MINUTES OF CONVOCATION

Thursday, 23rd January, 2003
9:00 a.m.

PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Banack, Bindman, Bobesich, Boyd, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar (by telephone), Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Ducharme, Epstein, Feinstein, Finkelstein, Finlayson, Furlong, Go, Gottlieb, Harris, Hunter, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Martin, Millar, Minor, Mulligan, Murray, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Ruby, Simpson, Swaye, Topp (by telephone), White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer and Benchers extended best wishes to life bencher, Gordon H. T. Farquharson, Q.C., LSM on his retirement from active practice.

The Treasurer acknowledged the passing of Allen Teplitsky and remarked on his immense contribution to the Lawyers Feed the Hungry Program now in its sixth year. Mr. Banack attended the memorial service for Mr. Teplitsky on behalf of the Law Society and a donation to the Lawyers Feed the Hungry Program was made on behalf of Convocation and the staff of the Society.

Benchers were reminded that the Law Society of Upper Canada in partnership with Pro Bono Ontario and the Canadian Association of Black Lawyers will host a workshop and reception in celebration of Black History Month on February 13.

Benchers were also reminded that the Law Society would be conferring an honorary Doctorate of Laws Degree upon Her Excellency the Right Honourable Adrienne Clarkson, Governor General and Commander-in-Chief of Canada on February 27th, following Convocation.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, January 23rd, 2003:

Melinda Northcote Anderson	Bar Admission Course
Eugene Ormonde Benson	Bar Admission Course
Christopher John Crowe	Bar Admission Course
John Dalkeith Davidson	Bar Admission Course
Vincent Joseph Ivan Michel de Grandpré	Bar Admission Course
Paul Steve Druxerman	Bar Admission Course
Jesse Miranda Hohmann	Bar Admission Course
David Christopher Holmes	Bar Admission Course
Beatrice Irabahinyuje	Bar Admission Course
Cicely Toosje Leemhuis	Bar Admission Course
Catherine Mary McKenna	Bar Admission Course
Lucia Da Conceiçao Mota Mendonça	Bar Admission Course
Julia Elisabeth Milosh	Bar Admission Course
Maurice Daryll Mirosolin	Bar Admission Course
Adnan Naeem	Bar Admission Course
Jagmohan Singh Nanda	Bar Admission Course
Oladipupo Emeka Ola	Bar Admission Course
Fan-Tzu Edmund Peng	Bar Admission Course
Grant Richard Poulsen	Bar Admission Course
Kelli Rolande Preston	Bar Admission Course
Michael Tang	Bar Admission Course
Dina Taub	Bar Admission Course
Chad Townsend	Bar Admission Course
Gary Wong	Bar Admission Course
Golan Yaron	Bar Admission Course
Ayad James Yousif	Bar Admission Course
Martha Zotov	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 Thursday, January 23rd, 2003:

Kari Lynn Becker	Province of Alberta
Gregory Gerald Norris	Province of British Columbia

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following applies to be certified as foreign legal consultant in Ontario:

Jaime de Orbegoso	Lima Bar Association Rodrigo, Elias & Medrano Abogados

B.2.2. The following apply to be certified as supervised foreign legal consultants in Ontario:

Bob Quang Tan Nguyen	State of New York Shearman & Sterling
Douglas B. Nathanson	State of New York Shearman & Sterling

B.2.3. Their applications are complete and they have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 23rd day of January, 2003

It was moved by Mr. Hunter, seconded by Mr. Cherniak that the candidates for call to the bar and Foreign Legal Consultant Applications contained in the Report of the Director of Professional Development & Competence be adopted.

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Ms. Potter then presented them to Mr. Justice N. Douglas Coo to sign the Rolls and take the necessary oaths:

Melinda Northcote Anderson	Bar Admission Course
Eugene Ormonde Benson	Bar Admission Course
Christopher John Crowe	Bar Admission Course
John Dalkeith Davidson	Bar Admission Course
Vincent Joseph Ivan Michel de Grandpré	Bar Admission Course
Paul Steve Druxerman	Bar Admission Course
Jesse Miranda Hohmann	Bar Admission Course
David Christopher Holmes	Bar Admission Course
Beatrice Irabahinyuje	Bar Admission Course
Cicely Toosje Leemhuis	Bar Admission Course
Catherine Mary McKenna	Bar Admission Course
Lucia Da Conceiçao Mota Mendonça	Bar Admission Course
Julia Elisabeth Milosh	Bar Admission Course
Maurice Daryll Mirosolin	Bar Admission Course
Adnan Naeem	Bar Admission Course
Jagmohan Singh Nanda	Bar Admission Course
Oladipupo Emeka Ola	Bar Admission Course
Fan-Tzu Edmund Peng	Bar Admission Course
Grant Richard Poulsen	Bar Admission Course
Kelli Rolande Preston	Bar Admission Course
Michael Tang	Bar Admission Course
Dina Taub	Bar Admission Course
Chad Townsend	Bar Admission Course
Gary Wong	Bar Admission Course
Golan Yaron	Bar Admission Course
Ayad James Yousif	Bar Admission Course

Martha Zotov	Bar Admission Course
Kari Lynn Becker	Transfer, Province of Alberta
Gregory Gerald Norris	Transfer, Province of British Columbia

MOTION – DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Bindman, seconded by Mrs. Legge that the Draft Minutes of Convocation of December 6, 2002 be confirmed.

Carried

MOTION – APPOINTMENTS TO LAW SOCIETY MEDAL/LINCOLN ALEXANDER AWARD COMMITTEE

It was moved by Mr. Bindman, seconded by Mrs. Legge that the following Bencher members be appointed to the Law Society Medal/Lincoln Alexander Award Committee: Kim Carpenter-Gunn, Abdul Chahbar, Gillian Diamond and Julian Porter.

Carried

MOTION – CEO'S QUARTERLY REPORTS ON DISCIPLINE STATISTICS

It was moved by Mr. Banack, seconded by Mr. Topp THAT the Chief Executive Officer provide updates quarterly to Convocation, throughout 2003, as to the status and progress made in respect of each of the Professional Regulation issues set out in the CEO's report of December 6, 2002, and in particular, provide a statistical grid to provide easy comparison with the December 2002 report of the status of complaints, discipline cases, and complaints to the Complaints Resolution Commissioner.

The following amendments were accepted:

(1) the words "and other relevant reports" be added after the words "December 6, 2002";
(2) the word "throughout" be deleted and replaced with "commencing" 2003;
(3) that the words "December 2002 report" be deleted and replaced with "2002 year end statistics";
(4) that the words "and complaints to the Complaints Resolution Commissioner" be deleted and replaced with the words "and cases in the complaints review process."

The motion then reads as follows:

THAT the Chief Executive Officer provide updates quarterly to Convocation, commencing 2003, as to the status and progress made in respect of each of the Professional Regulation issues set out in the CEO's report of December 6, 2002 and other relevant reports and in particular, provide a statistical grid to provide easy comparison with the 2002 year end statistics of the status of complaints and discipline cases and cases in the complaints review process.

The Banack/Topp motion as amended was voted on and adopted.

MOTIONS STOOD DOWN

The following Ross/St. Lewis motions were stood down:

- Establishment of a Task Force to Prepare Document of Policies, Procedure, Rules and Practices
- Establishment of a Task Force to Codify Policies and Procedures Governing Convocation's Proceedings
- Establishment and Mandate of an Appointments Committee
- Composition of Appointments Committee

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IN PUBLIC

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The Treasurer requested that that portion of the in camera transcript on paralegals beginning with Mr. Gottlieb's questions be released in public.

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Ducharme presented the Report of the Professional Regulation Committee for approval by Convocation.

Professional Regulation Committee
January 23, 2003

Report to Convocation

Purposes of Report: Decision and Information

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

OVERVIEW OF POLICY ISSUES

RETIRED LAWYERS AS ESTATE TRUSTEES AND
PAYMENT OF THE LAW SOCIETY ANNUAL FEE

Request to Convocation

1. Convocation is asked to approve

   a. that a lawyer who

      i. meets the requirements for exemption for payment of the annual fee under By-Law 15 and

      ii. who is appointed or acts as estate trustee, acts as trustee for an *inter vivos* trust or who is an attorney for property under a Continuing Power of Attorney for Property

   not be required to pay the Law Society's annual fee, but be required to provide the testator, beneficiary or the settlor, as the case may be, with information, in the form provided by the Society, on the implications of the change in the lawyer's status and obtain the testator's, beneficiary's or settlor's written acknowledgement of the disclosure of this information, and

   b. that the same information be provided by the lawyer to the testator, beneficiary or settlor, as the case may be, with respect to the implications of the lawyer's change in status to a non-practicing member.

Summary of the Issue

2. Currently, lawyers who otherwise qualify for the exemption for payment of the annual fee under By-Law 15[1] are not permitted an exemption (effectively are not permitted to retire from the practice of law) if they act as an estate trustee. Several lawyers who are trustees have made application for exemption. They are of the opinion that it is unfair to require the payment of the annual fee (even at a reduced rate) in these circumstances. In all of these cases, the solicitor's work, if any, has been turned over to practicing members. The lawyers seeking exemption continue to act only as trustees.

3. The Committee concluded that lawyers who wish to retire and are estate trustees should not be required to pay the annual fee, but must disclose to clients the implications of retirement and satisfy the Society that the disclosure has been made.

4. The Committee concluded that this disclosure of information and acknowledgement should also be provided by lawyers who are in a non-practicing status or who wish to change to a non-practicing status (in which case the lawyer does not require liability insurance but contributes proportionally to the Compensation Fund). The Committee also proposes that the policy apply to circumstances involving *inter vivos* trusts and powers of attorney.

5. The form of disclosure and acknowledgement is included in this report at page 14 and following.

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[1] Section 4 of the By-Law reads:
4. (1) A member may apply to the Society for an exemption from payment of an annual fee if he or she,
(a) is over sixty-five years of age and is permanently retired from the practice of law in Ontario; or
(b) is permanently disabled and, as a result, is unable to practise law.

CHANGES TO THE APPLICATION PROCESS UNDER RULE 6.07(2) OF THE *RULES OF PROFESSIONAL CONDUCT*

Request to Convocation

6. Convocation is asked to approve changes to the administrative process for approval of applications by members under rule 6.07(2) of the *Rules of Professional Conduct*, which permits members, with the approval of the Hearing Panel, "to retain, occupy office space with, use the services of, partner or associate with, or employ a person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted."

7. The changes are highlighted as amendments to the information document entitled "Rule 6.07(2) Applications - A Guide To The Society's Policy And Procedures" that is sent to members, with the required forms, who apply under the rule. The Guide with the amendments appears at page 23 and following.

Summary of the Issue

8. Following amendments to rule 6.07(2) in June 2002 which gave a committee of Convocation (designated as the Hearing Panel for this purpose) the responsibility for approving all applications under the rule, staff initiated discussions with the chair of the Hearing Panel on the Panel's process for reviewing the applications. This led to proposals for improvements to the process which were reviewed and accepted by the Committee.

9. The major changes are as follows:

   a. A requirement for applicants to publish a notice in the *Ontario Reports* of the fact that an application is being made, such notice to be modeled on that for readmissions applications.
   b. Payment of application, quarterly report and reapplication fees in the amount of $200, $50 and $150 respectively.
   c. Approval of the arrangement for a three year period.
   d. A renewal process that avoids a formal reapplication after the three-year period, involving a supervisory review by the chair of Hearing Panel or his or her designate.
   e. Public availability of the approved plan of supervision of the disbarred/suspended person.

   Explanation of the above changes appears at page 21.

THE REPORT

Terms of Reference/Committee Process

10. The Committee met on January 9, 2003. Committee members in attendance were Carole Curtis (Acting Chair), Judith Potter (Vice-Chair), Heather Ross (Vice-Chair), Stephen Bindman, Gillian Diamond, Avvy Go, Gary Gottlieb, Holly Harris and Joanne St. Lewis. Staff in attendance were Dan Abrahams, Naomi Bussin, Lesley Cameron, Terry Knott, Zeynep Onen, Bethany Simons, Elliot Spears, Jim Varro and Andrea Waltman.

11. The Committee is reporting on the following matters:

Policy – For Decision

- Retired Lawyers as Estate Trustees and Payment of the Society's Annual Fee
- Changes to the application process under rule 6.07(2) of the *Rules of Professional Conduct*

Information

- French language translation of by-laws and rules
- Report from the Professional Regulation Department

RETIRED LAWYERS AS ESTATE TRUSTEES AND PAYMENT OF THE SOCIETY'S ANNUAL FEE

A. BACKGROUND

12. An issue has arisen about the responsibility of lawyers who no longer practise law but who continue to act as estate trustees to pay the Law Society's annual fee.[2] Currently, such members are required to pay the annual fee. The rationale is that the trusteeship arose by virtue of the member's practice, and the client had the expectation that the professional indemnity coverage through LawPRO and the Lawyers Fund for Client Compensation Fund ("Compensation Fund") safeguards would be in place in relation to the administration of the estate.

13. Generally, members who wish to cease practicing must wind up any trusts or estates before retiring or resigning. If members wish to continue as estate trustees, for example, when they act as the executor of their own family's estate, they are not permitted to retire.

14. Concerns have been expressed by some members who act as estate trustees and who meet the exemption requirements about the obligation to pay the annual fee. They rely on the law applicable to a trustee, not on the fact of their status as a practising lawyer and member of the Society, to define duties in connection with the estate funds.

15. As a consequence of the above policy, in some cases, lawyers who are trustees who otherwise meet the exemption requirements, and wish to cease practicing change their status to a non-practicing member category (for example, paying 25% of the annual fee). In order to change their status to non-practicing, members must merely notify the Society. Non-practicing members are generally not required to maintain professional liability insurance, once their status has changed, as they are not actively engaged in the practice of law.

16. The Committee noted that the definition of practicing law in By-law 15[3] does not specifically include trusteeship. Subsection 2(7) of the By-law provides that a member practices law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services. There is no definition in the By-law for "legal services".

17. In addition to reviewing this issue from the perspective of retiring members, the Committee also considered the implications of a lawyer's change to a non-practicing status.

What the Change in Status Means

18. Generally, lawyers who are retired from the practice of law are at least 65 years of age and
    - do not engage in the practice of law

[2]A similar issue was reviewed by the Committee in January 1997, concerning the responsibility of lawyers who retire and have trust fund balances. The Committee determined that as along as the lawyers have estate funds, for example, they must report on the trust account to the Society, through filing the Member's Annual Report. The reasoning is that they became estate trustees as practising lawyers and the compliance responsibility continues.

[3] The By-Law appears at Appendix 1.

- remain subject to the Society's regulatory jurisdiction (i.e. complaints, discipline)
- are not required to maintain LAWPRO coverage (run-off coverage is available for claims in the period prior to retirement)
- are exempt from payment of the annual fee under By-Law 15 and the levy for the Compensation Fund
- are not required to file the Member's Annual Report (MAR)

19. Lawyers in the 25% and 50% annual fee-paying categories (non-practicing status)
    - do not engage in the practice of law (in the 50% category) and do not engage in the practice of law or any remunerative work (in the 25% category)
    - pay a percentage of the Compensation Fund levy in the same percentage as the annual fee
    - are exempt from payment of the LAWPRO levy, with run-off coverage, as applicable, continuing (these members may purchase full insurance coverage if they wish)
    - are required to file the MAR

Information on LAWPRO Coverage

20. The definition of "Professional Services" under the LAWPRO policy includes services for which the insured is responsible as a lawyer arising out of trustee, administrator, or executor activities. LAWPRO will look to the purpose of the retention (e.g. to obtain the benefit of the lawyer's knowledge, skill and experience in the law) rather than the specific nature of each of the individual tasks performed.

21. A lawyer who is appointed as an estate trustee is covered in the ordinary course for errors and omissions occurring when he or she performs functions that are his or her responsibility as estate trustee.

22. Beneficiaries of an estate would generally find protection under the lawyer's policy for services the lawyer may have provided in his or her capacity as estate trustee, on the assumption that the lawyer is acting as estate trustee as part of his or her law practice.

23. The fact that a lawyer continues as an estate trustee after winding down the rest of his or her practice does not change the nature of service. Essentially, the service would continue to be seen by LAWPRO as a legal service. As such, under the current program, it would be open to the lawyer to continue to maintain his or her on-going practice coverage, and the policy would respond to claims arising out of these services in the ordinary course.

