practice was first authorized by the Law Society pursuant to the by-law, which ever is later.

52. For the purposes of the endorsement, "professional services" is expanded to included the practice of the non-lawyer partner's profession, trade or occupation that supports or supplements the practice of the Law of Canada, its provinces and territories, where such services are performed or ought to have been performed by the non-lawyer individual as a partner in the multi-discipline partnership.

53. Policy endorsement nos. 2 and 3, concerning the real estate and transaction levy surcharges shall apply to the non-lawyer partner as though he or she were a lawyer. Similarly, endorsement no. 5, concerning innocent party coverage and levy surcharge, shall apply to the non-lawyer partner as though he or she were a lawyer (effectively requiring that the mandatory innocent party coverage be maintained by lawyer partners and employees, as well as non-lawyer partners, alike.)

54. Premiums for the endorsed coverage are individually assessed based upon risk and are as set out in the policy declarations for the non-lawyer partner. Payment of the endorsement premium is the obligation of both the non-lawyer partner and Law Society member partners.

55. A multi-discipline partnership shall be considered to be a "law partnership" for the purposes of the policy, and the requirement of consistency in option selection (such as deductible, restricted area of practice, innocent party and innocent party buy-up options) shall apply as it would to any other type of partnership.

56. The LPIC Board recommends:

- (a) that for the purposes of section 19 of By-Law No. 25 of the *Law Society Act*, a Law Society member who has entered into a multi-discipline partnership under the by-law shall maintain through the insurer of the Law Society's insurance plan (LPIC) professional liability insurance coverage for the non-lawyer individual(s) in an amount at least equal to that required by Convocation of the Law Society's own practising members.
- (b) that changes to the policy wording concerning multi-discipline partnerships be as detailed in paragraphs 44 to 55 of this report.

Law Corporations

57. A professional corporation may now be authorized to practise law as a barrister and solicitor in Ontario, in keeping with recent amendments to the *Business Corporations Act*, R.S.O. 1990 c.B16 and *Law Society Act*, R.S.O. 1990 c.L.8, and Convocation's approval of By-Law 34.⁶

⁵ By-Law 25, s.4(2), condition 5.

⁶ Certificates of authorization may be issued in accordance with s. 3-4 of By-Law 34 of the Law Society Act. See also, Bill 152 (Chapter 42, Statutes of Ontario, 2000) – An Act to implement the 2000 Budget to establish a made-in-Ontario tax system and to amend various Acts; and Bill 45 (Chapter 8, Statutes of Ontario, 2001) – An Act to implement measures contained in the 2001 Budget and to amend various statutes.

58. A professional corporation may only be owned and operated by members of the same profession, and may not carry on a business other than the practice of the profession, or activities related to or ancillary to the practice of that profession⁷.

59. Although the use of professional corporations may offer significant tax benefits to sole practitioners and others practising in small firms, many of the traditional protections regarding personal liability associated with working in a corporate entity do not exist in the case of a professional corporation.

60. In this regard, the *Business Corporations Act*, R.S.O. 1990 c.B.16 provides:⁸

- (a) that the acts of a professional corporation are deemed to be the acts of the shareholders, employees or agents of the corporation, as the case may be;
- (b) that the liability of a member for a professional liability claim is not affected by the fact that the member is practising the profession through a professional corporation; and
- (c) that the person is jointly and severally liable with a professional corporation for all professional liability claims made against the corporation in respect of errors and omissions that were made or occurred while the person was a shareholder of the corporation.

61. Appreciating the foregoing, it is proposed that "Law Corporations" (professional corporations for which practice is governed and a valid certificate of authorization issued under the *Law Society Act*), their officers, directors and shareholders, be included as insureds under the Law Society program policy with respect to the rendering of professional services by the shareholders and/or employees of the corporation, who are named in the declarations.

62. In the case of a Law Corporation with more than one practising lawyer, the requirement of consistency in option selection (such as deductible, restricted area of practice, innocent party and innocent party buy-up options), policy obligations and coverage restrictions relating to a partner, shall apply to the Law Corporation and its shareholders as it would to a law partnership and its partners. A Law Corporation would be considered to be a "law firm", and a Law Corporation with only one practising lawyer to be a "sole practitioner", as defined in the policy.

63. The LPIC Board recommends that Law Corporations and their officers, directors and shareholders, be included as insureds under the policy with respect to the rendering of professional services by the shareholders and/or employees of the corporation who are named in the declarations. Details of this insurance, restrictions in option selection and coverage, policy obligations and changes in definition, shall be as detailed in paragraphs 57 to 62 of this report.

Electronic Filing

64. As first approved in 1999, the premium discount for optional online electronic application form filing would again be \$50 per lawyer. The discount would be applied to those lawyers who completed and submitted their 2002 policy application form electronically to LPIC prior to November 1, 2001. For the 2001 program, more than 12,000 lawyers, or approximately two-thirds of the practising bar, submitted their application forms online, up from about 10,500 lawyers in 2000. This discount encourages the use of technology among the profession and the LPIC website as a means of communication with the membership. It also minimizes administration and encourages the timely filing of application forms.

65. The LPIC Board recommends that lawyers who complete and submit their 2002 professional liability insurance application form electronically to LPIC prior to November 1, 2001, be provided with a premium discount equal to \$50 per lawyer.

⁷ *Business Corporations Act*, R.S.O. 1990 c.B.16, s.3.2.

⁸ *Ibid*, s. 3.4.

Changes to the Application Form

66. The policy application form was first introduced under the 1996 program. This was in response to recommendations in the Task Force Report, which considered the gathering of statistics and underwriting information a priority and constituent part of transforming the program to a program in which the cost of insurance generally reflects the risks.⁹

67. Since 1996, the policy application form has been transformed from a detailed 12-page form to a streamlined, pre-populated, two-page form suitable for electronic filing.

(a) Claims and Potential Claims

68. For the purposes of the 2002 program, the Board proposes that an application form question be added to inquire whether the member is aware of any outstanding claim or potential claim that has or may be made against him or her, which has not already been reported under the program. This question would, however, only apply to an individual member's application where he or she is either changing existing coverage options or applying for coverage following a period of exemption. Those responding in the affirmative, would then be invited to contact LPIC concerning the claim or potential claim.

69. Specifically, the application form for those individually filing would read: "Other than CLAIMS and POTENTIAL CLAIMS already reported under the Law Society of Upper Canada (LSUC) program, is the APPLICANT LAWYER aware of any CLAIM or POTENTIAL CLAIM that has or may be made against him or her? [] Yes [] No". If the member responds "Yes", he or she is referred to the program guide which explains how to contact LPIC to report a claim or potential claim.

70. This question is considered important for two reasons:

- (1) to remind practitioners of their obligation to report claims under the program, allowing an early opportunity for claims resolution, and
- (2) to protect the program, LPIC and its reinsurers, against any adverse selection in policy coverage. It is of special concern where there is a change in coverage options or practice status for a member.

(b) Volume of Billings

71. The existing application form includes a question concerning volume billings information, asking that the applicant lawyer report actual or average gross billings for the previous fiscal year-end in accordance with predetermined ranges. These ranges are:

⁹ 1994 Task Force Report, at page 17.

Under \$60,000
\$60,000 to \$125,000
\$125,001 to \$200,000
\$200,001 to \$300,000
\$300,001 to \$400,000
\$400,001 to \$500,000
Over \$500,000

72. The size or volume of practice was specifically identified in the Task Force Report as an aspect which should be considered in determining the cost of insurance,¹⁰ and has proven to be important in monitoring the financial health of the profession and assessing the relationship between risk and billings. Using this type of information, program changes have been considered, implemented and evaluated. Volume of billings are specifically considered in the context of the Part-Time Practice option and the selection of deductibles under the program.

73. For the members' convenience and protection, it is proposed that the volume billing question in the 2002 program application form be prepopulated using a discrete coded reference for the billing range amount.

(c) Premium Payment Options

74. Unfortunately, the option of paying premium instalments by post-dated cheques will no longer be available to members in 2002. LPIC is advised that the 'lock-box' service available through the banking industry in the past will no longer be available in 2002. This reflects the banking industry's focus upon electronic and other more efficient means of money transfer.

75. For 2002, the payment options available are:

- (a) lump sum payment – by cheque, by pre-authorized payment (automated bank account withdrawal), credit card or debit card;
- (b) quarterly instalment payments – by pre-authorized payment or credit card; and
- (c) monthly instalment payments – by pre-authorized payment or credit card.

These are consistent with the options provided by the Law Society for the collection of its annual membership fees.

76. About 7,300 members currently pay their premiums on an instalment basis with post-dated cheques. LPIC has recently been in touch with these members to alert them to this upcoming change. Notably, this change does present these members with an opportunity to save \$162 (\$150 in premium, plus GST), by electing to pay their premium on a lump sum basis prior to March 1, 2002 by either cheque or pre-authorized payment.

(d) General Member and Firm Information

77. To streamline communication efforts and reach various constituencies with information relevant to their individual needs, it is proposed that contact information be obtained on key individuals who file their applications on a firm basis (an option currently available to firms of 10 or more lawyers only), including identifying: the Managing Partner, Office Administrator/Manager, Claims Administration contact, and Continuing Legal Education/Professional Development contact. Members may also provide their firm web site address.

¹⁰ 1994 Task Force Report, at page 17 as well as pp. 75-78.

78. As in the past, members who do not file an application form or do not disclose the required information are surcharged 30 per cent of the base rate. No change to that surcharge is recommended.

79. LPIC's Board recommends that the application form be amended as follows:

- (1) to inquire about outstanding claims and potential claims;
- (2) to prepopulate the existing volume billing information question information using a discrete range of billing code and inquire of the most recent fiscal year end for which financial statements are available;
- (3) to collect key contact information for those electing to file on a firm basis; and
- (4) to inform that premium payment options will no longer accommodate the payment of instalments by post-dated cheque.

Risk Rating

a) Background

80. As already discussed in this report, the Task Force Report concluded that the cost of insurance under the program should generally reflect the risks.

81. Specifically the Report indicated that "... as a fundamental, shaping principle the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."¹¹

82. In keeping with this, detailed analyses of the risks associated with the program have been undertaken by LPIC. The earlier results of these analyses are summarized in previous Reports to Convocation. Notably, these analyses concluded that the practice of real estate and civil litigation represented a disproportionate risk when compared to other areas of practice, and that lawyers with a prior history of claims have a greater propensity for future claims than do other lawyers.

83. The objective of risk-rating was finally achieved in 1999 by applying various discounts and the real estate and civil litigation transaction levies and claims history levy revenues to the insurance program.

84. Risk rating, however, is not static. The relationship between the cost of claims and different areas of practice may change, and it is important that LPIC continue to monitor the program to ensure that risk rating continues to be achieved. Accordingly, the results of these earlier risk analyses are re-evaluated each year, and are addressed in this report at paragraphs 99 to 118.

b) Practice Trends

85. LPIC's present risk analysis reaffirms the results of its last report indicating that the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with civil litigation equalling or leading the practice of real estate as the area of practice with the greatest relative exposure for losses. In particular, the analysis indicates that:

Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 66.8% of the claims reported and 61% of the claims costs under the program in 2000;

¹¹ 1994 Task Force Report, at page 17.

However:

- a) the relative exposure relating to the practice of real estate law has declined, with this practice area accounting for 31.2% of the claims reported and 32.7% of the claims costs under the program in 2000 (well below the levels of 48.1% and 58% seen in the 1989-94 period); and
- b) the relative exposure relating to the practice of civil litigation has increased, with civil litigation accounting for 35.6% of the claims reported and 28.3% of the claims costs under the program in 2000 (well above the traditional levels of 27.4% and 17.7% seen in the 1989-94 period);
- c) the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 61.6% compared to purely missed limitation period claims at 38.4% in 2000; and
- d) lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers, with 12.9% of lawyers with claims in the prior eight years, compared to 3.8% of lawyers with no claims in the prior eight years reporting one or more claims during the last 12-month period.

86. The results of this analysis are summarized in the graphs contained in Appendix B of this report.

87. The decline in real estate claims, now estimated to be about \$8 million less than four years ago, is attributed to changes in both the lawyers' practice environment and the insurance program.

88. Factors affecting the practice environment include the active real estate market which offers a climate in which parties are inclined to want to complete the transaction rather than bringing a claim, the exclusion of mortgage brokering from coverage under the program and the apparent reluctance by many lawyers to now involve themselves in this activity, and the impact of LPIC's practicePRO and other risk management initiatives.

89. It is also clear now that title insurance is having an increasingly significant impact on real estate claims under the program, although it is not possible to isolate the impact of this factor from others affecting real estate claims under the program.

90. Although many of the risks associated with a real estate transaction may be shifted from the lawyer's professional liability insurance policy to title insurance policies offered by LPIC and others, it takes time for the impact of title insurance to be felt because of the time that it takes for claims to arise after the transaction and legal services are provided. Appreciating that this delay can be many years, the full impact of title insurance on the program is not likely to be known for some time.

91. The potential impact of fraud upon lawyers in real estate as well as other areas of practice is a growing area of concern. Although not yet apparent from program statistics, over the last couple of years, new types of fraud schemes have surfaced that have the potential to expose lawyers and the program to substantial loss, appreciating the lawyers' pivotal role in a real estate and other transactions.

92. These new schemes lend themselves to duplicity, and tend to be more sophisticated, intricate, organized and often more difficult – or even impossible – for the lawyer to detect, compared to those seen in past.

93. In response to this concern, LPIC issued a special report to members across the profession this summer outlining its concerns, providing details of these fraud-related schemes and the warning signs to which lawyers should be alert.

94. This concern is now the topic of various seminar presentations and meetings with representative law associations. It is expected that this will be an on-going matter of communication between LPIC and the areas of the bar most closely affected in the coming year.

95. The growth in number and change in the nature of civil litigation claims has also been an important topic of communication with the profession.

96. Although lawyers engaged in litigation practice continue to make many of the same types of errors made in the past, it is clear that the general breakdown in the lawyer/client relationship is now a leading cause of claims. Traditional causes of claims such as poor calendaring, procrastination, and failure to know and/or apply the law or meet a deadline have declined; the leading causes of litigation-related claims are now: failure to follow instructions, poor communication with the client, and overall dissatisfaction on the part of the client with the relationship.

Types of Errors that Result in Litigation Claims, 1989-2001

(see graph in Convocation file)

97. Last summer, LPIC issued a special report to all litigation lawyers alerting them to this development. Since then, LPIC has attended many seminar presentations and meetings with representative law associations, encouraging lawyers to provide greater attention to the client relationship, to more effectively communicate, manage expectations, limit their exposure to libel and slander claims, and guard against personal awards of costs under Rule 57.07.

98. It is anticipated that this will be an on-going matter of communication between LPIC and the areas of the bar most closely affected.

c) Revalidating Risk Rating

99. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating.

100. The following chart shows the distribution of claims costs and expenses by detailed area of practice over the last decade. A similar chart is enclosed as part of Appendix B, providing a distribution by the number of claims.

Distribution of Claim Cost and Program Expenses, by Area of Practice

(see graph in Convocation file)

101. Apparent from this chart are the significant but declining claims costs associated with real estate claims; the significant and growing claims costs associated with civil litigation; and the variability associated with most other areas of practice. This variability, to large measure, is a reflection of the unpredictability associated with fewer losses and smaller group sizes – reflecting the diminishing assistance of the law of large numbers.

102. This, and the fact that few lawyers practise exclusively in one area, provides a compelling reason to group together common or related areas of practice. Grouping the areas of practice, we get the following chart which complements the first.