24. Where the lawyer concludes his or her role as estate trustee when winding down the rest of his or her law practice, claims subsequently arising out of these services would be covered in the ordinary course under the run-off coverage.

Information on Compensation Fund Claims

25. Payments from the Fund are always discretionary. If the lawyer performs trustee duties as a practising member and a claim is made, it will be treated as any other claim arising from the lawyer's practice of law and assessed accordingly. If the trustee duties are performed by a lawyer retired from the practice of law and a theft occurs, considerations of whether the activity was connected to or arose from the practice of law come into play, and the possibility exists that the claim arising from the theft may be denied.

Other Information

26. The Committee also obtained information from staff in the Advisory Services, Policy Secretariat and Administrative and Compliance Processes departments on the following issues which appears in summary form in Appendix 2:
    - Consequences of a lawyer's resignation as estate trustee
    - Estate trustee compensation
    - Statistical information on lawyers as estate trustees and those handling estate funds

B. CALL FOR INPUT AND THE RESULTS

27. At its October and November 2001 meetings, the Committee decided that input from the profession should be sought before a policy position is developed for Convocation's consideration. A notice requesting input from the profession was published in the *Ontario Reports*, in the *Ontario Lawyers Gazette* and on the Society's web site. The notice read:

> [The issue is] whether non-practising lawyers who continue to act as estate trustees must pay the Law Society's annual fee. Under By-Law 15, only lawyers who are permanently retired from the practice of law and 65 years of age or over, or permanently disabled, and therefore unable to practice law, are exempt from the fee payment. The Committee considered two options. Option 1 would require members who otherwise meet the criteria for exemption to pay the fee if they continue to act as estate trustees, permitting beneficiaries to continue to have the protection of the lawyer's professional liability insurance through LPIC and access to the Lawyers' Fund for Client Compensation. Option 2 would permit an exemption if members acting as estate trustees give notice to the beneficiaries of the intention to retire, the consequences of retirement, and options available to them, such as buying excess run off insurance coverage.

28. Responses were received from twenty-six members or member groups.[4]

29. One respondent agreed with the proposals, calling them "reasonable". Ten respondents disagreed with both options for a number of reasons, including the following:
- Law Society fees will often exceed the compensation a trustee will receive from an estate
- Option 1 will cause many lawyers to cease acting as trustees, putting an estate to considerable expense to replace the trustee
- Compensation Fund payments are discretionary, and LAWPRO coverage would not be available for those acting as trustees only, as this is not the practice of law
- the proposals do not distinguish between lawyers who are trustees before and after retirement
- the *Trustee Act* will protect beneficiaries

30. Eleven respondents agreed with Option 2 (no payment of the fee with advice to the beneficiaries of the effect of retirement). Many of these respondents raised the same issues about LAWPRO insurance coverage and Compensation Fund claims noted above. Other respondents within this group suggested that the proposal should be clarified as applicable to lawyers who are trustees of *inter vivos* trusts.

C. THE COMMITTEE'S DISCUSSION

Questions The Committee Considered

31. In considering whether the annual fee payment should be required of lawyers in these circumstances, the Committee considered the following questions:
   a. Is a retired/non-practising lawyer practising law when acting as an estate trustee?
   b. Does the Society have an obligation to ensure that public protections are in place for beneficiaries of estates administered by retired/non-practising lawyer trustees?
   c. Is it appropriate or fair for retired/non-practising lawyer trustees to pay fees and levies, given the nature of many estates and the amount of compensation from such duties?
   d. Is it appropriate that retired/non-practising lawyer trustees not pay fees and levies when they are still subject to and may actively engage the Law Society as regulator (i.e. complaints investigation and discipline, Compensation Fund claims)?
   e. Should lawyers who are appointed trustees of *inter vivos* trusts and under powers of attorney be subject to the same treatment as estate trustees?

[4] A summary of the responses, without attribution, appears at Appendix 3.

f. Should lawyers who have no solicitor/client connection with a testator but who are named in a will as estate trustee be subject to the requirements that may ultimately be decided on this issue?

32. In the course of its deliberations the Committee discussed various options. The first was the current practice of requiring lawyers to pay the fee if they continue to act as estate trustees. This would permit beneficiaries to continue to have the protection of the lawyer's professional liability insurance through LawPRO and access to the Compensation Fund. Implicit in this view is recognition of a connection between the member's status as a practising lawyer and the fact of his or her appointment as a trustee in a client's will. It would also assure the lawyer's financial contribution to the Society's regulatory operations. A major part of the Society's operations, funded by the annual fee, are devoted to regulatory compliance and enforcement. Although a lawyer may be retired or not practising, he or she may be subject to complaints or disciplinary action.[5]

33. The second option was to exempt such lawyers from payment of the fee with a requirement that disclosure be made to the relevant party of the implications of the retirement or change in status. This option acknowledges that many estates administered by lawyers that arise from the lawyer's professional or personal relationships have few assets, with correspondingly small remuneration for the trustee. As some respondents to the call for input indicated, the expense of paying the annual fee and insurance would exceed the remuneration received from the estate for trustee duties. Implicit in this option is the view that estate trustees' duties are not characterized as the practice of law.

34. A third option was to exempt such lawyers from payment with disclosure of the implications with an option for the lawyer to pay either 25% or 50% of the annual fee[6] and purchase the equivalent of LawPRO's part-time practice insurance coverage (currently offered at 60% of the full-time practice rate) or some other LawPRO product that might be adapted for this purpose.[7] This option would give the beneficiaries the choice of having Compensation Fund access and liability insurance coverage for activities of the lawyer as estate trustee at a reduced rate.

D. THE COMMITTEE'S VIEW

35. The Committee determined that, for the reasons in paragraph 33, a lawyer who qualifies for retirement and acts as an estate trustee should not be required to pay an annual fee. The Committee felt that paying the fee in these circumstances would be financially onerous for many lawyers involved with small estates. The lawyer, however, must disclose the implications of the change in status and obtain the testator's or beneficiary's acknowledgement of the disclosure.

36. The Committee also felt that lawyers who are trustees of *inter vivos* trusts or who are given powers of attorney should be subject to the same policy as estate trustees.

37. To assist lawyers in providing the appropriate notice to the testator or beneficiaries, the Committee is proposing that disclosure documents in the form appearing below be used by such lawyers.

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[5]Statistical information on complaints involving retired or non-practicing lawyers acting as estate trustees shows that since 1985 there have been 52 complaints about members in the wills/estates category who are retired or not working, life members/retired, or retired (By-Law 15) in Ontario. While this information does not provide detail on the allegations of lawyer misconduct in these complaints, it indicates that very few complaints have been made in circumstances in which a retired (non-practicing) lawyer is involved in estates work.

[6] As the lawyer as trustee usually receives some remuneration, the 50% fee-paying category would apply.

[7] For example, it may be possible to structure a Restricted Area of Practice Option limiting on-going practice to the estate trustee function, similar to the existing Restricted Area of Practice Option (RAOP) for lawyers limiting their practice to criminal and/or immigration law. The member could be provided with the full $1million per claim/$2 million aggregate limit practice coverage with a substantial premium discount.

38. Certificates of Disclosure A and B address the circumstances in which a practising lawyer discloses required information. Certificate A would apply where the lawyer makes the disclosure to a testator who makes a will and wishes to name the lawyer as trustee. Certificate B would be used where the testator has died and the beneficiaries require notification.

39. Certificates C and D address the same disclosure requirements to the testator and beneficiaries respectively in circumstances in which the lawyer is not practising, or has resigned his or her membership in the Society.

40. The Certificates can be adapted for use in circumstances involving *inter vivos* trusts and powers of attorney.

41. One member of the Committee did not agree that the Society should, in effect, prescribe the type of disclosure that lawyers must make to the individuals noted above. The view of this member was that lawyers should be free to provide the disclosure they consider appropriate based on the information discussed in the forms. The majority of the Committee, however, felt that the forms were useful and that lawyers, as matter of convenience and certainty, would welcome a document that provides the type of information they are required to provide to the Society in these circumstances.

Certificate of Disclosure A
(Testator)

To be used by a lawyer engaged in the active practice of law at the time of execution of a Will by the testator naming the lawyer as Estate Trustee.

I, (*insert the name of the lawyer)* certify as follows:

1. *(Insert the name of the testator)* ("the testator"), has appointed or intends to appoint me as an estate trustee of his/her will, and I have discussed the nature and effect of my appointment as estate trustee with the testator making specific reference to the matters delineated in paragraph 2, below.

2. I have made the following disclosures to the testator:

   (a) that as a practicing lawyer I am required to carry insurance in the amount of $1,000,000 (at a minimum) for errors and omissions occurring in the course of my practice;

   (b) that the errors and omissions insurance would normally cover errors relating to my duties as estate trustee <u>if</u> the error or omission occurred while I was engaged in the active practice of law <u>and</u> the claim was made while I was engaged in the active practice of law;

   (c) that at some future time I will cease the active practice of law, either by reason of death, retirement, or otherwise;

   (d) that my change in practice status may occur before or after I assume my duties as estate trustee and before or after the testator's estate is completely administered;

   (e) that when I cease the active practice of law, I will no longer be required to maintain errors and omissions insurance and that as a result of my change in status, my actions as estate trustee undertaken after the status change <u>will not</u> be covered under my errors and omissions insurance, <u>and</u> insurance coverage for my previous actions as estate trustee that were undertaken <u>before</u> the status change will be limited to $250,000 unless I or my estate have voluntarily chosen to purchase additional insurance coverage;

(f) that the estate will have the option of purchasing alternate errors and omissions coverage to deal with these changes in circumstances;

(g) that when I cease the active practice of law, I will no longer be contributing to the Lawyer's Fund for Client Compensation ("the Fund"), a fund established to compensate clients for losses flowing from the dishonest conduct of their lawyers, including in their capacity as estate trustees;

(h) that as a result of my change in status, the ability to make successful claims to the Fund may be compromised.

3. I am satisfied that the testator fully understands the nature and effect of the disclosure that I have made.

I, *(insert the name of the testator)* acknowledge and declare as follows:

1. I am the testator described above and understand the disclosures and the explanations that (*insert the name of the lawyer)* provided me with respect to:

(a) the nature and effect of naming (*insert the name of the lawyer)* estate trustee in my will;

(b) the nature and effect of (*insert the name of the lawyer)* ceasing to carry on the active practice of law either before or after assuming his or her duties as estate trustee.

Certificate of Disclosure B
(Beneficiary)

To be used by a lawyer engaged in the active practice of law who has been named as Estate Trustee in a Will, at the time he or she assumes duties as Estate Trustees following the death of the testator.

I, (*insert the name of the lawyer)* certify as follows:

1. *(Insert the name of the beneficiary)* ("the beneficiary"), is a beneficiary of the estate of *(insert the name of the testator).*

2. I have made the following disclosures to the beneficiary:

(a) that I have been appointed as estate trustee of the estate of *(insert the name of the testator)*;

(b) that as a practicing lawyer I am required to carry insurance in the amount of $1,000,000 (at a minimum) for errors and omissions occurring in the course of my practice;

(c) that the errors and omissions insurance would normally cover errors relating to my duties as estate trustee <u>if</u> the error or omission occurred while I was engaged in the active practice of law <u>and</u> the claim was made while I was engaged in the active practice of law;

(d) that I will be ceasing the active practice of law;

(e) that my change in practice status will occur before the testator's estate is completely administered;

(f) that when I cease the active practice of law, I will no longer be required to maintain errors and omissions insurance, and that as a result of my change in status, my actions as estate trustee undertaken after the status change will not be covered under my errors and omissions insurance, and insurance coverage for my previous actions as estate trustee that were undertaken before the status change will be limited to $250,000 unless I have voluntarily chosen to purchase additional insurance coverage;

(g) that the estate will have the option of purchasing alternate errors and omissions coverage to deal with these changes in circumstances;

(h) that when I cease the active practice of law, I will no longer be contributing to the Lawyer's Fund for Client Compensation ("the Fund"), a fund established to compensate clients for losses flowing from the dishonest conduct of their lawyers, including in their capacity as estate trustees;

(i) that as a result of my change in status, the ability to make successful claims to the Fund may be compromised.

2. I am satisfied that the beneficiary fully understands the nature and effect of the disclosure that I have made.

I, *(insert the name of the beneficiary)* acknowledge and declare as follows:

1. I am the beneficiary described above and understand the disclosures and the explanations that (*insert the name of the lawyer)* provided me with respect to:

   (a) the nature and effect of (*insert the name of the lawyer)* ceasing to carry on the active practice of law after assuming his or her duties as estate trustee.

Certificate of Disclosure C
(Testator)

To be used by a lawyer intending to withdraw from the active practice of law where the lawyer has been named Estate Trustee in a Will, but the testator is not yet deceased.

I, (*insert the name of the lawyer)* certify as follows:

1. *(Insert the name of the testator)* ("the testator"), has appointed or intends to appoint me as an estate trustee of his/her will, and I have discussed the nature and effect of my appointment as estate trustee with the testator making specific reference to the matters delineated in paragraph 2, below.

2. I have made the following disclosures to the testator:

   (a) that I am not a practicing lawyer;

   (b) that practicing lawyers are required to carry insurance in the amount of $1,000,000 (at a minimum) for errors and omissions occurring in the course of their practice;

   (c) that the errors and omissions insurance would normally cover errors relating to my duties as estate trustee if the error or omission occurred while I was engaged in the active practice of law and the claim was made while I was engaged in the active practice of law;

(d) that as a non-practicing lawyer, I am not required to maintain errors and omissions insurance, and that my actions as estate trustee will therefore not be covered under any errors and omissions insurance policy;

(e) that the estate will have the option of purchasing alternate errors and omissions coverage;

(f) that as a non-practicing lawyer I contribute proportionally to the Lawyer's Fund for Client Compensation ("the Fund"), a fund established to compensate clients for losses flowing from the dishonest conduct of their lawyers, including in their capacity as estate trustees;

(g) that as a result of my non-practicing status, the ability to make successful claims to the Fund may be compromised.

3. I am satisfied that the testator fully understands the nature and effect of the disclosure that I have made.

I, *(insert the name of the testator)* acknowledge and declare as follows:

1. I am the testator described above and understand the disclosures and the explanations that (*insert the name of the lawyer)* provided me with respect to:

   (a) the nature and effect of naming (*insert the name of the lawyer)* estate trustee in my will;

   (b) the nature and effect of (*insert the name of the lawyer)* his or her status as a non-practicing lawyer.

Certificate of Disclosure D
(Beneficiary)

To be used by a lawyer intending to withdraw from the active practice of law who has been named as Estate Trustee in a will and who has already assumed duties as Estate Trustee following the death of the testator.

I, (*insert the name of the lawyer)* certify as follows:

1. *(Insert the name of the beneficiary)* ("the beneficiary"), is a beneficiary of the estate of *(insert the name of the testator)*.

2. I have made the following disclosures to the beneficiary:

   (a) that I have been appointed as estate trustee for the estate of *(insert the name of the testator)*;

   (b) that I am not a practicing lawyer;

   (c) that practicing lawyers are required to carry insurance in the amount of $1,000,000 (at a minimum) for errors and omissions occurring in the course of their practice;

   (d) that the errors and omissions insurance would normally cover errors relating to my duties as estate trustee if the error or omission occurred while I was engaged in the active practice of law and the claim was made while I was engaged in the active practice of law;

(e) that as a non-practicing lawyer, I am not required to maintain errors and omissions insurance, and that my actions as estate trustee will therefore not be covered under any errors and omissions insurance policy;

(f) that the estate will have the option of purchasing alternate errors and omissions coverage;

(g) that as a non-practicing lawyer, I contribute proportionally to the Lawyer's Fund for Client Compensation ("the Fund"), a fund established to compensate clients for losses flowing from the dishonest conduct of their lawyers, including in their capacity as estate trustees;

(h) that as a result of my non-practicing status, the ability to make successful claims to the Fund may be compromised.

3. I am satisfied that the beneficiary fully understands the nature and effect of the disclosure that I have made.

I, *(insert the name of the beneficiary)* acknowledge and declare as follows:

1. I am the beneficiary described above and understand the disclosures and the explanations that *(insert the name of the lawyer)* provided me with respect to:

(a) the nature and effect of (*insert the name of the lawyer)* ceasing to carry on the active practice of law after assuming his or her duties as estate trustee.