Distribution of Claim Cost and Program Expenses, by Grouped Area of Practice

(see graph in Convocation file)

103. To ensure that risk-rating is being achieved, however, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2000 and the first six months of 2001), the following chart compares the anticipated losses distributed by area of law, to the proposed base levy premiums by the lawyer's primary area of practice. The premiums in this chart include only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

Comparison of Projected 2002 Premium by Lawyer's Primary Area of Practice to
Claims and Expenses by Claim's Area of Law

(see graph in Convocation file)

104. The shortfall between the anticipated claims costs and expenses to base levy premiums, both for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that \$24 million be provided through the transaction levies and claims history levy surcharges. Although clearly benefitting those whose primary area of practice is real estate or in the litigation grouping, these additional revenues also benefit those whose secondary and other areas of practice include payment of these levies.

105. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about \$7,500 and \$4,500 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

106. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, avoiding any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.¹²

107. As indicated in the following chart, by including the transaction and claims history surcharge levies as proposed, the shortfall between anticipated claims costs and expenses to total insurance levies is almost entirely overcome in these higher risk and other areas of practice.

108. Although this chart offers an imperfect comparison, in the sense that the chart compares premiums sorted by the lawyer's primary area of practice and compares this to claims costs and expenses sorted by the area of law of the claim itself, the chart does show a strong correlation between insurance levies and losses in each area of practice – a good indication that risk rating is being achieved.

Comparison of Projected 2002 Premium + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by
Claim's Area of Law

(see graph in Convocation file)

109. To compare the actual claims experience of lawyers to revenues received from those lawyers, the chart below compares the anticipated premiums (with the transaction and claims history levies) sorted by the lawyer's primary area of practice, and compares this to the anticipated claims costs and expenses of these lawyers.

Comparison of Projected 2002 Premium + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by
Lawyer's Primary Area of Practice

(see graph in Convocation file)

¹² 1999 LPIC Report to Convocation, pp. 18-22; 1998 LPIC Report to Convocation, pp. 35-37; and 1996 LPIC Report to Convocation, pp. 32-36.

110. This comparison still indicates that with the benefit of the transaction and claims history surcharge levies, there is a reasonably close correlation between revenues and claims.

111. However, the chart does indicate some subsidy by area of practice. Those lawyers whose primary area of practice is classified as "All Other" are expected to have their premiums somewhat exceed losses. This affects less than 15 per cent of the practising bar.

112. Finally, it is also possible to compare rating based on the time spent by each lawyer in a particular area of practice, to claims sorted by the area of law of the claim. Appreciating the practical limitations in determining and verifying time spent by area of practice, this approach is not seen as offering sufficiently reliable data for the purposes of a practical rating methodology. It is, however, of interest in reassessing other means of risk assessment. This approach results in the following chart.

Comparison of Projected 2002 Premium + Levies by Lawyer's Percentage of Time in Area of Practice to Claims and Expenses by Claim's Area of Law

(see graph in Convocation file)

113. This chart shows a close correlation between revenues and claims by area of practice, perhaps even more so than the previous chart. Notably, this chart indicates that real estate revenues actually exceed claims somewhat, and that revenues for the 'All Other' grouping only marginally exceed claims.

114. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "... no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."¹³

115. Other aspects reviewed in the analysis included the exposure based on the size of firm, year of call, geographic location and prior claims history. The results of this analysis reaffirm the premium discounts already in place, including the discounts for new and for part-time practitioners and the surcharge applied to those practitioners with a prior claims history. The results of this analysis support the conclusions of previous reports, and are summarized in the graphs in Appendix B.

116. Although the volume (size) of practice may not be wholly determinative of risk, the transaction levies do reflect the volume of business transacted in a practice as well as the higher risk associated with real estate conveyancing and civil litigation.

117. Accordingly, the LPIC Board is satisfied with the continued use of the transaction and claims history levy revenues as premium with the result that the cost of insurance under the program continues to generally reflect the risk.

118. Various examples of premiums which would be charged to members depending upon the nature of their practice are summarized in Appendix C of this Report.

¹³ 1994 Task Force Report, at page 17.

Lawyer Mentoring Program

119. Mentoring among lawyers has been a fundamental aspect of practice in the profession for many years. Although believed to be prevalent in all regions of the province and all areas of practice, the practice of mentoring has tended to be largely informal and unstructured in nature, even with formation of an mentoring program by the Law Society in about 1990.

120. In the view of LPIC's Board, mentoring is a valuable and important process which should be actively encouraged. Through this process new practitioners and practitioners entering new areas of practice can access experienced counsel and provide a better service to their clients. Mentoring is a particularly important process for sole practitioners and lawyers acting in smaller firms, as they look to expand their expertise and benefit from the experience of others.

121. From an insurance perspective, it is also a process by which errors in practice and resulting claims can be avoided as a result of experienced counsel's insights, a benefit to all members of the profession.

122. In the view of the LPIC Board, however, it is important that this type of activity – which inevitably takes place – become more structured, to ensure appropriate client contact and dealings, consistent expectations between counsel, and protection of the mentoring lawyer against any subsequent claims.

123. Under its current mentoring program, the role of the Law Society is essentially that of an intermediary. When approached by members seeking a mentor, the Law Society draws on an active list of experienced practitioners (usually identified through the Law Society specialist programs) which it maintains for the various areas of practice, contacts an experienced practitioner to determine the member's availability and willingness to act as mentor on the matter, and then introduces the two members while obtaining the appropriate signed acknowledgement and waiver.

124. Although the mentoring relationship is struck for the one specific matter only, the members' relationship may well continue beyond that, although the Law Society itself currently would have no on-going involvement or knowledge of it.

125. It is the intention that LPIC work with the Law Society to more formally structure the mentoring program, to establish procedures, guidelines and documentation that would better define the process, the extent of the mentoring relationship, the role of the mentoring lawyer, and safeguards regarding client contact. It is anticipated that this could be accomplished by early 2002.

126. With these procedures in place, the exposure for any subsequent claims would rest with the lawyer providing the actual legal service to the client, with no genuine recourse against the mentoring lawyer (or the program, as the mentoring lawyer's insurer).

127. In the view of the LPIC Board, if LPIC and the Law Society are able to agree upon a more formal structure for the mentoring program, its procedures, guidelines and documentation, then this program should be more actively promoted by the Law Society and LPIC, and the process and principles made readily available to the membership to be applied in both new and existing mentoring relationships across the profession.

128. In support of this, the LPIC Board recommends, upon agreement of LPIC and the Law Society on the mentoring procedures, guidelines and documentation, that no deductible or claims history levy surcharge will be applied against a mentoring lawyer for subsequent claims arising out of the mentoring relationship, where the Law Society's mentoring procedures, guidelines and documentation have been applied.

Continuing Education Premium Credit / Online Coaching Centre

129. In the view of the LPIC Board, there are real and substantial benefits that many continuing legal and other educational courses bring to the practice of law, and the insurance program, and that members' participation in such courses should be actively encouraged.

130. By helping lawyers to become more knowledgeable in the law, more effective in management of their practice and more able to excel in a rapidly changing practice climate, it is felt that they are better able to manage and reduce their exposure to claims.

131. In keeping with this, last year Convocation approved for 2001 the removal of the \$50 subscription fee for Ontario Law Society members, providing members with free access to the On-line Coaching Centre ("OCC"). The OCC is part of LPIC's practicePRO risk management initiative, and is an internet-based, self coaching tool helping lawyers enhance their business and people skills.

132. In the view of the LPIC Board, Law Society members should continue to have free access to the Online Coaching Centre in 2002. Last year Convocation also approved, for the up-coming 2002 policy, a \$50 premium credit for Ontario members who complete a minimum of three OCC practice modules and file a OCC Survey and Declaration with LPIC prior to September 15, 2001.

133. Consideration is now being given to broadening the scope and amount of this premium credit. In particular, consideration is being given to whether select courses and programs offered by the Law Society, the Ontario Bar Association, The County and District Law Presidents' Association, the Advocates' Society, and others should be considered as eligible courses for the premium credit.

134. In particular, for the purposes of the 2003 policy, a \$50 premium credit per course per member is proposed, with a \$100 maximum amount per member, under the 2003 policy. Courses would be pre-approved by LPIC and the premium credit made available to the member where the course is taken and successfully completed by the member in 2002, before September 15th.

135. To accommodate this process, more structured relations with course providers would have to be struck and guidelines established concerning content, duration, venue, attendance, record keeping, audit, information exchange and other aspects. Meetings between LPIC and the Law Society staff, and others, are currently underway.

136. Courses would be approved solely at the discretion of LPIC and only where LPIC is satisfied that the course will assist lawyers in becoming more knowledgeable in the law, more effective in their practice management in a changing climate, and reduce their exposure to claims.

137. LPIC would also have to be satisfied that the course providers will be able to efficiently and reliably administer the premium credits.

138. Accordingly, the LPIC Board recommends:

- that free access continue to be provided to Law Society members for the Online Coaching Centre in 2002; and
- that a \$50 premium credit per course, subject to a \$100 per member maximum amount, be applied to members' 2003 premiums, for pre-approved legal and other educational courses taken in 2002 and successfully completed by the member before September 15, 2002. Courses would be pre-approved by LPIC on the basis described in paragraphs 133 to 137 of this report.

CONCLUSION

139. The LPIC Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LPIC Board invites Convocation's consideration of this report and recommendations for approval by Convocation in September so that the year 2002 insurance program can be implemented by January 1, 2002.

ALL OF WHICH LPIC'S BOARD OF DIRECTORS RESPECTFULLY SUBMITS TO CONVOCATION.

September, 2001

ROSS W. MURRAY, Q.C.
Chair, LPIC's Board of Directors

APPENDIX A

Standard Program Summary & Options 43

Appendix "A"

The Standard Insurance Program Coverage

Eligibility

- Required for all sole practitioners, lawyers practising in association or partnership, and lawyers practising in a Law Corporation, who are providing services in private practice.
- Available to other lawyers (e.g. retired lawyers, in-house corporate counsel and other lawyers no longer in private practice) who opt to purchase the insurance coverage.

Coverage limit

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2002), application to CLAIM expenses, indemnity payments and/or cost of repairs together

Standard DEDUCTIBLE

- \$5,000 per CLAIM applicable to CLAIM expenses, indemnity payments and/or costs of repairs together.

Standard base premium

- \$2,700 per insured lawyer

Transaction Premium Levy

- \$50 per real estate or civil litigation transaction
- No real estate transaction levy generally payable by transferee's lawyer if title insured

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
 - ◆ less than 1 full year in practice: premium discount equal to 40% of base premium;
 - ◆ less than 2 full years in practice: premium discount equal to 30% of base premium;
 - ◆ less than 3 full years in practice: premium discount equal to 20% of base premium;
 - ◆ less than 4 full years in practice: premium discount equal to 10% of base premium.

Mandatory Innocent Party Coverage

Eligibility

The minimum coverage of \$250,000 per claim/in the aggregate must be purchased by all lawyers practising in association (including an MDP Association) or partnership (including general, MDP and LLP partnerships), or in the employ of other lawyers.

The minimum coverage must also be purchased by all lawyers practising in a Law Corporation, where two or more lawyers practise in the Law Corporation.

Premium

\$250 per insured lawyer

2002 Program Options

1. Deductible option

\$Nil deductible

· Increase in premium equal to 15% of base premium (\$405 increase).

\$2,500 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

· Increase in premium equal to 7.5% of base premium (\$202.50 increase).

\$2,500 deductible applicable to indemnity payments and/or costs of repairs only

· Increase in premium equal to 12.5% of base premium (\$337.50 increase).

Standard insurance program: \$5,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

· Base premium of \$2,700 per insured lawyer.

\$5,000 deductible applicable to indemnity payments and/or costs of repairs only

· Increase in premium equal to 10% of base premium (\$270 increase).

\$10,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs together

· Decrease in premium equal to 7.5% of base premium (\$202.50 decrease).

\$10,000 deductible applicable to indemnity payments and/or costs of repairs only

· Increase in premium equal to 7.5% of base premium (\$202.50 increase).

\$25,000 deductible applicable to CLAIM expenses, indemnity payments and/or costs of repairs

· Decrease in premium equal to 12.5% of base premium (\$337.50 decrease).

2. Innocent Party Sublimit Coverage Options

Innocent Party Coverage Sublimit Buy-Up: For lawyers practising in associations, partnerships and Law Corporations

Lawyers practising in association (including an MDP association) or partnership (including general, MDP and LLP partnerships) or a Law Corporation (with more than one practising lawyer) can increase their Innocent Party Coverage in two ways:

Increase coverage sublimit to:
\$500,000 per CLAIM/aggregate
\$1 million per CLAIM/aggregate

Additional annual premium:
\$150 per insured lawyer
\$249 per insured lawyer

Optional Innocent Party Sublimit Coverage: For sole practitioners and lawyers practising alone in a Law Corporation
Coverage limits

- \$250,000 per CLAIM/in the aggregate
- \$500,000 per CLAIM/in the aggregate
- \$1 million per CLAIM/in the aggregate

3. Practice Options

Restricted Area of Practice Option *Eligibility*

Available only to lawyers who agree to restrict their practice to criminal¹⁴ and/or immigration law¹⁵ throughout 2002.

Premium

Eligible for discount equal to 40% of base premium, to a maximum of \$1,080.¹⁶

Part-Time Practice Option

Eligibility

Available only to part-time practitioners who meet part-time practice criteria.

Premium

Eligible for discount equal to 40% of base premium, to a maximum of \$1,080.

- Premium Payment Options

Instalment Options:

- Lump sum payment by cheque or pre-authorized payment: eligible for \$150 discount.
- Lump sum payment by credit or debit card
- Quarterly instalments
- Monthly instalments

¹⁴ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

¹⁵ Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration Act (R.S.C. 1985, C.I.-2)* and regulations, and procedures and policies pertaining thereto, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

¹⁶ The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40% of the base premium.

5. E-filing Discount
\$50 per insured lawyer (if filed by November 1, 2001)
6. Online Coaching Centre Discount
\$50 per insured lawyer where member completes at least three modules between January 1, 2001 and September 15, 2001, and completes and files the Online Coaching Centre Survey and Declaration prior to September 15, 2001.

APPENDIX B

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Claim Facts

- More than 4 out of 5 lawyers in practice from 1977 to 2001 have reported an errors-and-omissions claim
- More than 2 out of 5 lawyers in practice from 1977 to 2001 have had claims paid on their behalf
- Claims incurred since 1977: 50,000 claims valued at \$1.08 billion
- Defence costs incurred since 1977: \$400 million
- LPIC has claims and membership information going back to 1977

APPENDIX C

Premium Rating Example

57

Premium Rating Examples (In Dollars)

(see Table in Convocation file)

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It was moved by Mr. Murray, seconded by Mr. Crowe that the Report be adopted.

Carried

The Treasurer on behalf of Convocation thanked Mr. Murray and Ms. Strom for their work.

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. MacKenzie presented the Professional Regulation Committee Report for Convocation's approval.

Report to Convocation

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 20, 2001. In attendance were:

Gavin MacKenzie (Chair)
Heather Ross (Vice-Chair)
Stephen Bindman

Staff: Lesley Cameron, Margot Devlin, Terry Knott, David McKillop, Cara O'Hagan, Felecia Smith, Elliot Spears, Richard Tinsley, Jim Varro, and Jim Yakimovich.

2. This report contains policy reports on amendments to the *Rules of Professional Conduct* respecting professional corporations and fees payable to the Law Society pursuant to the new scheme for professional corporations, and an information report on file, caseload management and staffing issues in the complaints resolution, investigations and discipline departments.

POLICY

PROFESSIONAL CORPORATIONS (BY-LAW 34)

I. AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

II. FEES UNDER BY-LAW 34

I. AMENDMENTS TO THE RULES OF PROFESSIONAL CONDUCT

A. PROPOSED RULE AMENDMENTS

3. On May 24, 2001, Convocation made By-Law 34, which permits lawyers to incorporate for the practice of law. The By-Law followed legislative amendments to the Ontario *Business Corporations Act* that permitted certain professions to practice in corporate form. The By-Law will come into force when the legislation that permits lawyers to form such corporations is proclaimed in force. A copy of By-Law 34 on Professional Corporations appears at Appendix 1.
4. There are two rules in the *Rules of Professional Conduct* related to the professional corporations scheme that the Committee determined should be amended. They are the following.