CHANGES TO THE APPLICATION PROCESS UNDER RULE 6.07(2) OF THE *RULES OF PROFESSIONAL CONDUCT*

A. NATURE OF THE ISSUE

42. The Committee is requesting that Convocation approve new administrative procedures for applications by members under rule 6.07(2) of the *Rules of Professional Conduct.* The rule reads:

Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted.

B. BACKGROUND TO THE CHANGES

43. In June 2002, Convocation amended rule 6.07(2) to provide that a committee of Convocation (which has been designated as the Hearing Panel) shall review all applications from members under the rule. Prior to this amendment, Convocation was responsible for reviewing the applications, except when the matter involved a member who was suspended for other than a disciplinary reason. In these cases, the Hearing Panel reviewed the applications.

44. After the June 2002 amendment, staff in the Policy Secretariat and Administrative and Compliance Processes initiated discussions with the chair of the Hearing Panel, Larry Banack, to discuss procedures for the Hearing Panel's review of these applications. As a result, changes to improve the process were proposed, which were reviewed and adopted by the Committee.

45. The changes are reflected in the information document entitled "Rule 6.07(2) Applications - A Guide To The Society's Policy And Procedures" that is sent to members, with the required forms, who apply under the rule. This Guide, which has been used for a number of years, contains extensive information about the approval process and requirements for the application. The Guide appearing later in this report incorporates the changes described below (and other clarifying amendments), which appear in boldface type in various paragraphs of the Guide.

Overview of the Changes

46. The proposed changes include the following:

a. A requirement for applicants to publish a notice in the Ontario Reports of the fact that an application is being made, such notice to be modeled on that for readmissions applications.

In an effort to improve the transparency around and integrity of these applications, material for which cannot be public as it contains confidential information about the member's and the individual's records with the Society and other organizations, it is proposed that the member publish a notice at his or her cost. Apart from public notice of the application, this will give those who have information related to the application an opportunity to provide it to the Society.

b. Payment of application, quarterly report and reapplication fees.

Currently, no fee is charged to members applying under the rule. Although the volume of applications is relatively small, the work that staff performs in communicating with the member, reviewing the application material and preparing it for the Hearing Panel's review is it extensive and time-consuming. It is proposed that an application fee in the amount of $200 be paid to the Society by members applying under the rule. This will contribute to the Society's costs in handling these applications. Fees are also proposed for quarterly reports members must provide to the Society and on reapplication, discussed in more detail below.

c. Approval of the arrangement for a three-year period.

It is proposed that applications be approved for a period of three years, a change from the current one-year approval period. The rationale is that if no issues arise from the ongoing arrangement, and the parties wish to continue it, a longer approval period would be acceptable.

To ensure that the Society receives the information it needs throughout the period, it is proposed that members provide the Society with quarterly reports in each year to regularly inform the Society of the status of the arrangement. This type of report is currently included as a condition of arrangements on a file by file basis. In formalizing the obligation, the reports would be due within 15 days of the end of each quarter, and failure to file the reports may result in revocation of the permission granted to the applicant to continue with the arrangement. It is also proposed that a fee payable by the member accompany the quarterly reports, to contribute to the cost of the time for review and assessment of the reports and any follow up with the member that may be required. The suggested fee is $50.

d. A renewal process that avoids a formal reapplication after the three-year period, involving a supervisory review by the chair of Hearing Panel or his or her designate.

It is proposed that a form of automatic renewal occur at the end of the three-year period provided that no issues of concern have arisen during the period, based on the quarterly reports. There does not appear to be a valid reason, in those circumstances, to require a formal reapplication from the member. The proposal is that the chair of the Hearing Panel or his or her designate undertake a supervisory review of the renewal request, to provide bencher oversight at this stage.

Similar to the application fee, it is proposed that a member pay a fee upon reapplication at the end of the three-year term, in the event that the above renewal process is not available to the member. The suggested amount is $150.

e. Public availability of the approved plan of supervision of the disbarred/suspended person

As a way to further enhance the transparency of the process, it is proposed that the member's final approved plan of supervision of the disbarred/suspended person be available to an interested party. In this way, other members and the public can be assured that, as a matter of protecting the public interest, the Society has addressed the propriety of the arrangement while accommodating the member and the individual who is the subject of the application.

RULE 6.07(2) APPLICATIONS
A GUIDE TO THE SOCIETY'S POLICY AND PROCEDURES

Introduction

G1 This Guide describes the Law Society's policy and procedures relating to applications by members who wish to enter into employment and other arrangements with a person who has been disbarred, suspended, or permitted to resign because of disciplinary action. Rule 6.07(2) of the Society's *Rules of Professional Conduct* governs this process and provides as follows:

> Without the express approval of a committee of Convocation appointed for the purpose, a lawyer shall not retain, occupy office space with, use the services of, partner or associate with, or employ in any capacity having to do with the practice of law any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted.

G2 The Society's Hearing Panel has been designated as the committee of Convocation referred to in the rule. The application process does not result in a hearing. However, the Hearing Panel was chosen because it includes all benchers with the exception of those who authorize disciplinary actions against members, and because a group of members of the Panel can be convened easily for review of applications on an ongoing basis, in accordance with existing practice.

G3 In this guide, "applicant" refers to the member applying for permission to hire the disbarred or suspended person, or the person who has undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign. This person is referred to in the guide as the "disbarred/suspended person".

The Policy Objectives Of Rule 6.07(2)

G4 The rule is designed to protect the public. As the public places significant trust in lawyers, those who deal with a lawyer and the lawyer's practice should be protected from unregulated exposure to a person who, in Ontario or elsewhere, has been disbarred or suspended or has been permitted to resign as a result of disciplinary action.

G5 Often, good reasons exist to permit a member to employ such a person. The Society recognizes the value of rehabilitation, through supervised retraining and education. To protect the public and to ensure effective supervision, the Society has adopted certain policies and procedures for applications under rule 6.07.

The Criteria For Applicants

G6 Entering into arrangements described in the rule places significant responsibility on the practicing member. The member often serves as a role model and mentor in the rehabilitation of the person. The integrity of the member's work habits and attitudes is crucial to the supervision and rehabilitation process.

G7 Members who make rule 6.07 applications must satisfy the Society that they can effectively supervise a disbarred or suspended person. In order to protect the public interest, members who cannot meet this threshold will be denied the privilege of entering into an arrangement with the person.

G8 Applicants are assessed on their experience, competence and ethical standards. Such applicants must demonstrate a dedication to professional excellence and an awareness of and commitment to ethical standards and behaviour. The Society will consider information provided by the applicant as well as information in the Society's possession and that obtained from the public. Information about the applicant will be obtained from all relevant Society departments including Professional Development and Competence, Complaints Resolution, Investigations and Discipline. Applicants with an extensive history of complaints or discipline may not be approved. The Society may also receive information of which it becomes aware relevant to the applicant from other investigatory and regulatory bodies and agencies.

G9 The approval granted to an applicant is only for the particular arrangement requested. The approval does not follow the member to a new office, for example, nor does the approval follow the disbarred/suspended person to a new employment situation.

Consideration Of The Disbarred/Suspended Person

G10 Disbarment, permission to resign as a result of discipline and a disciplinary suspension arise from serious professional misconduct or conduct unbecoming a barrister and solicitor. Disciplinary sanctions are imposed to protect the public, maintain high professional standards and preserve public confidence in the legal profession. Members may also be subject to administrative suspensions imposed for non-compliance with reporting and payment obligations to the Society. Rule 6.07 applies to all suspended persons including members administratively suspended.

G11 An applicant's proposal to enter into an arrangement with a disbarred/suspended person will involve consideration of that person's character, attitudes and abilities, including

- Pre-discipline character, standing and professional reputation
- Ethical standards while in practice
- The type of misconduct that led to discipline/suspension
- Allegations of misconduct/conduct unbecoming that were not resolved prior to the conclusion of the discipline or conduct hearing, including unresolved complaints
- Post-discipline attitude, conduct and reformation
- The elapsed time since the discipline
- Ability and capacity to perform tasks as proposed by the applicant
- Sincerity and frankness in discussing issues relating to his or her circumstances, including any discipline
- Pre- and post-discipline cooperation with the Society

- Outstanding obligations to the Society, LawPRO, clients and other investigatory and regulatory bodies and agencies

- The member's status history with respect to administrative suspensions

G12 In assessing the disbarred/suspended person, the Society will review its records and may review other relevant information, for example, records of other investigatory and regulatory bodies and agencies.

The Application And Reapplication Process

G13 The application process is initiated by a written request from a member in good standing. The Society will forward to the member general information relating to Rule 6.07 applications, together with blank forms to be completed by the applicant and the disbarred/suspended person. Both parties must consent to disclosure of information from other sources, such as LawPRO and the Lawyers' Fund for Client Compensation office.

G14 The applicant and the disbarred/suspended person must complete and return the forms to the Law Society with the appropriate fee. The applicant will be asked to submit a proposed plan of supervision of the disbarred/suspended person (more fully addressed below).

G15 The applicant will also be required to place a notice, at his or her cost, in the *Ontario Reports* indicating that he or she is applying or reapplying under rule 6.07 to hire the named disbarred/suspended person, and that anyone having comments on the application should respond to the Society by a date indicated in the notice. The notice will include a generic statement that information about plans of supervision that are approved by the Hearing Panel in rule 6.07 applications can be obtained from the Society. The notice will only be published when all material relevant to the application has been filed and the Society's review of the application is about to begin.

G16 Upon the receipt of the completed forms, Law Society staff will prepare summaries of information contained in the Law Society's records and that received from LawPRO or other investigatory and regulatory bodies and agencies about the applicant and the disbarred/suspended person. These summaries will include information from the Lawyers' Fund for Client Compensation, discipline, professional standards (where applicable), complaints, etc. Upon completion, both summaries of information about the applicant and the disbarred/suspended person will be forwarded to the applicant, with the prior consent of the disbarred/suspended person. The disbarred/suspended person will receive only his or her information summary.

G17 Applicants must carefully review the Society's summary of information on the disbarred/suspended person, as they may not be aware of details about a person's prior discipline. Upon considering all of the information, applicants may wish to amend their proposed Plan of Supervision. The Law Society staff my also suggest amendments to the proposed Plan. This may occur where, for example, staff's initial review of the application and the proposed plan of supervision raise concerns. While staff have no authority not to refer an application to the Hearing Panel, they may suggest alternative approaches.

G18 After the internal summaries have been prepared and sent, Law Society staff will incorporate the summaries in a memorandum for the Hearing Panel. A copy of the memorandum will be sent to the applicant, for comment within a specified time, before the materials are provided to the Hearing Panel. The applicant may choose to share the memorandum with the disbarred/suspended person, in the knowledge that the memorandum may contain information about the applicant's history with the Society that the disbarred/suspended person may not have previously known. The memorandum will include the plan of supervision, conditions for the arrangement recommended by Law Society staff and discussion of issues relevant to approval of the application that staff believe should be brought to the attention of the Hearing Panel.

G19 The materials submitted by the applicant and the disbarred person are confidential. The application will be reviewed by a Hearing Panel in camera. The final decision of the Hearing Panel will be made public, together with any approved plan of supervision.

G20 Applications under Rule 6.07 are generally approved for a defined term of three years. During that term, the applicant must report quarterly within each year to the Society, with the appropriate fee, on adherence to the plan of supervision and conditions. At the end of the term, if the quarterly reports show ongoing compliance and no regulatory issues have arisen between the Society and the member, or the Society and the disbarred/suspended person, the application, if requested in writing by both parties, will ~~automatically~~ be renewed for a further three years upon payment of the requisite fee and after a supervisory review by the chair of the Hearing Panel. If issues have arisen, generally, the applicant may be required to reapply with a formal reapplication (and readvertise) at the end of the three-year period.

G21 The materials submitted on a reapplication will update materials submitted at the time of the original application, and will include a report on the activities and supervision of the disbarred/suspended person over the past term. On a reapplication, the member must submit either a letter confirming his or her general information on the form previously submitted or an amended form. the Society's updated internal summary for the member applicant and his or her term end report about the disbarred/suspended person. In the reapplication, the applicant must affirm that the approved Plan of Supervision was followed, and request that the existing Plan continue or request that it be altered. If the request is that the plan be altered, the applicant must provide support for that request. The applicant should identify how the public interest will be protected, how the request will assist in the rehabilitation of the disbarred/suspended person and what supervisory controls the applicant intends to implement. In the reapplication form, applicants must provide and respond to any concerns or complaints about the disbarred/suspended person during the past term and reaffirm that they will comply with the Plan of Supervision for the next term, if approved. The applicant must also publish a notice advertising the reapplication.

The Plan Of Supervision

G22 The member applicant must file a plan outlining the tasks that the disbarred/suspended person will perform together with the supervisory procedures to be implemented. The plan of supervision is customized for the situation. The choice of tasks to be delegated will be primarily influenced by the disciplinary history of the disbarred/suspended person and past and current work history. The plan must provide for safeguards and controls for the protection of the public, and demonstrate effective measures for rehabilitation through supervision, monitoring and evaluation. In formulating the plan, the member must ensure that the delegated tasks do not cross the line to legal practice.

G23 Generally a plan of supervision will identify

- the areas of law in which tasks will be delegated to the person, and identify the nature and types of tasks to be performed within each area of law.
- any other non-legal tasks or functions expected to be performed by the person.
- the procedure whereby the disbarred/suspended person reports to the applicant. Preferably this will be written or computerized report, either generated weekly or daily, in which the disbarred/suspended person reports on the nature of tasks and services performed and identifies the files worked on.
- the applicant's proposed monitoring and evaluation procedures. The applicant should meet regularly with the disbarred/suspended person to review and evaluate the past performance of delegated tasks and supervise ongoing and newly delegated tasks. The applicant must identify how the disbarred/suspended person will be supervised in the event that the applicant is out of the office for an extended period of time (more than five days).

- guidelines and procedures to ensure that the disbarred/suspended person does not have access to the applicant's bank accounts or accounting records.

- guidelines and procedures to ensure that the applicant's staff, other personnel occupying or sharing office space with the applicant's practice and clients, as required, are advised of the history and current status of the disbarred/suspended person.

- guidelines and procedures to ensure that the applicant's staff, other personnel occupying or sharing office space with the applicant's practice and clients, as required, are aware of the nature and types of tasks that the disbarred/suspended person is to perform.

G24 After expiry of the notice/advertising period, the proposed Plan of Supervision will be reviewed by staff, who may suggest modifications before it is sent to the Hearing Panel for review. Staff will then submit the application, together with any responses to the notice, to the Hearing Panel for review and it will either accept or reject it.

G25 Applicants who wish to amend a plan of supervision that has been approved by the Hearing Panel must apply in writing, and subject to review by Law Society staff, to the Hearing Panel for the amendment.

G26 Only the approved plan of supervision, as noted above, is available to interested members of the public or the profession upon written request.

Follow Up Monitoring

G27 As noted above, initial applications are usually approved for a term of three years during which quarterly reports, with the appropriate fee, must be filed by the member applicant on compliance with the plan of supervision and conditions attached to approval of the arrangement. The reports give the Society and the applicant an opportunity to assess and evaluate the performance of the disbarred/suspended person, and to monitor the effectiveness of the supervision. This also affirms the responsibility that the member assumes when entering such arrangements with disbarred/suspended persons.

G28 The reports are due within 15 days of the end of each quarter. Failure to file the reports may result in revocation of the permission granted to the applicant to continue in the arrangement with the disbarred/suspended person. The reporting procedures may be altered at the discretion of the Hearing Panel. Reports will only usually be required at the end of the term (within 15 days of the end of the term) if a further reapplication is sought.

INFORMATION

FRENCH LANGUAGE TRANSLATION OF BY-LAWS AND RULES

47. At previous meetings, the Committee discussed the need to formulate a policy on the status of French versions of by-laws and *Rules of Professional Conduct*. The question was whether Convocation should make by-laws and Rules only when both the final English and French versions are presented, or make the English by-law or rule as the official version, acknowledging that the French version will be adopted as soon as possible (and if possible, simultaneously with the English version).

48. The issue was discussed in the context of Convocation's June 1989 French Language Services Policy. The Policy commits the Society to provide services in the French language to members and the public, instruction and materials in the French language to students pursuing the Bar Admission Course in Ottawa, and continuing legal education programmes in the French language.