Rule 3.02 - Law Firm Name (attached in its current form at Appendix 2)
5. The Committee's proposal is that the rule should be amended to mirror the requirement in the amendments to the *Business Corporations Act* for professional corporations, namely, that a corporation carrying on the practice of law must include the words "Professional Corporation" in its name.
6. Suggested language, similar to that for limited liability partnerships, is

Professional Corporation

- (9) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words "Professional Corporation".

Rule 3.03 (1)- Letterhead (attached in its current form at Appendix 3)

7. The Committee's proposal is that a new (i) should be added as follows:

Subject to subrules (2) and (3), a lawyer's letterhead and the signs identifying the office may only include

...
(i) the words "Professional Corporation", where applicable;

8. The above change would require the re-designation of existing clauses (i), (j), (k), (l) and (m) as (j), (k), (l), (m) and (n) respectively.
9. The Committee also proposes that the above Rule amendments come into force on the day the legislation permitting professional corporations for lawyers comes into force.
10. The Committee did not have a quorum present for discussion of this matter, and could not make a recommendation. However, the Committee defers to Convocation's general authority to make Rules (or amend Rules) found in the subsections 15(2) and (3) of By-Law 9 on Committees:

Rules of professional conduct

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

Authority of Convocation

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

B. DECISION FOR CONVOCATION

11. Convocation is asked to
 - (a) make the amendments to the *Rules of Professional Conduct* as described above in paragraphs 6 and 7 or in such other language as Convocation deems appropriate, and
 - (b) provide that these Rule amendments come into force on the day that the legislation permitting professional corporations for lawyers comes into force.

II. FEES UNDER BY-LAW 34

A. REQUIREMENTS UNDER BY-LAW 34

12. By-Law 34 requires lawyers to pay three different fees for three separate matters relating to practice as a professional corporation, as follows:
 - an application fee to the Society for a certificate of authorization (By-Law 34, clause 3(2)(c))
 - a renewal fee for the certificate of authorization (By-Law 34, clause 5(2)(b))
 - a fee for replacement of the certificate of authorization as a result of correction or loss or destruction of the certificate (By-Law 34, subsections 6(5) and 7(2))
13. In each case, the By-Law states that the fee is "in an amount determined by Convocation from time to time".
14. As noted above, the By-Law will come into force when the legislation that permits lawyers to incorporate is proclaimed in force. In anticipation of that event, the Committee is requesting that Convocation determine appropriate fees for the items noted above.

B. THE COMMITTEE'S SUGGESTED APPROACH

15. While obviously no experience has been gained operationally with respect to incorporations, the suggestion is that a figure of \$250 be set for the application fee, \$75 for the renewal fee and \$25 for the replacement fee. British Columbia, Alberta and Manitoba all charge \$250 as the application fee under their respective regulatory schemes for incorporations. This fee also corresponds with the fee payable for multi-discipline partnership applications under By-Law 25. British Columbia's renewal fee is \$75.
16. The fee is intended to cover the costs associated with review of the applications, preparation of prescribed forms under the By-Law and related functions of the Society's Forms Services department, to which these responsibilities will fall. The fees for the various functions vary according to the time necessary to complete them and their complexity. The Committee recognized that it is difficult to predict the volume of applications that will be received, but determined that, if necessary, the level of the fees can be revisited if the Society's experience with the process warrants a change in the amounts. The Committee considered it desirable, particularly in light of anticipated developments in multi-jurisdictional practice, that the fees correspond with those in other jurisdictions, if possible.
17. As no quorum existed at Committee at the time this matter was discussed, the Committee cannot make a recommendation. However, the Committee is requesting that Convocation consider the Committee's suggested approach for setting the fees, and make a decision based on this information. The Committee believes that matters related to the Society's administration of the incorporations scheme should, if possible, be finalized and in place as soon as possible, so that members may take advantage of the benefits of incorporation immediately upon the legislation being proclaimed in force.

C. DECISION FOR CONVOCAION

18. Convocation is requested to consider the Committee's suggested approach to setting fees pursuant to By-Law 34, and make a decision on whether they should be set on the following basis:
 - (a) \$250 for the application fee to the Society for a certificate of authorization (By-Law 34, clause 3(2)(c))
 - (b) \$75 for the renewal fee for the certificate of authorization (By-Law 34, clause 5(2)(b)), and
 - (c) \$25 for the fee for replacement of the certificate of authorization as a result of correction or loss or destruction of the certificate (By-Law 34, subsections 6(5) and 7(2))

INFORMATION

REPORT ON COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE FILE MANAGEMENT,
CASELOADS AND OPERATIONS

19. The Secretary, Richard Tinsley, Senior Counsel - Discipline Lesley Cameron and James Yakimovich (Manager, Investigations) reported to the Committee on caseload management in the Complaints Resolution, Investigations, and Discipline Departments. The reports appear at Appendix 4. These reports are prepared monthly for review by the Committee as part of its monitoring function respecting file management. The Committee receives general information and statistics on file management and caseloads in the departments noted above.¹ The reports in this report cover the period June through August, 2001.

¹The Chair of the Committee, as a member of the Proceedings Authorization Committee, is not a member of the Hearing Panel and accordingly does not and cannot have adjudicative responsibilities. Information received by the Committee, as reflected in the reports appended to this report, does not itemize specific cases.

20. With respect to regulatory operations,

- Attached at Appendix 5 is an organization chart showing the personnel and functions of the Policy and Legal Affairs Department, which includes the Policy Secretariat and the Society's new Legal Affairs Office
- Elliot Spears, formerly Legislation and Research Counsel, has been appointed as the new Senior Counsel, Legal Affairs. The Senior Counsel, Legal Affairs provides and manages the provision of legal services for the Society through legal advice to staff and others on all corporate and commercial matters of the Society, reviews and prepares documents and contracts, and retains and manages external legal counsel (except for matters related to Discipline). The Senior Counsel also provides direction and advice to the Clerk to the Hearings Panels and the Scheduling Coordinator in fulfilling their duties
- Donna Farquharson, a lawyer previously in other positions within the Law Society, was appointed as Team Leader, Trustee Services responsible for planning, and managing the Trustee Services provided through Staff Trustee and Unclaimed Trust Funds functions in accordance with legislated requirements and Law Society policy. Ms. Farquharson will be responsible for supervising the orderly wind-up of law practices and intervening in practices where a member dies, disappears, is incapacitated, is facing discipline, has been suspended, has been granted permission to resign or has been disbarred, and inadequate or no provisions have been made to protect client interests

APPENDIX 1

BY-LAW 34

Made: May 24, 2001

PROFESSIONAL CORPORATIONS

CORPORATE NAME

Names of shareholders

1. (1) Subject to subsection (6), the name of a professional corporation may include the name of any shareholder, but it shall include the name of at least one shareholder who will be practising law through the corporation.

Deceased shareholder

- (2) A professional corporation may retain in its name the name of a deceased shareholder.

Use of certain phrases

- (3) Provided that three or more individuals practise law through the professional corporation, a professional corporation may include in its name phrases such as "and associates" and "and company".

Use of honorific "Q.C."

- (4) A professional corporation having one shareholder may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Prohibition: trade name, etc.

- (5) The name of a professional corporation shall not include a trade name, commercial name or figure of speech.

Prohibition: shareholder

(6) The name of a professional corporation shall not include the name of a shareholder who holds office as a member of a tribunal or who holds any other office the duties of which are incompatible with the practice of law.

Prohibition: general

(7) The name of a professional corporation shall not include any language that is not expressly permitted under this By-Law or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

(8) A professional corporation shall not use a name,

(a) that is used by another professional corporation; or

(b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

Use of past firm name

(9) Despite any other provision in this section, a professional corporation that is established by two or more members who, before the day the corporation is established, practised law as a partnership may use as its name the name of the partnership.

Interpretation: name of shareholder

(10) For the purposes of this section, the name of a shareholder means the shareholder's surname and, at the shareholder's option, his or her given names or initials.

Corporate name certificate

2. (1) A member may apply in writing to the Society for a certificate that the Society does not object to the establishment of a professional corporation under a proposed name.

Decision of Society official

(2) A Society official shall consider every application made under subsection (1) and shall,

(a) if the official is satisfied that the proposed name complies with section 1, issue a certificate to the member; or

(b) if the official is not satisfied that the proposed name complies with section 1, reject the application.

Notice to member and application for review

(3) If a Society official rejects an application made under subsection (1), the official shall so notify the member and the member may apply to the committee of benchers appointed under section 11 for a review

CERTIFICATE OF AUTHORIZATION

Application for certificate

3. (1) A corporation that wishes to practise law shall apply to the Society for a certificate of authorization.

Same

(2) An application under subsection (1) shall include,

(a) a completed application form provided by the Society;

- (b) a copy of,
 - (i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and
 - (ii) the corporation's articles of amendment, if any, and the certificate of amendment; and
- (c) an application fee in an amount determined by Convocation from time to time.

Consideration by Society official

4. (1) A Society official shall consider every application under subsection 3 (1) made in accordance with subsection 3 (2).

Issuance of certificate

- (2) A Society official shall issue a certificate of authorization to a corporation if the official is satisfied that,
 - (a) the corporation is a subsisting corporation under the *Business Corporations Act* and meets the conditions for professional corporations specified in that Act and in any regulations made under that Act;
 - (b) the name of the corporation complies with section 1 of this By-Law;
 - (c) the directors of the corporation are members whose rights and privileges are not suspended; and
 - (d) the individuals who will practise law through the corporation are members who are entitled to engage in the private practice of law in Ontario, student members who are not the subject of an order made under section 35 or section 40 or other persons who are authorized to practise law under the *Law Society Act* and the by-laws made thereunder.

Refusal to issue certificate

(3) If a Society official is not satisfied that a requirement set out in subsection (2) has been met, the official shall notify the corporation and the corporation may meet the requirement or appeal to the committee of benchers appointed under section 11 if it believes that the requirement has been met.

Same

(4) Despite subsection (2), a Society official may refuse to issue a certificate of authorization to a corporation where,

- (a) the corporation has had a certificate of authorization revoked; or
- (b) a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(5) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (a), the official shall so notify the corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Same

(6) If a Society official refuses to issue a certificate of authorization to a corporation under clause (4) (b), the official shall so notify the corporation and the corporation may appropriately re-appoint its directors and officers and alter its shareholders or appeal the refusal to the committee of benchers appointed under section 11.

Duration of certificate

(7) Subject to its being revoked, a certificate of authorization issued under this section is valid from the date of issue, as indicated on the certificate, until December 31 of the year in which it is issued.

Renewal

5. (1) A professional corporation may apply to the Society for a renewal of the corporation's certificate of authorization.

Application

- (2) An application under subsection (1) shall include,
- (a) a completed application form provided by the Society; and
 - (b) a renewal fee in an amount determined by Convocation from time to time.

Consideration by Society official

(3) A Society official shall consider every application under subsection (1) made in accordance with subsection (2) and shall,

- (a) if the official is satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), renew the corporation's certificate of authorization; or
- (b) if the official is not satisfied that the professional corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), refuse to renew the corporation's certificate of authorization.

Refusal to renew

(5) Despite clause (3) (a), a Society official may refuse to renew the certificate of authorization of a professional corporation where a director, officer or shareholder of the corporation is or has been a director, officer or shareholder of a corporation whose certificate of authorization has been revoked.

Notice and appeal

(6) If a Society official refuses to renew a certificate of authorization, the official shall so notify the professional corporation and the corporation may appeal the refusal to the committee of benchers appointed under section 11.

Duration of renewal

(7) Subject to its being revoked, a certificate of authorization that has been renewed under this section is valid until December 31 of the year for which it is renewed.

Expiry of certificate

- (8) A professional corporation shall not practise law if its certificate of authorization has expired.

Time for applying for renewal

(9) A professional corporation that wishes to renew its certificate of authorization without any disruption in its entitlement to practise law pending the renewal shall apply for the renewal not later than 90 days before the day on which its certificate expires.

Revocation of certificate

(10) If for any reason the certificate of authorization of a professional corporation is not renewed within 12 months after its expiry, the certificate of authorization is automatically revoked.

Renewal of revoked permit

(11) A professional corporation may not apply for a renewal of a certificate of authorization that has been revoked, but the corporation may apply for a new certificate of authorization.

Erroneous or incomplete certificate of authorization

6. (1) If a Society official receives information that a certificate of authorization held by a professional corporation contains an error or is incomplete, the official may, by so notifying the corporation in writing, require the corporation by the date specified in the notice to return its certificate of authorization to the Society for correction, completion or replacement.

Replacement certificate

(2) If the Society replaces an erroneous or incomplete certificate of authorization with a new certificate of authorization, the new certificate of authorization shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

No interruption in holding of certificate

(3) The return of a certificate of authorization under this section shall not constitute an interruption in the holding of the certificate by the professional corporation.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Correction, etc. following report of change

(5) If the replacement of a certificate of authorization under this section is necessitated as a result of a change reported by the professional corporation under section 10, the professional corporation shall pay to the Society a fee for the replacement certificate in an amount determined by Convocation from time to time.

Loss or destruction of certificate

7. (1) If the certificate of authorization of a professional corporation is lost or destroyed, the corporation may apply to the Society in writing for a replacement certificate.

Society official may issue replacement certificate

(2) Upon payment of a fee in an amount determined by Convocation from time to time, a Society official may issue a replacement certificate of authorization to the professional corporation.

Replacement certificate

(3) A replacement certificate of authorization issued under this section shall bear the date of issue of the replaced certificate of authorization and shall indicate that it is a replacement certificate.

Duration of replacement certificate

(4) Subject to its being revoked, a replacement certificate of authorization issued under this section is valid until December 31 of the year in which it is issued.

Form 34A

8. A certificate of authorization issued under this By-Law shall be in Form 34A.

Surrender of certificate

9. (1) A professional corporation shall apply to the Society for permission to surrender its certificate of authorization,

- (a) when the corporation does not wish to renew the certificate or when the corporation no longer wishes to practise law; and
- (b) prior to a voluntary winding up or voluntary dissolution of the corporation.

Same

(2) An application under subsection (1) shall be in writing and shall be accompanied by a statutory declaration signed by the directors of the professional corporation setting forth,

- (a) the name of the professional corporation, the corporation's Ontario Corporation Number, the address of the corporation's registered office, the address of the corporation's business office, the number of the corporation's certificate of authorization and the date of issue of the corporation's certificate of authorization;
- (b) the reasons for the application;
- (c) a declaration that all money or property held in trust for which the professional corporation was responsible has been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust;
- (d) a declaration that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law;
- (e) a declaration that the directors of the professional corporation are not aware of any claim against the corporation in its professional capacity or in respect of its practice; and
- (f) such additional information or explanation as may be relevant by way of amplification of the foregoing.

Same

(3) An accountant's certificate to the effect that all money and property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto shall be attached, and marked as an exhibit, to the statutory declaration required under subsection (2).

Publication of notice of intention to surrender certificate

(4) Subject to subsection (5), a professional corporation that wishes to surrender its certificate of authorization shall, at least thirty days before the day on which it applies to the Society under subsection (1), publish in the Ontario Reports a notice of intention to surrender a certificate of authorization.

Exemption from requirement to publish notice

(5) Upon the written application of the professional corporation, a Society official may exempt the corporation from the requirement to publish a notice of intention to surrender a certificate of authorization.

Notice of intention to surrender certificate

(6) The notice of intention to surrender a certificate of authorization which a professional corporation is required to publish under subsection (4) shall be in Form 34B [Notice of Intention to Surrender Certificate of Authorization].