49. Translation Guidelines made pursuant to the Policy state that they are intended to "assist in continuing to produce high-quality French materials in a timely and cost-effective manner in keeping with the customer

service focus and the regulatory function of the Law Society". By-laws and Rules are included in the material that the Guidelines indicate are to be "systematically translated in full" and fall within the category of time-sensitive material that the Guidelines direct "shall be published/released in both languages simultaneously".

50. Currently, English versions of new by-laws or amendments to existing by-laws are referred through the appropriate Committee or brought directly to Convocation for approval. Whenever possible, the French version will accompany the English version. In the absence of the French version, Convocation will adopt the English version and adopt the French version at a later date. This is because the time between a Committee's approval of the proposed text and Convocation may not permit French translation for Convocation, especially if the by-law or amendments are long. A similar process is followed with respect to Rule amendments. If the French language amendment is not available for Convocation, the amending motion includes a paragraph revoking the French version of the by-law.

51. The Committee felt that presenting Convocation with English and French versions of a by-law or an amendment might not solve the problem entirely. If changes are made to the English version during Convocation and language is approved, it is not possible to make the same changes to the French version unless a translator is present at Convocation for that purpose. Accordingly, adoption of the French version may inevitably be delayed at least one month.

52. The Committee discussed two options to address the issue:

- By-laws or amendments to by-laws could be made by Convocation only when final English and French versions are presented to Convocation. This would, however, delay the approval process in some cases.
- Convocation could determine that the English version of the by-laws and rules is the official version, which would allow Convocation to approve a by-law, rule or amendments in English, and at a later date approve the French version (this is effectively the *status quo*).

53. In the fall of 2002, follow-up inquiries on the issue were made of the acting director of the Equity Initiatives Department, Josée Bouchard, in light of earlier discussion with this department on the issue.

54. Ms. Bouchard reported to the Committee that at a November 2002 meeting of the Board of Directors of the Association des jurists d'expression française de l' Ontario (AJEFO), the translation issue was discussed. Agreement was reached on applying the process described in the second option above, that is, Convocation may determine that the English version of the by-laws and rules is the official version, which would allow Convocation to approve a by-law or rule or amendments in English, and at a later date approve the French version.

55. AJEFO relayed the importance of the Law Society adopting the French version of the by-laws within a reasonable period of time. For example, if the Law Society adopts a by-law in English, it should adopt the French version at the Convocation following the adoption of the English by-law. AJEFO considers that once the French by-law is approved, it is as official as the English version.

56. AJEFO agreed to endorse the second option as they consider the Law Society an important partner, and noted that the Law Society has made tremendous progress in offering services in the French language in the past few years.

57. Accordingly, as AJEFO, the primary organization interested in the application of the Society's French language services initiative, is satisfied with the *status quo*, revisions to the process for translating by-laws and other instruments are not required, provided that efforts are made to have French translations prepared and adopted by Convocation at the earliest possible time. For June Convocation, efforts should be made to have both English and French versions available.

REPORTS FROM THE PROFESSIONAL REGULATION DEPARTMENT

58. Reports provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appear at Appendix 4. The reports consist of the monthly report (December 2002, at page 53) on file management and monitoring in Discipline, Investigations and Complaints Resolution, and a quarterly report (October to December 2002, at page 66) on the activities and responsibilities of these departments.

APPENDIX 1

BY-LAW 15

Made: January 28, 1999
Amended:
May 28, 1999
September 24, 1999
November 29, 2000
April 26, 2001

ANNUAL FEE

Interpretation: "Society official"
0.1 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.

Requirement to pay annual fee
1. (1) Every year, a member shall pay an annual fee, in accordance with sections 2 and 3, unless the member is exempt from payment of an annual fee.

Exemption from requirement to pay annual fee: life members and honorary members
(2) Life members and honorary members are not required to pay an annual fee.

Same: retired and incapacitated member
(3) A member whose application to be exempt from payment of an annual fee is approved under section 4, is not required to pay an annual fee.

Amount and payment of annual fee
2. (1) The amount of the annual fee for a year shall be determined by Convocation.

Levy for Lawyers Fund for Client Compensation
(2) An annual fee shall include a Lawyers Fund for Client Compensation levy.

Payment due
(3) Payment of an annual fee is due on January 1 every year.

Amount payable
(4) Subject to subsections (5) and (6), a member shall pay the full amount of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee.

Same
(5) A member who does not practise law, including a member employed in education, in government or in a corporation in a position where he or she is not required to practise law, shall pay fifty percent of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee.

Same

(6) The following members shall pay twenty-five percent of an annual fee and any taxes that the Society is required to collect from the member in respect of the payment of an annual fee:

1. A member who does not engage in any remunerative work, including the practice of law, in or outside of Ontario.

2. A member who is in full-time attendance at a university college or designated educational institution within the meaning of the *Income Tax Act* (Canada) and does not practise law.

3. A member who is on a maternity, paternity or adoption leave and does not practise law.

Interpretation: practising law

(7) For the purposes of subsections (5) and (6), a member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services.

Application of subss. (3) to (6)

(8) Subsections (3) to (6) apply only to persons who are members on January 1.

Persons admitted, etc. after January 1

(9) A person who after January 1 is admitted or readmitted as a member, or whose membership after January 1 is restored, shall pay, in respect of the year in which he or she is admitted or readmitted as a member, or in which his or her membership is restored, an amount of an annual fee determined by the formula,

$$(A \div 12) \times B$$

where,

A is the amount of the annual fee the person would have been required to pay under subsection (4), (5) or (6) is he or she were a member on January 1, and

B is the number of whole calendar months remaining in the year after the month in which the person is admitted or readmitted as a member or in which the person's membership is restored.

Same: payment due

(10) Payment of an annual fee by a person to whom subsection (9) applies is due on the day on which the person is admitted or readmitted as a member or on which the person's membership is restored.

Student members admitted as members

(11) Despite subsection (9), a student member who, after January 1 and before March 31 in a year, is admitted as a member shall pay, in respect of the year in which he or she is admitted as a member, the amount of an annual fee payable by a person admitted as a member on March 31.

Same: payment due

(12) Payment of an annual fee by a student member to whom subsection (11) applies is due on April 1 in the year in which the student member is admitted as a member.

Change in status

3. (1) If a member who is required to pay the full amount, or fifty percent, of an annual fee becomes entitled to pay fifty percent, or twenty-five percent, of an annual fee, the member shall pay,

(a) an amount determined by the formula

$$(A \div 12) \times B$$

where

A is the full amount, or fifty percent, of an annual fee, and

B is the number of whole or part calendar months during which the member is required to pay the full amount, or fifty percent, of an annual fee; and

(b) an amount determined by the formula

$$(C \div 12) \times D$$

where

C is fifty percent, or twenty-five percent, of an annual fee, and

D is the number of whole calendar months during which the member is required to pay fifty percent, or twenty-five percent, of an annual fee.

Same

(2) If a member who is required to pay fifty percent, or twenty-five percent, of an annual fee becomes required to pay the full amount, or fifty percent, of an annual fee, the member shall pay, in respect of the period of time during which he or she is required to pay the lesser amount of an annual fee and the period of time during which he or she is required to pay the higher amount of an annual fee,

(a) an amount determined by the formula

$$(E \div 12) \times F$$

where

E is fifty percent, or twenty-five percent, of an annual fee, and

F is the number of whole calendar months during which the member is required to pay fifty percent, or twenty-five percent, of the annual fee; and

(b) an amount determined by the formula

$$(G \div 12) \times H$$

where

G is the full amount, or fifty percent, of an annual fee, and

H is the number of part or whole calendar months during which the member is required to pay the full amount, or fifty percent, of an annual fee.

Same

(3) If a member who is required to pay the full amount, fifty percent or twenty-five percent of an annual fee becomes exempt from payment of an annual fee, the member shall pay an amount determined by the formula

$$(I \div 12) \times J$$

where

I is the full amount, fifty percent or twenty-five percent of an annual fee, and

J is the number of whole or part calendar months during which the member is required to pay the full amount, fifty percent or twenty-five percent of an annual fee

When payment due

(4) If under this section, a member is required to pay, in respect of a year, an amount that is greater than the amount required to be paid under section 2, the difference between the amount that the member is required to pay under this section and the amount that the member is required to be pay under section 2 shall be due on a date to be specified by a Society official.

Application for refund

(5) If under this section, a member is required to pay, in respect of a year, an amount that is less than the amount required to be paid under section 2, subject to subsections (6) and (7), the member is entitled to a refund of the difference between the amount that the member is required to pay under section 2 and the amount that the member is required to be pay under this section.

Application for refund

(6) A member shall apply to the Society to claim an entitlement to a refund under subsection (5).

Time for making application

(7) An application to the Society under subsection (6) shall be made before the end of the year in respect of which the member claims an entitlement to a refund under subsection (5).

No entitlement to refund

(8) A member who does not comply with subsection (7) is not entitled to receive a refund.

Retired and incapacitated members

4. (1) A member may apply to the Society for an exemption from payment of an annual fee if he or she,

(a) is over sixty-five years of age and is permanently retired from the practice of law in Ontario; or

(b) is permanently disabled and, as a result, is unable to practise law.

Application form

(2) An application under subsection (1) shall be in a form provided by the Society.

Consideration of application

(3) A Society official shall consider every application made under subsection (1) and if the official is satisfied that the requirements described in clause (1) (a) or (1) (b) have been met, the official shall approve the application.

Effective date of exemption

(4) A member whose application is approved is exempt from payment of the annual fee beginning on the first day of the first month after the month in which the member submits an application form completed to the satisfaction of a Society official.

Interpretation: practising law

(5) For the purposes of subsection 4 (1), a member practises law if the member gives any legal advice respecting the laws of Ontario or Canada or provides any legal services

Period of default

5. (1) For the purpose of subsection 46 (1) of the Act, the period of default for failure to pay an annual fee is 120 days after the day on which payment of the annual fee is due.

Payment plan: deemed date of failure to pay

(2) Where the Society arranges or permits a schedule for the payment of an annual fee by instalments or otherwise and a required payment is not made by a scheduled date, failure to pay an annual fee will be deemed to have occurred on January 1.

Reinstatement of rights and privileges

(3) If a member's rights and privileges have been suspended under subsection 46 (1) of the Act for failure to pay an annual fee in a given year, for the purpose of subsection 46 (2) of the Act, the member shall pay an amount equal to the amount of the annual fee which the member is required to pay in respect of that year and a reinstatement fee in an amount determined by Convocation from time to time.

Commencement

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

APPENDIX 2

OTHER INFORMATION CONSIDERED BY THE COMMITTEE ON RETIRED LAWYERS ACTING AS ESTATE TRUSTEES

Consequences of a Lawyer's Resignation of an Estate Trusteeship

There are costs and complications associated with resignation as estate trustee, if a member chooses not to pay an annual fee to the Society and wishes to resign the trusteeship.

If the member is the sole trustee, he or she cannot simply resign. The member must make an application to the court under the *Trustee Act*. This will result in a fairly large expense, which would likely be borne by the estate. The problem becomes more complex if there is no one willing or able to assume these duties, and the Public Guardian and Trustee must be enlisted to assume the role. Finally, the court has historically been reluctant to interfere with a testator's or donor's choice of trustee, and will only do so in limited circumstances (i.e. where there is negligence, misconduct, a conflict of interest, or a failure to maintain an even hand).

Unless the new trustee is himself or herself a member, the LAWPRO and Compensation Fund protections would be unavailable to beneficiaries in any event. An example would be where a member is the sole (or last surviving) trustee and dies with a will that appoints the member's spouse (a non-member) as trustee of the member's estate. Under Ontario law, in the absence of a specific clause in the will to the contrary, the spouse would also become the trustee of the estate for which the member had been acting as trustee.

A member wishing to transfer signing authority over estate accounts may face problems. The transfer may be tantamount to improper delegation of trustee powers, thereby placing the member in a breach of trust position. As a general rule, trustees have a duty not to delegate responsibilities entrusted to them to others. This principle has been statutorily relaxed to permit limited powers of delegation in s. 20 of the *Trustee Act.* It appears that delegation in respect of trust property is only permitted for short periods of time in order to facilitate the completion of specific transactions. It is unclear whether the transfer of signing authority over trustee accounts would be considered improper delegation, if the trustee continued to exercise decision-making power in respect of the trustee accounts, and continued to monitor the activity on the account.

Such an arrangement would place a heavy onus on the member assuming signing authority for the trustee accounts to scrutinize every withdrawal or transfer requested by the trustee, for fear that he or she may somehow be held liable for permitting improper payouts.

Estate Trustee Compensation

The amount a retired or non-practicing lawyer earns as an estate trustee appears to be related entirely to the number of estates being administered and the value of the estate assets subject to administration, coupled with the complexity of the estate. The discussion below elaborates on the approach the courts have taken to ascertaining appropriate compensation.

How Compensation is Determined

Information on how estate trustee compensation is determined was obtained from the 1997 text, *Compensation for Estate Trustees*, by Jennifer J. Jenkins. A relatively recent Court of Appeal decision also provided helpful information on the tests the court will apply when determining compensation.

The statutory backdrop is the Ontario *Trustee Act*, which permits for estate trustees " a fair and reasonable allowance for care, pains and trouble and time expended in or about the estate". (s. 61.1(1)). The Act also provides that "where a lawyer is a trustee, guardian or personal representative, and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and the allowance shall be increased by such amount as may be considered fair and reasonable." (s. 61(4)).

Percentage guidelines, or tariff guidelines as they are called, have developed in almost every Canadian jurisdiction. In Ontario, they are not sanctioned by statute or regulation but were developed by the estates bar and judges of the former Surrogate Court. Since 1975, the practice has been to award compensation on the basis of 2.5% against the four categories of capital receipts, capital disbursements, revenue receipts and revenue disbursements, along with a management fee of two-fifths of 1 percent per annum on the gross value of the estate in appropriate cases. In her book, Ms. Jenkins advises that while the courts consistently emphasize that the usual percentages are guidelines only, as a matter of practice, the guidelines have generally been relied upon.

The Ontario Court of Appeal discussed the factors that will determine the level of estate trustee compensation. In *Logan v. Hines*, (1998), 41 O.R. (3d) 571, the court dealt with the following question: what are the principles to be applied in determining fair and reasonable compensation under the *Trustee Act*?

The court adopted the approach in *Re Jeffrey Estate* (1990), 39 E.T.R. 173. That case held that compensation claims should be tested against the percentages approach described above. The result should then be "cross-checked" or confirmed against the five factors set out in *Re Toronto General Trusts and Central Ontario Railway*, which are

- the magnitude of the trust
- the care and responsibility springing therefrom
- the time occupied in performing its duties
- the skill and ability displayed
- the success which has attended its administration.

The court in *Re Jeffrey Estate* also found that the audit judge should also consider whether an extra allowance should be made for management, based on special circumstances. Overall, the court said that "it is a search for an award which reflects fairness to the executor: in a real sense, the search is for an appropriate *quantum meruit* award in a unique setting."

The court in *Logan* said the approach in *Re Jeffrey Estate* "achieves the appropriate balance between the need to provide predictability while, at the same time, tailoring compensation to the circumstances of each case".

Statistical Information on Non-Practicing Lawyers as Estate Trustees

The following statistics provide information on the number of members holding estate funds or property.

The last year in which estates information on the Society's annual forms distinguished lawyers acting for family from those acting for non-family was in the 1998 Private Practitioner's Report (PPR) and Member's Information Form (MIF). When these forms were combined to form the MAR in 1999, the question was removed.

Accordingly, the 1998 statistics appearing below show the results of the answer to the MIF question: "In the 1998 calendar year, did you handle, or were you responsible for, as Estate Trustee, estate funds or estate valuables in Ontario?" If the answer is "Yes", the form goes on to ask if a) any of the deceased were the member's former client, and b) if any of the deceased were NOT related to the member) and the PPR question, which asks whether the deceased persons *were* related to the member.

The only statistic that can be obtained from the Member's Annual Report (MAR) related to this issue is the number of lawyers in practice who hold estate funds. Non-practicing lawyers are not required to answer the question in the MAR on whether they hold funds as an estate trustee.

The statistics are as follows:

1998 MIF results (Number of respondents: 28,242)
(Note: the questions below were to be answered only by respondents who were NOT in private practice.)

Question: In the 1998 calendar year, did you handle, or were you responsible for, as estate trustee, estate funds or estate valuables in Ontario:

Answer: Yes: 702
No: 12,297

(Note: Only the members answering "yes" to the above question were required to answer the questions below.)