Proof of publication of notice of intention to surrender certificate

(7) Unless a professional corporation is exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, an application under subsection (1) shall be accompanied by proof of publication in accordance with subsection (4) of a notice of intention to surrender a certificate of authorization.

Society official to consider application

(8) Subject to subsection (9), a Society official shall consider every application made under subsection (1) in respect of which the requirements set out in subsections (2), (3) and (7) have been complied with, and a Society official may consider an application made under subsection (1) in respect of which the requirements set out in subsection (2), (3) and (7) have not been complied with, and,

- (a) the official shall accept an application if he or she is satisfied,
 - (i) that all money or property held in trust for which the professional corporation was responsible have been accounted for and paid over or distributed to the persons entitled thereto, or, alternatively, that the corporation has not been responsible for any money or property held in trust,
 - (ii) that all clients' matters have been completed and disposed of or that arrangements have been made to the clients' satisfaction to have their papers returned to them or turned over to some other barrister or solicitor, or, alternatively, that the professional corporation has not engaged in the practice of law,
 - (iii) that there are no claims against the professional corporation in its professional capacity or in respect of its practice,
 - (iv) that the professional corporation is no longer the subject of or has fully complied with all terms and conditions of an order made under Part II of the Act, and
 - (v) that the professional corporation, if not exempted from the requirement to publish a notice of intention to surrender a certificate of authorization, has complied with subsection (4); or
- (b) subject to subsection (9), the official shall reject an application if he or she is not satisfied of a matter mentioned in clause (a).

Acceptance of application

(9) A Society official may accept an application if he or she is not satisfied of the matter mentioned in subclause (8) (a) (iv) but is satisfied of the matters mentioned in subclauses (8) (a) (i), (ii), (iii) and (v).

Society official not to consider application

(10) A Society official shall not consider an application made under subsection (1) if the professional corporation or any individual practising law through the corporation is,

- (a) the subject of an audit, investigation, search or seizure by the Society; or
- (b) a party to a proceeding under Part II of the Act.

Documents, explanations

(11) For the purposes of assisting a Society official to consider its application, the professional corporation shall provide to the official such documents and explanations as the official may require.

Rejection of application

(12) If a Society official rejects its application, the official may specify terms and conditions to be complied with by the professional corporation as a condition of its application being accepted, and if the corporation complies with the terms and conditions to the satisfaction of the official, the official shall accept the application.

CHANGE OF INFORMATION

Change of information

10. (1) A professional corporation shall notify the Society in writing immediately after,
- (a) any change in the information provided as part of the corporation's application for a certificate of authorization or for a renewal of a certificate of authorization; and
 - (b) any change in the corporation's articles of incorporation.

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in the professional corporation's articles of incorporation, shall include the corporation's articles of amendment and the certificate of amendment.

COMMITTEE OF BENCHERS: REVIEWS AND APPEALS

Committee of benchers

11. (1) Convocation shall appoint a committee of at least three benchers to consider applications for review and appeals made under this By-Law.

Term of office

- (2) A bencher appointed under subsection (1) shall hold office until his or her successor is appointed.

Consideration of review or appeal: quorum

(3) Three benchers who are members of the committee appointed under subsection (1) constitute a quorum for the purposes of considering an application for a review or an appeal made under this By-Law.

Time for making application for review

12. (1) An application for a review under subsection 2 (3) shall be commenced by the member notifying a Society official in writing of the application within thirty days after the day the official notifies the member that his or her application for a certificate has been rejected.

Time for appeal: appeals under subss 4 (3), (5) and (6)

(2) Subject to subsection (4), an appeal under subsection 4 (3), (5) or (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after,

- (a) the day the official notifies the corporation under subsection 4 (3) that a requirement has not been met; or
- (b) the day the official notifies the corporation under subsection 4 (5) or (6) that he or she is refusing to issue a certificate of authorization.

Time for appeal: appeal under subs. 5 (6)

(3) Subject to subsection (4), an appeal under subsection 5 (6) shall be commenced by the professional corporation notifying a Society official in writing of the appeal within thirty days after the day the official notifies the corporation that he or she is refusing to renew the corporation's certificate of authorization.

Extension of time for commencing appeal

(4) Upon the written request of the professional corporation, made no later than the last day for commencing an appeal as specified in subsection (2) or (3), a Society official may extend the time for commencing the appeal.

When notice given

(5) For the purposes of this section, a Society official will be deemed to have notified a person of a rejection or refusal,

- (a) in the case of oral notification, on the day that the official notified the person; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
 - (ii) if it was faxed, on the first day after it was faxed.

Procedure: review and appeal

13. (1) Subject to subsection (2), the procedure applicable to the consideration by the committee of benchers appointed under section 11 of an application for a review under subsection 2 (3) or of an appeal under subsection 4 (3), 4 (5), 4 (6) or 5 (6) shall be determined by the committee and, without limiting the generality of the foregoing, the committee may decide who may make submissions to it, when and in what manner.

Same

(2) Unless the committee of benchers appointed under section 11 permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers on review

14. (1) After considering an application for a review under subsection 2 (3), the committee of benchers appointed under section 11 shall,

- (a) if it is satisfied that the proposed name complies with section 1, direct a Society official to issue a certificate to the member; or
- (b) if it is not satisfied that the proposed name complies with section 1, reject the application.

Powers on appeal: appeal under subs. 4 (3)

(2) After considering an appeal made under subsection 4 (3), the committee of benchers appointed under section 11 shall,

- (a) if it determines that the requirement has been met, direct a Society official to issue a certificate of authorization to the corporation; or
- (b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subss 4 (5), (6)

(3) After considering an appeal made under subsection 4 (5) or (6), the committee of benchers appointed under section 11 shall make such decision as it considers proper in the circumstances.

Powers on appeal: appeal under subs. 5 (6)

(4) After considering an appeal made under subsection 5 (6), the committee of benchers appointed under section 11 shall,

- (a) direct a Society official to renew the professional corporation's certificate of authorization if it is satisfied that,
 - (i) the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), and
 - (ii) despite the fact that the situation mentioned in subsection (5) is present, it is appropriate to renew the corporation's certificate of authorization; or
- (d) refuse to renew the professional corporation's certificate of authorization if,
 - (i) it is not satisfied that the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2); or
 - (ii) it determines that it is inappropriate to renew the corporation's certificate of authorization because the situation mentioned in subsection (5) is present.

Decisions final

- (5) The decisions of the committee of benchers appointed under section 11 are final.

GENERAL

Register

15. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

1. The name of the professional corporation.
2. The address of the professional corporation's registered office.
3. The business address of the professional corporation, if different from the address of its registered office.
4. The number of the certificate of authorization issued to the professional corporation.
5. The date on which the certificate of authorization was issued to the professional corporation.
6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.
7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws

16. (1) The following by-laws, with necessary modifications, apply to a professional corporation:

1. By-Law 17 [Filing Requirements].
2. By-Law 18 [Record Keeping Requirements].
3. By-Law 19 [Handling of Money and Other Property].
4. By-Law 25 [Multi-Discipline Practices].
5. By-Law 29 [Payment of Costs].
6. By-Law 35 [Bankruptcy of Member].

No voluntary winding up or dissolution

17. The shareholders of a professional corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation until the corporation has received permission under section 9 to surrender its certificate of authorization.

Interpretation: "Society official"

18. In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Delegation of powers and duties of Secretary: Director, Client Service Centre

19. An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under subsection 61.0.2 (1) and section 61.0.3 of the Act.

Form 34A

Certificate of Authorization

Certificate Number: *(Fill in number)*

THE LAW SOCIETY OF UPPER CANADA

(Society's Coat of Arms)

CERTIFICATE OF AUTHORIZATION

Issued under By-Law 34 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*

(Name of corporation), Ontario Corporation Number *(Fill in number)*, is hereby authorized to practise law as a barrister and solicitor in accordance with the *Law Society Act*, the by-laws made thereunder and the Rules of Professional Conduct of the Law Society of Upper Canada.

(Date)

(Signature of Society Official)

Form 34B

Notice of Intention to Surrender a Certificate of Authorization

NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION

*(Name of professional corporation applying
for permission to surrender a certificate of authorization, in capital letters)*

Pursuant to section 9 of By-Law 34 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of its intention to surrender its certificate of authorization.

The above named has carried on the practice of law at *(identify where the above named has carried on the practice of law)* *(or has not carried on the practice of law since (date))* *(or has never carried on the practice of law in Ontario).*

Dated at *(place)*

(Date)

(Name of professional corporation)

(Signatures of all directors)

APPENDIX 2

RULE 3.02 LAW FIRM NAME

3.02 LAW FIRM NAME

Permissible Names

3.02 (1) A law firm name may include only the names of persons who are qualified to practise law in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or who, if retired or deceased, were qualified to practise law in Ontario or in any other province or territory of Canada where the firm carries on its practice.

(2) A law firm name may consist of or include the names of lawyers who were members of the firm but who are deceased or retired from the practice of law.

[Amended - May 2001; Effective - September 2001]

(3) A lawyer who purchases a practice may, for a reasonable length of time, use the words "Successor to ____" in small print under the lawyer's own name.

Restrictions

(4) The name of a law firm shall not include a trade name, a commercial name, or a figure of speech.

(5) The name of a law firm shall not include the use of phrases such as "John Doe and Associates," "John Doe and Company," or "John Doe and Partners" unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.

(6) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall be deleted from the firm name.

(7) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

Limited Liability Partnership

(8) If a law firm practices as a limited liability partnership, the phrase "limited liability partnership" or the letters "LLP" shall be included as the last words or letters in the firm name.

APPENDIX 3

RULE 3.03 LETTERHEAD

Letterhead

3.03 (1) Subject to subrules (2) and (3), a lawyer's letterhead and the signs identifying the office may only include

- (a) the name of the lawyer or law firm,
- (b) a list of the members of any law firm, including counsel practising with the firm,
- (c) the words "barrister," "barrister-at-law," "barrister and solicitor," "lawyer," "law office," "solicitor," "solicitor-at-law," or the plural, where applicable,
- (d) the words "notary" or "commissioner for oaths" or both, where applicable,
- (e) the words "patent and trade mark agent," where applicable,
- (f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,
- (g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,
- (h) the phrase "limited liability partnership" or the letters "LLP," where applicable,
- (i) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable,
- (j) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice,
- (k) a logo,
- (l) reference to an affiliation, and
- (m) advertising permitted under rule 3.05.

[Amended - May 2001]

APPENDIX 4

FILE MANAGEMENT AND CASELOAD STATISTICS FOR
COMPLAINTS RESOLUTION, INVESTIGATIONS AND DISCIPLINE
TO AUGUST 2001

(Pages 25 - 41)

APPENDIX 5

ORGANIZATION CHART FOR POLICY AND LEGAL AFFAIRS
SEPTEMBER 2001

(Pages 42 - 43)

Re: Amendments to the Rules of Professional Conduct Respecting Professional Corporations and Fees Payable to the Law Society Pursuant to the New Scheme for Professional Corporations

It was moved by Mr. MacKenzie, seconded by Mr. Bindman that the Rules of Professional Conduct respecting Professional Corporations be amended as follows and that the amendments come into force on the day that the legislation permitting professional corporations for lawyers comes into force:

Rules 3.02

“Professional Corporations

- (9) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation.”

Rule 3.03

Subject to subrules (2) and (3), a lawyer’s letterhead and the signs identifying the office may only include

(add new (i)) the words “Professional Corporation”, where applicable;

The above change would require the re-designation of existing clauses (i), (j), (k), (l) and (m) as (j), (k), (l), (m) and (n) respectively.”

Carried

It was moved by Mr. MacKenzie, seconded by Mr. Bindman that the fees pursuant to By-Law 34 be set on the following basis:

- “(a) \$250 for the application fee to the Society for a certificate of authorization (By-Law 34, clause 3(2)(c))
- (b) \$75 for the renewal fee for the certificate of authorization (By-Law 34, clause 5(2)(b)), and
- (c) \$25 for the fee for replacement of the certificate of authorization as a result of correction or loss or destruction of the certificate (By-Law 34, subsections 6(5) and 7(2)).”

Carried

REPORT FOR INFORMATION ONLY

Finance & Audit Committee Report

Finance and Audit Committee
September 20, 2001

Report to Convocation

Purpose of Report: Information

Prepared by the Finance Department
Andrew Cawse (947-3982)

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on September 20, 2001. Committee members in attendance were: Ruby C. (c), Crowe M. (vc), Epstein S. (vc) Cass R., Chahbar A., Coffey A., Diamond G., Divinsky P., Lamont D., Lawrence A., Swaye G.. Also attending were Krishna V. (Treasurer), Ducharme E., Manes R., McKenzie G., Millar D., Minor J., Mulligan G., Puccini H., Topp R.. Staff in attendance were Heins M., Tysall W., Tinsley R., Bernhardt R., Cohen L., Corrick K., Knott T., Miller J., Rybka-Becker L., Smith C., Sorenson E., Grady F., Cawse A..
2. The Committee is reporting on the following matters:

Information
 - Financial Statements as at June 30, 2001
 - 2002 Budget

FOR INFORMATION

INTERIM FINANCIAL STATEMENTS AS AT JUNE 30, 2001

1. The Committee received the report from the Audit Committee and the following:
 - Law Society General Fund financial statements for the six months ending June 30, 2001 (attached from page 3);
 - Lawyers Fund for Client Compensation Statement of Revenues, Expenses and Fund Balance and Balance Sheet for the six months ending June 30, 2001 (attached from page 5);
 - Lawyers' Professional Indemnity Company financial statements for the six months ending June 30, 2001 (attached from page 7);
 - Investment Compliance Reports at June 30, 2001 (attached from page 20).

2002 OPERATING AND CAPITAL BUDGETS

2. The Committee reviewed a draft of the 2002 Operating and Capital Budgets and discussed individual program budgets with Chairs and representatives from other Committees of Convocation. Funding for LibraryCo Inc. was established at the requested level contingent upon an operating plan and detailed budget being provided to the Law Society as required by the Shareholder's Agreement. It was agreed that Law Society staff would be made available to assist LibraryCo in providing the necessary detail. It was felt to be important not to disrupt the services to the profession provided by LibraryCo, and accordingly funding will continue in the interim. Detailed budget information from LibraryCo Inc. will be reviewed at or before the final Finance and Audit Committee meeting of 2001.
3. The draft 2002 Operating and Capital Budgets will be distributed to all Benchers prior to the Budget debate at Convocation on October 25, 2001.
4. The Committee recommends that Convocation approve the draft 2002 operating and capital budgets at Convocation on October 25, 2001.

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

- (1) The Law Society General Fund financial statements for the six months ending June 30, 2001.
(Pages 3 - 4)
- (2) The Lawyers Fund for Client Compensation Statement of Revenues, Expenses and Fund Balances and Balance Sheet for six months ending June 30, 2001.
(Pages 5 - 6)
- (3) The Lawyers' Professional Indemnity Company financial statements for six months ending June 30, 2001.
(Pages 7 - 19)
- (4) Investment Compliance Reports at June 30, 2001.
(Pages 20 - 24)

CORRESPONDENCE

The following correspondence was included in the Convocation material:

- (1) A letter from Ms. Eleanore A. Cronk to the Treasurer dated August 9th, 2001;
- (2) A letter from the Treasurer to President Mugabe, c/o the Zimbabwe High Commission dated August 23rd, 2001; and
- (3) A letter from the Treasurer to Mr. Robert E. Hirshon, President, American Bar Association dated September 17th, 2001.

CONVOCATION ROSE AT 1:00 P.M.

28th September, 2001

The Treasurer and Benchers had as their guest for luncheon the Attorney General of Ontario, The Honourable David S. Young.

Confirmed in Convocation this day of

Treasurer

2001
 