Question: Were any of the deceased your former client?

Answer: Yes: 395
No: 1,711

Question: Were any of the deceased not related to you?

Answer: Yes: 430
No: 1,363

1998 PPR results (Number of respondents: 14,359)
(Note: This report was only to be completed by members who were in private practice).

Question: Did you handle, or were you responsible for, as a sole estate trustee, estate funds or estate valuables in Ontario?

Answer: Yes: 1,282
No: 13,024

(Note: Only members who answered "yes" to the above question were required to answer the questions below).

Question: Were any of the deceased persons former clients of yours?

Answer: Yes: 1,032
No: 2,001

Question: Were all of the deceased persons related to you?

Answer: Yes: 246
No: 2,703

2001 MAR results (Number of respondents: 30,215)
(Note: The question below was to be answered only by members in private practice.)
Question: In 2001, did you handle client or estate property as a sole estate trustee, or exercise sole signing authority over any bank accounts or other property pursuant to a Power of Attorney or otherwise in Ontario?

Answers: Yes: 10,896
No: 18,933

APPENDIX 3

SUMMARY OF RESPONSES TO CALL FOR INPUT ON THE ISSUE OF
RETIRED LAWYERS ACTING AS ESTATE TRUSTEES

1. Option 2 is better. Where relatively small life interests requiring continued involvement of the trustee, the Society fees might exceed the executor's compensation. In large estates, other forms of insurance or bonding would be preferable to the LPIC coverage.

2. Neither option is acceptable.

   - Option 1 would result in such lawyers ceasing to act as trustees - they could not command sufficient compensation to justify the fee. This would mean that the wishes of the clients would be thwarted, with significant costs to have a replacement trustee appointed. As compensation fund payments are discretionary, there may be no payment even though the lawyer has paid the fee, and this would only lower the profession in the public's eyes. How would lawyers have access to LPIC coverage if only the annual fee is paid? How would the lawyer only acting as trustee (in no legal capacity) have access to LPIC coverage that only covers lawyers in the practice of law?

   - For Option 2, in many estates, the beneficiaries want to get rid of the trustee (not necessarily for the best motive) as the trustee stands between them and the money. If the trustee is forced to retire, the beneficiaries could thwart the reason the trustee was appointed (i.e. judgment in the management of and access to the capital) by compelling the trustee's resignation and nominating someone of their own choosing. The option does not address the question of incapacitated beneficiaries or disagreements among beneficiaries (it would appear that all would have to agree to the trustee continuing).

   Both options signal to the public that lawyers are untrustworthy. Presumably, LPIC fears exposure from claims of beneficiaries who were dealing with lawyers who are supposed to be covered by insurance.

3. Neither option 1 or 2 should be implemented - they are inherently arbitrary and designed to address an issue more perceived than real. The proposal does not distinguish between lawyers who are trustees at the time of retirement and who become trustees after retirement, or lawyers who are trustees in an *inter vivos* trust or pursuant to a power of attorney for property. The policy will result in an undue burden on lawyers. Where lawyers act for friends or family members, these cannot be situations in which a lawyer should continue to pay the annual fee. In option 2, notice to beneficiaries who are unascertained or under a legal disability would be ineffective. Requiring a lawyer to pay fees for many years, e.g. where there is a life interest, is onerous. The fees could be larger than the trustee's compensation. The lawyer has all the fiduciary duties of a trustee and there are sufficient remedies and protections available.

4. LPIC run-off coverage does not cover embezzlement nor errors or omissions arising after retirement - thus, there would seem to be no protection to the beneficiaries in compelling the retiree to purchase additional insurance. Paying the fee to maintain a trusteeship for a life estate would be more than what is received as compensation. Who is going to pay for the process of the trustee applying to be removed? The proposal is grossly unfair, and depends on the timing of the death of the testator. Trying to drag retired members who become trustees after retirement would be an administrative nightmare. The best course of action would be to require the trustee retiring as a lawyer to notify the beneficiaries, advising that he or she can no longer act as lawyer for the estate but can continue as trustee unless the majority of beneficiaries object.

5. I am opposed to the proposal. Reasons include

   - expensive and time consuming (to the estate) to change trustees
   - in smaller estates, the fee would exceed the trustee's compensation
   - beneficiaries would fight over deciding on a successor
   - the Children's Lawyer is involved (to protect unborn children) and accounts must be considered by her and passed

   There must be some other reasonable way to protect beneficiaries from unscrupulous lawyers without charging the fee for doing something at times almost non-compensatory or requiring them to resign.

6. If a lawyer retires when a trustee, under option 1, estates would be put to considerable expense to appoint another trustee, who would have to post a bond. The better option is to have the trustee inform the beneficiaries that their services are not covered by LPIC and that another lawyer in practice act as solicitor for the estate. An acknowledgement to this effect should be sought from all beneficiaries.

7. The assumption that a lawyer who has retired resumes practising law when acting as an estate trustee is fallacious. An estate trustee need not be a lawyer - as an estate trustee, a permanently retired lawyer will not be practising law. Professional liability is irrelevant because by definition the trustee is not practising law.

8. Agree with option 2.

9. To expect a retired member to continue to pay any fees out of retirement income is an unfair financial burden. Upon retirement, lawyers who are estate trustee should be able to arrange for a lawyer colleague to continue to hold and oversee the administration of the estate funds, where the practising member has some responsibility to insure that the instructions from the trustee are proper, and where the beneficiaries would appear to be protected by LPIC of the compensation fund if the practising member fails to meet obligations to prevent any impropriety.

   The report does not address members who may be suspended for non-payment of the fee or retired members who later become estate trustees.

   The rules are not necessary, given the minimal risk of a member mishandling or misappropriating estate funds after many years in practice.

10. If the policy is pursued, it should apply as well to non-practising lawyers who are trustees of inter-vivos trusts or directors of corporations where shares are owned by those estates or trusts. Insurance coverage should exist for retired members acting as estate trustees (reference is to By-Law 16, s. 8(2)) but it would not be fair to charge the full premium, but a reasonable proportion of the premium.

11. The proposal is not satisfactory because it does not affect existing retired lawyers who are trustees or who will become trustees after retirement, administrators of estates, nor does it require lawyers to explain to makers of wills the consequences of retirement. Further, the notice to the beneficiary is predicated on the assumption that a retiring lawyer can find good reason for "maintaining in place the additional safeguards". The explanation and advice referred to above should include:

    - LPIC coverage does not cover honest mistakes nor dishonest conduct, whether retired or not
    - a beneficiary has no claim against or likelihood of an *ex gratia* payment from the compensation fund
    - the maker of a will can require as a term of the will that the trustee purchase a bond of indemnity, but no bond can be purchased to eliminate the risk of loss

   While it is desirable that out of an abundance of caution, a trustee clarify the risks associated with administration of an estate by a retired lawyer, there is no merit to a beneficiary requesting from a retired lawyer as trustee that he or she purchase excess run-off coverage, which will not cover legal services after retirement or indemnify the lawyer for any loss as a result of negligent performance, whether before or after retirement.

12. Favour option 2. There should be no obligation to pay the annual once retired, even if a trustee, as any other non-member has no such obligation.

13. If estate trustees who are not lawyers are not paying fees, why should a former lawyer be treated differently? Possibly because the Society wants to find a way to get some money and have some say over people's lives?

14. Retired members as trustees should not have to pay the fee. A beneficiary is protected by the Trustee Act and has recourse under that legislation should something happen to the estate funds through the trustee. Because the trustee is a fiduciary, neither LPIC or the compensation fund will reimburse his clients because the liability did not arise through the law practice but through the fiduciary relationship.

15. Requiring a retired lawyer as trustee to pay thousands of dollars in LPIC levies and the annual fee is ludicrous. Advising the beneficiaries of intention to resign as executor because there is no insurance coverage and requiring them to obtain a court order for removal is an undo worry on the beneficiaries and an undo expense, given the minor insurance or Society exposure.

16. For option 1, on the understanding that LPIC does not cover liability for a lawyer acting as an estate trustee, the annual fee payment would only provide access to the compensation fund. For option 2, this would require payment of the fee or resignation. In small estates where no one would want to be appointed, and there is effectively no trustee compensation, it should be sufficient to inform the beneficiaries of the retirement and the meaning of this for their protection and the alternatives available.

17. The role of a trustee is not that of a lawyer and provided the non-practising lawyer is not providing legal advice, there should be no requirement for fee or liability insurance premium payment.

18. Two other options should be considered:

    - the lawyer advises the principal beneficiaries that he or she is not in practice and is not covered by LPIC
    - the lawyer should be able to obtain on a case by case basis E and O coverage

19. Option 2 is more appropriate. Lawyers are not always named as executor because of their legal role and the work is predominantly not legal work. The beneficiaries are sufficiently protected by being informed of alternate sources for such insurance. The same rules should probably apply to a lawyer acting as trustee of an *inter vivos* trust.

20. Estate trustees are bound by the *Trustee Act* and need not be lawyers, nor has the writer considered that estate administrative tasks are work done in the capacity of a lawyer. LPIC and compensation fund coverage would not apply. Should there be a distinction between being named in a will as trustee prior to retirement and named in a will not prepared by the lawyer after his retirement? Should there be a difference between a retired lawyer being an estate trustee with someone else (multiple trustees would have some control over a retired lawyer trustee)?

21. The wording may require clarification. It appears to only apply to cases where one is first appointed executor and then some time later retires.

22. The proposals are too broad, as they place an onerous requirement on someone who was not appointed a trustee because of professional status and who never had a lawyer client relationship with any of the testators (the writer is in legal education and has not practised law since 1980, but has been named as trustee in several wills for friends and relatives). The solution is to create an exemption for members whose trustee position has no relation to being a member of the Society.

23. Option 2 should be modified to allow the beneficiaries to consent to the continued action of a non-practising lawyer as trustee, provided the beneficiaries are advised of the consequences. Beneficiaries should be given the option so there is less disruption to the estate. The option fails to consider the wishes of the deceased in appointing the lawyer which may have had nothing to do with insurance coverage.

24. The options present a reasonable approach. If LPIC covers lawyers as executors, it is reasonable to expect a lawyer to pay the fees or get clear instructions from the beneficiaries to the contrary.

25. Lawyers are asked to act when literally there is no one else to do the job, and the writer cannot recall a case where the client wished the lawyer to act because he had insurance or because a compensation fund was in place. The office of estate trustee is separate and apart from that of solicitor, and this is recognized in law and in the tariffs of fees provided by the courts. With respect to the amount of the fee, many estates do not generate enough by way of trustee compensation to cover it. With respect to LPIC, run-off coverage was only available for five years. Further, the proposed rule does not consider the situation where testators die after the lawyer has retired, or a retired lawyer acting as attorney under a power of attorney that comes into effect after retirement.

    Is there a problem with the status quo? Nothing in the report discloses a need, based on the proportion of the a problem to do this. It may be an attempt to kill a fly with a sledgehammer.

26. Option 2 is favoured. It would not be appropriate to force a member to continue to pay full LSUC fees if the member had for all intents and purposes stopped practising. Perhaps a clause could be inserted in the will which would in effect show that the testator had turned his mind to the fact that the lawyer might at some time retire, but despite that fact would want the lawyer to continue on as estate trustee. Such a clause would have to be carefully drafted however to ensure that it would not effect LPIC coverage for trustee work which would normally be in place if the trustee work was performed in the course of the lawyer's practice.

APPENDIX 4

REPORTS FROM THE PROFESSIONAL REGULATION DIVISION

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

Copy of the monthly report (December 2002) on file management and monitoring in Discipline, Investigations and Complaints Resolution and a quarterly report (October to December 2002) on the activities and responsibilities of these departments.

(Appendix 4, pages 52 – 90)

Re: New Procedures for Rule 6.07 Applications

It was moved by Mr. Ducharme, seconded by Ms. Curtis that Convocation approve the changes to the administrative process for approval of applications by members under rule 6.07(2) of the *Rules of Professional Conduct*, which permits members with the approval of the Hearing Panel, "to retain, occupy office space with, use the services of, partner or associate with, or employ a person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, suspended, undertaken not to practice, or who has been involved in disciplinary action and been permitted to resign, and has not been reinstated or readmitted," set out on pages 23 to 31 of the Report

Carried

Item Deferred

Retired/Non Practising Lawyers as Estate Trustees and Annual Fee Payments

Items for Information

Information on French Language Translation
Report from Professional Regulation Department

FEDERATION OF LAW SOCIETIES OF CANADA

Mr. Hunter reported that the Federation is engaged in a redefinition of its governance and that the work on the mobility of lawyers was proceeding well.

REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

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

Professional Development, Competence & Admissions Committee
January 23, 2003

Report to Convocation

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
(Julia Bass 416-947-5228
Sophia Sperdakos 416-947-5209)

OVERVIEW OF POLICY ISSUES

PRIVATE PRACTICE REFRESHER PROGRAM MODULES

Request to Convocation

1. That Convocation approve the Guide to the Private Practice Refresher Program (PPRP) Modules set out at Appendix 1.

Summary of the Issue

2. In September 2001 Convocation approved the introduction of the Private Practice Refresher Program (PPRP) to begin operation in 2007. The Executive Summary of the Report is attached at Appendix 2.

3. At that time, the Committee agreed to return to Convocation with a proposed guide that would set out which modules lawyers in different job categories would be required to complete, if they are subject to the PPRP. The Committee provided a proposed guide to Convocation in May 2002. Convocation directed that the profession be advised of the guide and be given the opportunity to provide comments on the appropriateness of the modules designated for each job category. It was not the purpose of the consultation process to examine the merits of the policy, which Convocation has already approved.

4. The consultation process has now been completed and the Committee recommends approval of the Guide.

Terms of Reference/Committee Process

5. The Committee met on January 9, 2003. Committee members in attendance were Earl Cherniak (Chair), George Hunter (Vice-Chair), Kim Carpenter-Gunn (Vice-Chair), Carol Curtis, Abe Feinstein, Barbara Laskin, Janet Minor, and Gregory Mulligan. Helene Puccini also attended part of the meeting. Staff in attendance were Ian Lebane, Diana Miles, Janine Miller and Sophia Sperdakos.

6. The Committee is reporting on the following matters:

Policy – For Decision

- Competence Model – Private Practice Refresher Program (PPRP) Modules

Information

- Report on Specialist Certification Matters Finalized by the Certification Working Group on October 21, 2002 and December 3, 2002 and approved by the Committee on January 9, 2003

- Delivery of Legal Information to Ontario Lawyers

PRIVATE PRACTICE REFRESHER PROGRAM MODULES

Background

7. In September 2001 Convocation approved the introduction of the Private Practice Refresher Program (PPRP) to begin operation in 2007. The Executive Summary of that report is set out at Appendix 2.

8. At that time, the Committee agreed to return to Convocation with a proposed guide that would set out which modules lawyers in different job categories would be required to complete, if they are subject to the PPRP. The Committee provided a proposed guide to Convocation in May 2002. Convocation directed that the profession be advised of the guide and be given the opportunity to provide comments on the appropriateness of the modules designated for each job category. It was not the purpose of the consultation process to examine the merits of the policy, which Convocation has already approved.

Input from the Profession

9. A number of steps were taken to bring the PPRP consultation to the attention of the profession.

   a. A Notice to the Profession was placed in the *Ontario Reports* in August 2002, in French and English, advising members of the policy and its provisions and the proposed guide. The guide was made available in both French and English. Members were invited to obtain a copy of the guide from the Law Society's web site or request a paper copy. Members were invited to provide comments until October 15, 2002.

   b. Information on the PPRP and consultation process was posted on the Law Society's website at www.lsuc.on.ca under the heading "Professional Development and Competence". That information continues to be on the website.

   c. Letters were sent to legal organizations advising them of the policy, providing the proposed guide and seeking their input by October 15, 2002. The following organizations provided comments: African Canadian Legal Clinic, Association of Community Legal Clinics of Ontario, Community and Legal Aid Services Programme (CLASP), Downtown Legal Services, and Metropolitan Toronto Lawyers Association (comments contained at the end of a longer submission on the Practice Guidelines).

10. The Law Society received a total of nine (9) submissions. There were some comments on the merits of the approved program, but the primary nature of the comments related to which modules clinic lawyers should be required to complete. Copies of the submissions are included at Appendix 3.

11. The Committee has carefully reviewed the submissions, particularly as they relate to submissions as to which modules lawyers moving from the clinic system to private practice should have to complete. The Committee understands the nature of the submissions, but in its view it is appropriate to leave the guide as is and address particular concerns on an individual basis as lawyers actually apply, beginning in 2007, to be exempted from certain modules or components of modules. In considering the comments made and reaching its conclusion the Committee has noted the following:

   a. The PPRP has been designed with a high degree of flexibility and recognition that individual lawyers within the same job category may have had different experiences. For this reason a member who becomes subject to the program will be entitled to apply to do fewer than the required modules for his or her job category and will be entitled to have a review to a bencher from a staff decision with which he or she disagrees. There are some practice skills that are specific to private practice and other skills that must be adapted somewhat when they are transposed from a non-private practice setting to a private practice setting. The module program focuses on developing flexible materials that address certain private practice activities, skills or information that may not be undertaken or emphasized in other job categories.

   b. The program is entirely self-study and can be completed in a relatively short time period, depending upon the individual lawyer's own schedule. Two of the eight modules are "read only".

The materials will provide a resource that those subject to the program will be able to use upon entering private practice. The process is not onerous, but is rather a refresher meant to support lawyers in their return to practice.

If, with respect to some aspects of a module, a lawyer reviews material with which he or she is already familiar, the review process will be that much quicker. The clinic submissions propose that clinic lawyers be excused from parts of certain modules. The Committee is of the view that it would be inappropriate to limit the applicability of the program in such a way, particularly as the modules have not yet been fully designed. In the Committee's view, the flexibility described above will more than adequately address whether a particular lawyer should be excused from some or all of a module.

c. Some of those providing comments argue that because those in private practice in large firms (in which non-legal staff perform many practice management functions) who move to small or sole practice do not have to take the program, the program creates a two-tier system of lawyers in the province, with those in private practice seen as superior to those not in private practice. This submission leads indirectly to the implication that the modules to be completed should be kept to a minimum the closer the lawyer's job is to private practice. The Committee notes, however, that the PPRP is only one component of the Law Society's enhanced competence mandate, namely a program that provides a refresher for members who have been out of private practice for a specified period. The program does not address the issue of members who move from large firm private practice to sole or small firm private practice, because that is not its defined intent. This does not, however, mean that the Law Society is not aware of the issue of the ongoing competence requirements and shifting needs of members already in private practice, as they move from different types of work experiences. The competence model approved in March 2001 more directly addresses issues related to those members. As well, the competence model is not static and will evolve as its various components are developed and evaluated. Should Convocation choose to do so, it could approve a provision that those moving from one type of private practice to another be required or encouraged to review the PPRP material.

d. In the Committee's view, the fact that there were only five organizational and 4 individual submissions suggests that the guide strikes a reasonable balance and should be approved. The best assessment of the accuracy of the module approach will be possible only after the program comes into effect in 2007 and staff have the opportunity to consider the specific requests that arise.

12. For the reasons set out above the Committee recommends that the Guide set out in Appendix 1 be approved.

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON OCTOBER 21 AND DECEMBER 3, 2002 AND APPROVED BY THE COMMITTEE ON JANUARY 9, 2003

13. The Committee is pleased to report final approval of the following lawyer's application for certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation: Patrick O'Hagan (Toronto)

14. The Committee is pleased to report final approval of the following lawyers' applications for re-certification, on the basis of the review and recommendation of the Certification Working Group.

Bankruptcy & Insolvency Law: Kevin McElcheran (Toronto)

Civil Litigation:	Milton Davis (Toronto) Grant Dow (Toronto) W. Bruce Drake (Toronto) Nestor Kostyniuk (Toronto) Jeffrey W. Kramer (Toronto) David R. Neill (Toronto) Michael S. O'Neill (Sault Ste. Marie)
Criminal Law:	Dean Paquette (Hamilton) David G. Price (Mississauga) Murray Segal (Toronto) Gerald E. Taylor (Waterloo)
Environmental Law:	Robert Mansell (Toronto) Graham Rempe (Toronto)
Family Law:	Gerald Sadvari (Toronto)
Labour Law:	Susan Ballantyne (Ottawa) W. Jason Hanson (Toronto)

DELIVERY OF LEGAL INFORMATION TO ONTARIO LAWYERS

15. A working group of the Emerging Issues Committee was established to develop a strategy for the delivery of legal information to Ontario lawyers. The members of the working group are The Treasurer, Earl Cherniak (Chair), Susan Elliott, George Hunter, Niels Ortved, Clayton Ruby, Malcolm Heins, and Diana Miles. Janine Miller and Jim Varro are providing staff support. Three of the members of the working group, including the Chair, are also members of the PDC&A Committee.

16. The working group will undertake a number of inquiries including,
    a. assessing the current delivery of legal information through the Great Library, the libraries under LibraryCo and CanLII (online);

    b. assessing the prospects for enhanced delivery through each of the above facilities;

    c. determining on a going forward basis the type of relationship that should exist between the Great Library and LibraryCo.;

    d. examining the impact of the Federal Court of Appeal decision in the copyright litigation.

17. Consultants engaged by the Law Society will undertake a qualitative research project on library and legal information services. Money for the cost of this project has been allocated and the Finance and Audit Committee has been provided with the information on the project. The consultants estimate that they will have a final report in March 2003.

18. Because the PDC&A Committee is concerned with issues of competence and monitoring library-related matters and because access to legal information is an integral component of competence the working group is providing this and subsequent reports through the PDC&A Committee to Convocation.

19. The information report and research proposal are set out at Appendix 4.

APPENDIX 1

Guide to PPRP Modules

Background
Convocation has approved a new program, called the Private Practice Refresher Program (PPRP) that will require lawyers who have been out of private practice for a specified number of years or more to undergo a refresher program prior to entering private practice.

Replacing the former Requalification Program, the PPRP came into effect in early 2002, but will not apply to any lawyers until 2007.

The new program will more effectively address the goals of the original program, to ensure that those members who have been out of private practice are provided with a refresher program on certain practice management, client relationship, and professional responsibility matters relevant to private practice situations.

There will be no requirement to redo the Bar Admission Course, or any aspect of it.

The program Convocation approved can be briefly summarized as follows:

Member categories have been defined, with rights and privileges that flow under each category:

Category A: Any member eligible for insurance under the Law Society's insurance plan and who is required to have insurance because he or she engages in the practice of law;

Category B: All members who are not in Category A or C;

Category C: Retired members.

Members seeking to change their category status from B or C to A will be entitled to do so unless for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member.

In such a case the member will be advised which of eight practice management and client relationship modules he or she must complete. These are:

Time management
File management
Financial management
Client service and communication
Technology
Professional management
Personal management
Professional responsibility

A member who disagrees with the assessment of which modules he or she must take will be entitled to seek a written review of the determination from a bencher.

Upon satisfactory completion of the modules the member's category status will be changed from category B or C to category A.

For further information on the program see By-law 13 made under the *Law Society Act* and the Law Society's website at www.lsuc.on.ca.

The attached chart sets out 18 job categories/activities and the modules those in each category will, *in general*, be required to complete.

The following factors are relevant in considering the modules to be completed by those in each category:

- Regardless of which modules a member is required to complete, all members subject to the PPRP will receive all modules and be encouraged to read them. In this way, the modules may be available for use as a reference tool on specific points, once the member is in private practice.

- This is a guide only. Some members, whose most recent job would indicate that they should complete certain modules, may have had previous experience or additional current experience that makes completion of one or more of the specified modules unnecessary. The Law Society will consider a member's request to complete fewer than the indicated modules at the time a member seeks to return to private practice.

- Members who dispute the determination of which modules they should complete will have the opportunity to appeal the decision in writing to a bencher.

- The entire module program is self-study.

- Although there will be assessments in some of the modules, others will be "read only".

- Although no one will have to take the program before 2007, the modules will be available in advance of that date, so that a lawyer contemplating entry into or return to private practice will be aware of the content well in advance of undertaking the requirement.

The considerations underlying the determination of which modules should be completed in each job category reflected in the chart, are:

- The Time Management Module and Personal Management will be provided to all those required to participate in the PPRP as *read only* with no assessment. They provide valuable information, but it is not necessary that candidates be assessed on them. Members will certify they have read them and thereafter may use them in practice as they see fit.

- Generally speaking, everyone in the 18 job categories will be required to complete the Technology Module and the Professional Management Module. This is because both modules are directed at specific issues relevant to running a practice and awareness of the rules and by-laws under the *Law Society Act* that govern lawyers in private practice. They address a number of issues that those out of private practice may be less likely to consider than those in private practice.

- Almost all categories will complete the Financial Management Module. This is because it addresses financial responsibility issues that are both essential to private practice and entail specific knowledge not gained in other jobs. The lawyers who are working for accounting firms might be the exception to this, if they are themselves accountants.

- Within certain job categories there may be variation in activities and experience that will mean that some members will have to complete a particular module and others will not. This will be determined at the time a member seeks to return to or enter private practice. In the attached chart "depends" in a category signifies that if lawyers within a job category perform different activities they may be required to take different modules.

- To the extent that a member's job or activity is not mentioned in the guide, when he or she advises the Law Society that he or she wishes to enter or return to private practice, a determination will be made as to which modules he or she is required to complete. To the extent possible the job will be analogized to one of those in the chart.

Time Management	= TM*	Technology	=T
File Management	= FM	Professional Management	=PFM
Financial Management	=FNM	Personal Management	=PM*
Client Service and Communication	=CSC	Professional Responsibility	=PR

Job Category * = read only	TM*	FM	FNM	CSC	T	PFM	PM*	PR
Counsel–in-house/corporate Solicitor-Government	Yes	depends	Yes	depends	Yes	Yes	Yes	depends
Crown Attorney/ Assistant C A; Government-litigator; Counsel-Children's Aid; regulatory body	Yes	No	Yes	No	Yes	Yes	Yes	depends
Clinic lawyer	Yes	No	Yes	No	Yes	Yes	Yes	depends
AdministrativeTribunal Counsel	Yes	No	Yes	No	Yes	Yes	Yes	Yes
Policy: government/other	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mediator	Yes	No	Yes	No	Yes	Yes	Yes	Yes
Arbitrator/ adjudicator Tribunal panel member	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes
Education	Yes	Yes	Yes	Yes	Yes	Yes	Yes	depends
Accounting firm	Yes	No	depends	No	Yes	Yes	Yes	Yes
Politician/Assistant to politician	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Justice of the Peace	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Small Claims Court judge (not private practice)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Law librarian/research staff	Yes	Yes	Yes	depends	Yes	Yes	Yes	Yes
Legal editor/publisher	Yes	Yes	Yes	depends	Yes	Yes	Yes	Yes
Post-graduate student	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clerk to court	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Regulatory investigators	Yes	depends	Yes	depends	Yes	Yes	Yes	depends
Not working/employed in field unrelated to law	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

APPENDIX 2

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 member 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.

APPENDIX 4

INFORMATION REPORT FROM THE WORKING GROUP ON A STRATEGY FOR LEGAL INFORMATION FOR ONTARIO LAWYERS

1. The first meeting of the above working group[1] was held on Wednesday, December 18, 2002. The working group's mandate is to determine an overall strategy for delivery of legal information to lawyers in Ontario.

[1] As a result of discussions at the May 22, 2002 Emerging Issues Committee meeting, and the Treasurer's and CEO's suggestions for review of a number of issues relating to the collection and dissemination of legal information

As part of the mandate, the working group is examining the delivery of legal information through the Great Library, the libraries under LibraryCo and CanLII (online), and assessing the prospects for enhanced delivery through each of the above facilities.

2. At its December 18 meeting, the working group received a report from Dysart & Jones Associates, the consultants hired by the Law Society in July 2002 to review the Great Library's operations in the context of general library services for Ontario lawyers and to explore the Great Library's options for delivery of library services. The study is being driven by the following factors:

   a) The creation of LibraryCo has changed the context within which the Great Library functions, and this context must be understood to ensure that the library system is properly structured to fulfill its role as a provider of library services;

   b) The use and leveraging of technology to improve library services and meet lawyers' expectations must be investigated;

   c) Costs of legal publications and operating libraries continue to increase, and the provision of cost-effective quality library services in Ontario to small firms and those outside the Greater Toronto Area must be considered.

3. The consultants' project is structured in three phases – situation analysis, best practices and learning from other library systems, and defining and selecting options.

4. The report of the consultants at the December 18 meeting focused on the first phase. Rebecca Jones and Eunice Hogeveen of Dysart & Jones Associates presented a suggested "going forward" plan for assessing library/resource information usage in the profession. A copy of the slides from their power point presentation on the situation analysis and recommendation for next steps is attached as Appendix A.

5. As a result of the discussion between the consultants and working group members, changes were proposed to the following sections of the presentation:

   - On page 60, the question "what library services should be provided to lawyers to support them in practicing law?" is to be recast to refer to "legal information", a more generic and expansive term
   - In the research assumptions on page 61, large firms are to be included in the "mix", on the assumption that ultimately, they may benefit from the enhancements to library and legal information services resulting from the study
   - Attention is to be paid to the "vintage" factor, i.e. the age and number of years post-call of members
   - In the outline of the market research approach on page 65, librarians are to be included in the mix of firms

6. The next step proposed by the consultants is a qualitative assessment through market research on library services involving members of the profession. The working group concluded that this phase of the study should be pursued and asked the consultants to prepare a proposal for the market research (funds have already been budgeted for the analysis). The proposal is attached as Appendix B.

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for Ontario lawyers, a working group of the Emerging Issues Committee was formed. Its work will touch on CANLII (the Canadian Legal Information Institute), the Great Library, LibraryCo and copyright issues.

APPENDIX B

Proposal for
The Law Society of Upper Canada

Prepared for

The Law Society of Upper Canada | Barreau du Haut-Canada

Revised for
January 13, 2003

Table of Contents

A. Situation Summary

The Law Society decided to develop an overall strategy for the delivery of legal information to lawyers in Ontario. For this purpose it established a Working Group within the Emerging Issues Committee. In July of 2002, the Law Society engaged the services of Dysart & Jones Associates to begin by exploring the role and options of the Great Library within this framework of delivery of legal information.

The results of the Dysart & Jones engagement were presented to the Working Group on December 18, 2002. A central recommendation of this report is that market research be conducted as a basis for designing the delivery of legal information to lawyers in Ontario. It is further recommended that the research begin with a qualitative effort to understand the current dynamics of the market. The scope and size of a follow-up quantitative research piece would be dictated by the learning from the qualitative phase.

InnerViews Inc., a qualitative market research firm, was retained by Dysart & Jones to assist in the initial investigation. Therefore, this research proposal by InnerViews Inc. is scoped on the insights gained through the initial investigation.

B. Research Objectives

The research objectives fall into two broad categories:

a) Understanding the information seeking needs and behaviours of the members:

a. overall perceptions of the current information solutions;
b. attitudes towards and differentiation between delivery options;
c. factors that drive value;
d. influences on purchase decisions; and
e. gaps in their legal information environment.

b) Understanding the potential opportunities for the LSUC to add value to those information needs and behaviours:

a. the current position of the LSUC services (includes Great Library, County Libraries, etc.) on their information radar screen; and
b. reactions and attitudes to various 'concept' delivery models which the LSUC might potentially deliver.

C. Conducting the Research

We propose in-depth paired interviews as an effective approach for this qualitative research engagement. Interviews rather than groups will be more conducive for the honesty and depth of insight sought. The recommended composition of the paired interview is one respondent whose current behaviour involves the LSUC services and another whose current behaviour does not. It is thought that the dialogue between these perspectives will add further depth of understanding.

Although previous conversations have made references to triad interviews with the possibility of the librarian as the third participant, further reflections suggest their perspectives as intermediaries should not be central in a study to understand the perspectives of members on the delivery of legal information. It is clear that librarians are important stakeholders in any scenario the LSUC might proceed with and their input should be planned for and gathered in the appropriate way.

In many engagements we have also found it beneficial to have participants prepare some homework in advance. This allows the participant the opportunity to gather their thoughts on the topic and encourages a collaborative starting point. It can also help us more tightly manage the interview and maximize the time spent with each respondent.

Below is our recommended approach for the engagement.

Synthesis of available research data by LSUC

During the discussions of the Working Group on December 18th, references were made to existing data such as the 'average spend' by law firms on information. Such information would be a useful addition to understanding the current dynamics of the market place. It is unknown at the time of writing this proposal, how much relevant data exists and whether this data will be synthesized by the LSUC or by InnerViews Inc. This proposal assumes that it will be synthesized by the LSUC and shared with InnerViews. If that assumption is incorrect, this proposal should be modified appropriately.

Preparatory homework by research participants

Once recruited, we would ask participants to come prepared to discuss their current 'information radar screen'. The thought is to use the same bulls-eye schematic we used for a few interviews in the first phase of this project and have respondents plot their various information resources in the must have, nice to have and on the peripheral circles. To facilitate the discussion on the current position of the LSUC information services, respondents would be asked to select and bring along a picture that captures their view of LSUC as a provider of legal information services.

The interview approach

Our preliminary thoughts on the possible components and approaches to the interview are as follows:

- *Understanding the currently used information sources:* The first 20 minutes of the interview would be devoted to probing around their current information solutions. Their homework would serve as a basis for this portion of the interview getting us to an overview of the current status from both the perspectives of library users and non-users quickly.

- *Exploring the current positioning of the LSUC in delivery of legal information:* The next 5 minutes would be used to explore an understanding of how the LSUC is currently perceived in delivery of information services. How is it used? What perceptions do members have about the capabilities?

- *Describing the workflow:* This portion of about 15 minutes would be focused on understanding their workflow. The approach might be to offer a few typical 'day in the life' situations (e.g. preparing a research memorandum) and have the respondents map out the steps they would typically take.

- *Making a purchase decision:* This piece seeks to understand the decision-making process around information delivery and services. For 10 minutes, the focus will be on how they assess value, and how they make decisions around information services, etc.

- *Testing concepts:* For approximately 30 minutes, we would ask participants to respond to the four possible concepts or scenarios that have been prepared in advance. Respondents would be asked to share their anticipated responses to each of the scenarios and explain why. Probing would be conducted around the

influence of delivery options and the perceived value, the wording/description of the service options, the perceived benefits and other factors at play.

- *Testing concepts continued with photo sorts*: To come at the differences and interests levels between the four options, we propose spending 5 minutes having respondents sort a set of selected photos. These photos would be sorted to reflect similarities and differences in their attitudes to the four alternatives.

- *Wrap-up exploration*: The last 5 minutes would allow for some open-ended probing on the connections between their current environment and future LSUC service options.

Who do we want to speak to?

Recognizing that this is a qualitative undertaking aimed at getting deeper insights into the current dynamics of the legal information marketplace, the research respondents should include:

- A mix of members from urban and non-urban centres;
- A mix of firm size (small, mid and large);
- A mix of practice areas; and
- A mix of practice experience (less than 5 years, between 5-15 years and more than 15 years).

The critical design assumption for the paired interview is that they capitalize on one key variable: user dynamics. As a result, each paired interview will be composed of individuals who currently use the LSUC services and those who do not. It is believed that this key difference in user dynamics will provide the discussion with a richness to assist in capturing insights.

Composition of Respondents

- 50 research participants participating in 25 paired interviews;
- 25 interviews are composed of 15 in urban centres and 10 in non-urban centres;
- urban interviews to be held in Toronto and London; and
- non-urban interviews in Thunder Bay and Kingston
- each paired interview contains a LSUC user and a non-user.

Breakdown by firm size:

Large firm	Mid-sized firm	Small firm
7 urban paired interviews	4 urban paired interviews 4 non-urban paired interviews	4 urban paired interviews 6 non-urban paired interviews

Breakdown by practice area (assuming 3 practice areas selected):

Civil Litigation	Family	General
10 paired interviews in total: 5 large urban firms 3 mid urban firm 1 mid non-urban firm 1 small urban firm	7 paired interviews in total: 2 large urban firms 2 mid urban firms 2 small non-urban firm 1 mid non-urban firms	8 paired interviews in total: 0 large urban firms 1 mid urban firm 3 small urban firms 4 small non-urban firms

Breakdown by length of time in practice

Recent graduates (<5 years)	Mid (5-15 years)	Long term (>15 years)
20 paired interviews will be a either a mix of recent grads and those in the mid range or pairings of recent grads and pairings of mid range practitioners. No quotas are being proposed for these combinations.		5 paired interviews

D. Key Deliverables

The outputs of the analysis will include:

- An appreciation of behaviours and needs of the members in legal information;
- An understanding of the current position of the LSUC services;
- An understanding of how users assess value and make purchase decisions;
- A deeper understanding of member attitudes towards potential LSUC service options; and
- An assessment of what further quantitative research should be undertaken.

E. Key Steps and Proposed Timeline

This timeline assumes project approval during the week of January 6th.

Step	Dates	Activities
Step 1	Week of Jan 6th	Briefing meeting with the team
Step 2	Week of Jan 13th	Recruiting screener is developed Membership lists are supplied
Step 3	Week of Jan 20th	Recruiting begins Development and approval of paired interview discussion script Development of presentation materials for alternative service options
Step 4	Weeks of Feb 3rd and 10th	Paired interviews are conducted
Step 5	Week of Feb 17th	Transcription
Step 6	Weeks of Feb 24th and Mar 3rd	Analysis
Step 7	Week of Mar 10th	First client debrief
Step 8	End of March	Final report

Mutual Responsibilities

As per discussions with the team, this engagement assumes that research respondents do not need to be incented but will participate as a commitment to the profession. The resulting responsibilities for both parties critical to managing costs and timing are outlined below.

InnerViews

- Hires and manages a professional recruiting firm to recruit from your membership lists;
- Provides schedules of interview times and dates;
- Issues homework assignment;
- Moderates and records paired interviews;
- Arranges for transcription of paired interviews; and
- Completes analysis and reporting.

LSUC

- Provides a list of suitable candidates complete with phone numbers practice specialties and firm sizes (if possible);
- Identifies locations and rooms suitable for conducting paired interviews on the dates and at the times agreed to; and
- Supports and helps in coordinating interviews taking place on LSUC premises, by designating a point person at each location who will greet respondents checking for homework completion and showing them to the room at the appointed time.

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F. Engagement Fees and Project Team

Our proposed fees are $8,625 for the hard costs of recruitment and transcription. Our professional fees are $39,750 or the equivalent of 26 days.

Several critical assumptions drive the hard costs for this engagement. We have assumed no incentives for research participants. We have also assumed that all paired interviews are conducted on LSUC premises at no cost.

The total investment is thus $48,375 *plus* GST and travel-related expenses

We propose billing a 50% retainer upon your approval to proceed and 50% upon satisfactory completion. The first invoice is due upon receipt and the final invoice is net 30 days.

Eunice Hogeveen and Betty Hutchins as principals of InnerViews Inc. are the primary consultants for this engagement. Rebecca Jones will participate in the phases of research design, analysis and presentation to provide the information services expertise and continuity from the first phase of this engagement.

G. References

We would be happy to arrange for reference conversations if you wish. For your convenience, here is a partial client list with type of work completed.

Organization	Type of Work Completed
Kraft Canada	• gaining deep insights into the high value segment of the market
Chatelaine	• uncovering the brand experience to keep the franchise healthy
Royal Bank	• exploring the customer perspectives for a new value proposition
Molson	• gaining deep customer understandings of a beer drinking target
Canadian Tire	• exploring customer perceptions to shape communication strategies
Teraview	• uncovering the current brand experience to develop a brand strategy
BBDO/Daimler-Chrysler	• gaining the perspectives of owners and intenders for creative strategies
Campbell Soup	• testing a new product positioning with a target segment

Attached to the original Report, copies of:

(1) Nine copies of submissions on the proposed guide from the African Canadian Legal Clinic, Association of Community Legal Clinics of Ontario, Community and Legal Aid Services Programme (C.L.A.S.P.), Downtown Legal Services, The Metropolitan Toronto Lawyers Association, Scott Pilkey, Lori Pope, Donald L. Revell, Chief Legislative Counsel and Jay Swanborough, Loblaw Companies Limited.

(Appendix 3, pages 14 – 46)

(2) Copy of the slides from Dysart & Jones Associates on a suggested "going forward" plan for assessing library/resource information usage in the profession.

(Appendix A, pages 49 – 66)

Re: Approval of Private Refresher Program – Results of Consultation

It was moved by Mr. Cherniak, seconded by Ms. Curtis that the Guide to the Private Practice Refresher Program (PPRP) Modules be approved as set out at Appendix 1 of the Report.

It was moved by Mr. Ducharme, seconded by Mr. Gottlieb that the Clinic Lawyer category in the chart set out on page 12 be amended by changing the following:

Time Management – "yes" to "no"
Technology – "yes" to "no"
Professional Management – "yes" to "no"
Professional Responsibility – "depends" to "no"

An amendment to delete the "Clinic Lawyer" category was accepted by Messrs. Ducharme and Gottlieb.

The amendment was voted on and lost.

ROLL-CALL VOTE

Aaron	Against
Arnup	Abstain
Banack	Against
Bindman	For
Braithwaite	For
Campion	Against
Carey	For
Carpenter-Gunn	Against
Chahbar	For
Cherniak	Against
Coffey	For
Copeland	Against
Crowe	For
Curtis	Against
Diamond	For
Ducharme	For
Epstein	Against
Feinstein	Against
Finkelstein	Against
Finlayson	Against
Go	For
Gottlieb	For
Harris	Against
Hunter	Against
Laskin	Against
Legge	Against
MacKenzie	Against
Marrocco	Against
Martin	For
Millar	For
Minor	Against
Mulligan	Against
Murray	Against
Ortved	Against
Pilkington	Against
Potter	For
Puccini	For
Robins	Against
Ruby	Against
Simpson	Against
Swaye	Against
Topp	Against
White	Against
Wilson	Against
Wright	Against

Vote: 30 Against; 14 For; 1 Abstention

It was moved by Mr. Wright, seconded by Mr. Ducharme that the list include judges.

Not Put

Mr. Cherniak advised that the Committee would consider the matter further.

The Cherniak/Curtis motion to approve the Guide to the Private Practice Refresher Program Modules was voted on and adopted.

ROLL-CALL VOTE

Aaron	Against
Arnup	Abstain
Banack	For
Bindman	For
Braithwaite	For
Campion	For
Carey	For
Carpenter-Gunn	For
Chahbar	For
Cherniak	For
Coffey	For
Copeland	For
Crowe	Against
Curtis	For
Diamond	Abstain
Ducharme	For
Epstein	For
Feinstein	For
Finkelstein	For
Finlayson	For
Go	Against
Gottlieb	For
Harris	For
Hunter	For
Laskin	For
Legge	For
MacKenzie	For
Marrocco	For
Martin	For
Millar	Against
Minor	For
Mulligan	For
Murray	For
Ortved	For
Pilkington	Abstain
Potter	For
Puccini	For
Robins	For
Ruby	For
Simpson	For
Swaye	For

Topp	For
White	For
Wilson	For
Wright	For

Vote: 38 For; 4 Against; 3 Abstentions

Items for Information

Specialist Certification
Delivery of Legal Information to Ontario Lawyers

Convocation took its morning recess and resumed in public.

MOTION – Donation to Out of the Cold Program in Lieu of Bencher Seasonal Party

Moved by: Robert Aaron

Seconded by: Avvy Go

RESOLVED that the Law Society Foundation for the Out of the Cold Program receive the donation of the funds that would have been expended on the 2003 Bencher seasonal party.

It was moved by Mr. Bindman, seconded by Mr. Epstein that the Aaron/Go motion be tabled.

Carried

MOTION – Donation to Charity in Lieu of Bencher Seasonal Party

Moved by: Robert Aaron

Seconded by: Avvy Go

RESOLVED that the cost that would have been incurred by holding the 2003 Bencher seasonal party instead be donated to a charity.

It was moved by Mr. Bindman, seconded by Mr. Millar that the Aaron/Go motion be tabled.

Carried

ROLL-CALL VOTE

Aaron	Against
Arnup	For
Banack	For
Bindman	For
Campion	For
Carey	Against
Carpenter-Gunn	Against
Chahbar	For

Cherniak	For
Coffey	For
Copeland	Against
Crowe	For
Curtis	Against
Diamond	Abstain
Ducharme	Against
Epstein	For
Feinstein	Against
Finkelstein	For
Finlayson	For
Go	Against
Gottlieb	For
Harris	Against
Hunter	For
Laskin	For
Legge	For
MacKenzie	For
Marrocco	Against
Martin	For
Millar	For
Minor	For
Mulligan	For
Murray	Against
Ortved	For
Pilkington	Against
Porter	For
Potter	Against
Puccini	Against
Robins	For
Ruby	For
Simpson	Against
Swaye	For
Topp	For
White	For
Wilson	Against
Wright	For

Vote: 28 For; 16 Against; 1 Abstention

AMENDED REPORT OF THE EQUITY & ABORIGINAL ISSUES COMMITTEE/COMITI SUR L'IQUITI ET LES AFFAIRES AUTOCHTONES

Mr. Copeland presented the amended Report of the Equity & Aboriginal Issues Committee for consideration by Convocation.

Equity and Aboriginal Issues Committee/
Comité sur l'équité et les affaires autochtones
January 23, 2003

Report to Convocation
As amended January 13, 2003

Purpose of Report: Decision

Prepared by the Equity Initiatives Department

OVERVIEW OF POLICY ISSUE

BENCHER REMUNERATION

Request of Convocation

1. That Convocation consider the report from the Committee and approve the following recommendations:

    a. Ex-officio benchers that participate in the business of the Law Society and elected benchers shall be remunerated for duties performed as benchers, effective from the date of the Convocation meeting in June 2003.
    b. An annual honorarium at a rate of $25,000 for elected benchers will be paid on request from the bencher. The amount of $25,000 will be prorated for partial years.
    c. An honorarium of $250 per half day (three hours or less) and $400 per full day (over three hours) for participation in Law Society business will be paid to ex-officio benchers on request from the bencher. Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters.

Summary of the Issue

2. The Committee presents a report proposing the adoption of remuneration for benchers. The report submits that the most convincing rationale in favour of bencher remuneration is the argument that benchers devote countless hours of service to the Law Society, which merits some recognition for the contribution made to the profession and the Law Society. Bencher remuneration would alleviate some financial hardship but is not intended to compensate for lost income or the opportunity to earn income.

3. The report proposes that elected benchers receive an annual honorarium at a fair level of $25,000 per year for a total cost of $1,000,000 (cost per member: $36). It is an amount that is not so high as to be seen as a compensation for lost income or the opportunity to earn income.

4. The report also proposes that the Law Society should acknowledge the participation of ex-officio benchers in the business of the Law Society by providing an honorarium of $250 per half day (three hours or less) and $400 per day for time spent at Convocation, committee meetings (including task forces), calls to the bar and attendance at discipline matters. Such a policy would cost approximately $154,000 or $6 per member.

THE REPORT

Terms Of Reference/Committee Process

5. The Committee met on January 8, 2003. Committee members in attendance were Paul Copeland (Chair), Derry Millar (Vice-Chair), Helene Puccini (Vice-Chair), Stephen Bindman, Gary Gottlieb, Janet Minor, Judith Potter and Bradley Wright. Others in attendance were Nathalie Boutet (representative of the Association des juristes d'expression française) and staff Josée Bouchard, Katherine Corrick, Margaret Froh and Giang Nguyen.

6. The Committee is reporting on the following matter:

Policy – For Decision

- Bencher remuneration

BENCHER REMUNERATION

Background

7. In 1990, the Special Committee on Bencher Elections (Committee on Election) noted concerns that some members are deterred from running for election because they cannot afford the financial burden related to fulfilling the responsibilities of a bencher. It was agreed that a system of remuneration should not encourage members to run for election in the hope of monetary reward. The Committee on Elections recommended that there be further study of ways to overcome the financial obstacles that deter members from running for election.

8. In 1994, the Women in the Legal Profession Committee (the WLPC) presented a proposal to Convocation that elected benchers receive remuneration stating that the financial loss occasioned by serving on Convocation deters many women and others in the profession from seeking election as benchers[1]. Convocation asked the WLPC to continue the study and report to Convocation on January 27, 1995.

9. On January 27, 1995, the WLPC recommended that Convocation approve a policy that would entitle elected benchers to be remunerated for work performed on behalf of the Law Society[2]. The recommendation was based partly on the hypothesis that bencher remuneration would encourage greater participation by those who lack the support of a firm or a steady form of income to afford the time that is required to play a significant role in the business of Convocation and its committees.

10. On February 13, 1997, the Finance and Audit Committee discussed the merits of Bencher remuneration. A majority of the members agreed, in principle, to some form of remuneration for Benchers. A number of Committee members felt that access was an issue and that many practitioners would not be able to run for bencher because of the time commitment required. Other members of the Committee felt that the position of bencher is a volunteer position and should not be remunerated. There was consensus on compensation for attendance at discipline and admissions hearings.

11. In 1997, Convocation adopted a motion that approved in principle, subject to further study, some form of honorarium to benchers[3]. A further motion that a referendum on bencher remuneration be held at the next bencher election was carried.

12. The 1997 motion was consistent with Recommendation 7b of the *Bicentennial Report* which states that "In furtherance of its commitment that governance of the profession encompass a wide and diverse representation of communities within the profession: … (b)Convocation should review the demands on benchers to determine what steps can and should be taken to promote the participation of diverse communities (including equality-seeking communities) in the governance of the profession[4]".

13. In January 1999, Convocation considered the Report of the Task Force on the 1999 Bencher Election and Referendum (1999 Election Report), which concluded that the Law Society did not have the legal authority to conduct a binding referendum and recommended that the Law Society not conduct a binding or an advisory referendum.

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[1] See Appendix 1 for November 25, 1994, Minutes of Convoation & Transcript of Debate.
[2] See Appendix 2 for January 27, 1995 Minutes of Convocation & Transcript of Debate.
[3] See Appendix 3 for February 28, 1997 Minutes of Convocation.
[4] Recommendation 7b of *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

14. The 1999 Election Report recognized that Convocation had made a policy decision to remunerate benchers. It noted however that the decision had been made under a different statute and that the new legislation would affect the workload of benchers both positively and negatively. The 1999 Election Report recommended that a task force of benchers be struck to study the new demands placed on bencher time and develop options for a remuneration scheme for Convocation's consideration in January 2000.

15. On January 22, 1999, Convocation rejected a motion to pay an honorarium to benchers. Convocation instead adopted a motion that an advisory referendum be held on the issue of bencher remuneration at the 1999 election.

16. In February 1999, Convocation adopted a motion that the following question be included on the ballot: 'are you in favour of some form of honorarium being paid to benchers?'

17. Of 11,351 voters, 3,915 voters (34%) were in favour of bencher remuneration, 5,406 (48%) were against, 2,021 (18%) did not respond to the question and 9 ballots were spoiled. While the implied conclusion might be that the majority of the membership opposed an honorarium, that conclusion does not necessarily follow. A significant minority did not respond to the question and the impact of non-respondents has not been assessed. In April 2000, a report including the results of the referendum was prepared and distributed to all benchers.

18. This report addresses the following issues.
    - Part I: Bencher Remuneration
    - Part II: Methods of Remuneration and Financial Implications
    - Part III: Referendum

Part I: Bencher Remuneration

Arguments in Favour of Bencher Remuneration

19. Convocation has debated the issue of providing benchers with some form of remuneration beyond compensation of reasonable expenses incurred while providing services to the Law Society. The main arguments in favour of bencher remuneration include[5]:

    a. Benchers devote long hours of service: Benchers devote many hours to the Law Society, which takes time away not only from work but also from family and other charitable activities. Accordingly, some form of remuneration should be provided to acknowledge the contributions made by benchers to the Law Society.

    b. Economic hardship: Payment of some form of remuneration will partially decrease hardship for those who otherwise might not afford to dedicate the time required to be a bencher.

    c. Increased bencher diversity: We believe that bencher remuneration would alleviate some of the economic burden related to serving as bencher. Bencher remuneration is not the only initiative that may promote the participation of diverse communities in the governance of the profession. However, it is one initiative that may reduce barriers to participation in the governance of the profession for those in lower income categories, including women and lawyers from equity-seeking communities[6].

20. Perhaps the most convincing rationale in favour of some form of bencher remuneration is the argument that benchers devote countless hours of service to the Law Society, which merits some recognition for the contribution made to the profession.

21. The Law Society collects some data on the amount of time spent by benchers to Law Society business.

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[5] Arguments raised in the *Guide for Voters* (Toronto: Law Society of Upper Canada, 1999) at 5.

[6] See Appendix 4 for statistical information on diversity within the pool of candidates and elected benchers in the 1999 bencher election.

22. *Convocation:* There are normally ten regularly scheduled monthly meetings and additional meetings such as Special Convocations and Committees of the Whole. There have typically been three of these additional meetings in recent years for an annual total of thirteen days or 91 hours[7].

23. *Discipline matters:* The Hearing Coordinator maintains records of bencher attendance for discipline matters, including time spent on pre-hearing conferences, hearing panels, appeal panels, appeal management tribunals and hearing management tribunals. The records do not include time spent on the Proceedings Authorization Committee, preparation time, or time spent on decision writing, all of which is quite onerous. In 2001, the Hearings Coordinator recorded formal time spent on discipline matters by elected and ex-officio benchers (excluding lay benchers) to amount to 2,823 hours. The time spent on discipline matters is doubled to take into account time spent on activities such as preparation time and decision writing, giving a total of 5,646 hours per year. Assuming there are 15 ex-officio benchers that participate in the business of the Law Society ("participating ex-officio benchers" [8]) and 40 elected benchers for a total of 55 benchers, the average time spent by each bencher on discipline matters is 103 hours per year. Time spent by in-town and out-of-town benchers on discipline matters is approximately equal[9].

24. *Committee meetings:* There are normally nine regularly scheduled monthly committee meeting days during the year. In a typical year there are always additional meetings for task forces and working groups. Three additional meeting days per year has been added to account for the additional workload, for a total of twelve days or 84 hours per bencher[10].

25. *Calls to the bar:* There are normally two major calls to the bar in Toronto and one each in London and Ottawa for a total of four meetings. If each meeting takes four hours (excluding travel), a total of 16 hours per bencher is spent at calls to the Bar[11].

26. *Travel time:* The Finance Department estimates that out-of-town benchers spend an average of 4 hours for return trips, amounting to 87 hours per bencher per year on travel time.

27. *Time spent on Law Society business:* Based on the above analysis, the time spent on Law Society business by elected and participating ex-officio benchers is onerous and is even more onerous for out-of-town benchers who spend time traveling on Law Society business. The Finance Department of the Law Society estimates that elected and participating ex-officio Toronto benchers spend an estimated 294 hours per bencher per year (42 days per year) and elected and participating ex-officio out-of-town benchers spend an estimated 372 hours per bencher per year (54 days per year) on Law Society business. The Committee notes that, in addition, there are many hours spent reading voluminous materials for meetings and Convocation. The Committee suggests that the number of hours spent by benchers on Law Society business is significantly higher than the estimated 294 hours per Toronto bencher and 372 hours per out-of-town bencher.

Arguments Against Bencher Remuneration

28. Arguments against bencher remuneration include[12]:

    a. Bencher efficiency: The real issue is the unreasonable amount of time that some benchers have to dedicate to Law Society business. The underlying problem is one of bencher efficiency, such as

[7] See Appendix 5 for Record of Attendance.
[8] The number of participating ex-officio benchers varies. The calculations are based on the assumption that there are 15 participating ex-officio benchers. Ex-officio benchers include Ex-Treasurers, Ex-Attorney Generals and ex-officio non-voting benchers.
[9] Provided by the Hearing Coordinator of the Law Society of Upper Canada.
[10] Provided by the Finance Department of the Law Society of Upper Canada.
[11] Provided by the Finance Department of the Law Society of Upper Canada.
[12] The arguments are outlined in the *Guide for Voters, 1999, supra* note 1 at 5.

discipline processes that are often unnecessarily lengthy, the workload is sometimes unequally distributed among benchers and terms of office are prolonged. The Committee agrees that bencher remuneration may not create more time and efficiency. However, It is an important initiative to recognize the service rendered by benchers to the profession.

b. Honour: Benchers are paid with honour, not cash. Benchers are compensated with respect, an increase in their profile within the profession and potential contacts. The Committee recognizes the rewards associated with being a bencher. However, this should not preclude the Law Society from remunerating its benchers. A bencher remuneration policy would allow benchers who do not require remuneration to forego the right to request the remuneration.

c. Service is voluntary in nature: The service provided by benchers to the Law Society and the legal profession is voluntary in nature. The service benchers give to the Law Society is community service freely given. Bencher remuneration is not meant to compensate for lost income or the opportunity to earn income, it is meant only to recognize contribution made to the Law Society and the legal profession.

Analysis for Bencher Remuneration

29. The voluntary nature of the service provided by benchers and the honour associated with serving as a bencher are not contested. A system of remuneration or honorarium for benchers should not be one that would encourage members to run for election in the hope of monetary reward. The rationale for paying an honorarium is not to replace income lost by benchers or opportunity to earn income, but to acknowledge and recognize the contributions of benchers to the Law Society and the onerous amount of time spent on Law Society business.

30. Lay benchers of the Law Society of Upper Canada receive $177 per diem from the Ontario government for time spent on Law Society business.

31. The Special Committee on Election and Remuneration of Treasurer and Election of Benchers presented similar arguments to Convocation on January 28, 1983 regarding the question of the remuneration of the Treasurer. Before that date, Convocation had regarded as inappropriate for an elected officer to be paid. Some considered that it would demean the office and perhaps attract to it candidates having an interest in receiving the remuneration. Those in favour of the proposal were of the view that the work of the Treasurer had increased with the general increase in the Society's responsibilities and that some worthy candidates for the office might be excluded from it by the financial sacrifice required in the absence of remuneration. The Committee recommended that an honorarium be paid to the Treasurer in addition to meeting the reasonable expenses in discharging the duties of office and that the amount of the honorarium should be set so as to make it possible for any worthy candidate to permit his or her name to be put forward but not so high as to be an attraction in itself. Convocation adopted the recommendation to pay an honorarium to the Treasurer. The Treasurer of the Law Society receives a $89,925 annual honorarium.

Other Law Societies and Governing Professions

32. It is useful to consider whether adopting a practice of bencher remuneration would be out of step with other law societies or other professions[13].

Barreau du Québec

33. The Barreau du Québec established in 2002 a Comité sur la rémunération des membres du Conseil général et du Comité administratif to study the issue of remuneration of its General Council and its Executive Committee[14]. The committee prepared a report outlining the following facts :

[13] See Appendix 6 for Bencher Remuneration by Other Law Societies.

a. Other Canadian law societies do not remunerate their benchers.
b. An assessment of the practices of other professional governing bodies in Quebec indicates that, with the exception of chartered accountants, all governing bodies (physicians and surgeons, nurses, accountants, notaries and engineers) provide some form of remuneration (between $250 and $570 per diem) to their directors.
c. The North-American legal profession considers that the service rendered by benchers to the governing body and the legal profession is voluntary in nature.
d. Some members of the committee on remuneration of members of the General Council indicated that members of the General Council spend approximately 10 to 12 days per year on General Council business. The adoption of some form of remuneration would not compensate for loss of income but would represent a symbolic acknowldgement for the services rendered to the Barreau du Québec and to the profession. The remuneration would also be an incentive for qualified candidates to offer their services to the Barreau du Québec.

34. On March 21 and 22, 2002, the General Council considered a report from the Comité spécial sur la rémunération des membres du Conseil général et du Comité administratif regarding the issue of remuneration of members of the General Council and members of the Executive Committee. The committee recommended to the General Council that no remuneration be paid to members of the General Council. It further recommended that the committee continue to study non-financial ways to acknowledge the contributions of members of the General Council. The committee's recommendations against the adoption of some form of remuneration were based on the following observations :

a. The Barreau du Québec must acknowledge the contributions of members of its General Council;
b. However, it is important to recognize the voluntary nature of services provided by members of the General Council to the Barreau du Québec and the legal profession;
c. Recognition of General Council members' contributions to the Barreau du Québec and the legal profession should not be monetary in nature.

35. Notwithstanding the recommendations of the committee, the General Council adopted the following resolution:

That members of the General Council, with the exception of the President and the Vice-President, receive an honorarium to the amount of $300 per diem for General Council meetings.

36. The arguments raised by General Council of the Barreau du Québec in favour of bencher remuneration included the additional costs and time away from practice for out-of-town members. Members of the General Council made it clear that the remuneration would be symbolic and was not meant to compensate for loss income or overhead costs.

37. The Barreau du Québec also provides remuneration to its Executive Committee to the amount of $600 per diem for Executive Committee meetings. The Executive Committee is made up of ten members of the General Council. It meets as frequently as needed (every two weeks, on average) and sees to the day-to-day administration between meetings of the General Council, whose powers it exercises (except those exercised by regulation). It reports its decisions to the General Council, which may modify or rescind them, without prejudice to vested rights, however.

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[14] The General Council is the Barreau du Québec's decision-making body, which is tantamount to the Law Society of Upper Canada's Convocation. It compises 37 members, including the President and Vice-President, 31 elected delegates and 4 members appointed by Quebec's professional board, the Office des professions. The General Council meets at least every four months and no less than four times a year.

Other Law Societies

38. The Law Society of Saskatchewan provides an honorarium of $300 per day for discipline cases but does not provide remuneration to benchers for other services performed on behalf of the Law Society.

39. Other law societies in Canada do not provide bencher remuneration[15].

Governing Bodies of Ontario Professions

40. Governing bodies of Ontario professions recognize the voluntary nature of the work performed by their directors. However, most governing bodies offer some form of honorarium to their directors, which varies in type and rate, based in part on the nature of the profession (see Appendix 2). It is generally accepted amongst the governing bodies that the rationale for paying an honorarium to elected members of boards of directors is not to compensate for lost income or opportunity to earn income but to recognize service voluntarily rendered.

41. Perhaps the professions that may be more closely compared with the legal profession are those that have members in diverse types of employment, such as in private practice in small, medium or large organizations, in partnerships, employed with the government or in academia. Rates of honorarium vary greatly amongst professional governing bodies. For example, the College of Physiotherapists ($210 per diem) and the College of Chiropractors of Ontario ($300 per diem) pay relatively low rates. The College of Psychologists of Ontario provides an additional allowance for overheads for those in private practice ($295 per diem generally plus $195 per diem if in private practice). The College of Veterinarians of Ontario ($400 per diem), the College of Optometrists of Ontario ($500 per diem), the College of Physicians and Surgeons of Ontario ($750 per diem) and the Royal College of Dental Surgeons ($795 per diem) provide higher rates.

42. Of the professions surveyed, all governing bodies that provide an honorarium to their elected directors have created discipline committees composed of elected directors. In all of these cases, the directors receive an honorarium for their work on discipline committees at the same rate as the rate of attendance at other committee meetings. This is the case for the Royal College of Dental Surgeons of Ontario, the College of Nurses of Ontario, the College of Optometrists of Ontario, the Ontario College of Pharmacists, the College of Physicians and Surgeons of Ontario, the College of Physiotherapists of Ontario, the College of Chiropractors of Ontario, the College of Psychologists of Ontario and the College of Veterinarians of Ontario.

43. A minority of governing bodies surveyed emphasize that members of their governing bodies are volunteers and do not receive any honorarium for services rendered, including discipline matters. These include: the Institute of Chartered Accountants of Ontario, the Certified General Accountants Association of Ontario, the Ontario Association of Architects and the Professional Engineers of Ontario.

44. Although not the governing body of a profession, the Lawyers' Professional Indemnity Company provides the following payment to its directors (other than elected Benchers of the Law Society of Upper Canada)[16]:

- $8,000 retainer per annum
- $1,000 for directors in attendance at board of directors' meetings
- $750 for directors in attendance at committee meetings
- $2,000 retainer per annum for directors elected to committees
- $2,000 retainer per annum for committee chairs
- $3,000 retainer per annum for vice-chairs.
- Retainers are cumulative.

[15] See Appendix 4
[16] By-Law 11 of the Lawyers' Professional Indemnity Company passed April 24, 2002.

45. Legal Aid Ontario also provides an honorarium for its Board members (including benchers) of $375 for work done in excess of 3 hours per day and $188 for 3 hours or less per day.

Recommendation: Institute Bencher Honorarium

46. As mentioned above, the rationale for instituting bencher honorarium is to acknowledge the contribution of benchers and the onerous amount of time spent on Law Society business. The demands on benchers are significant. The amount of the honorarium should not be so large as to encourage members to run for election in the hope of monetary reward. As mentioned above, bencher remuneration would not be intended to compensate for lost income or the opportunity to earn income.

Request to Convocation

47. That Convocation consider the report of the Committee and approve the following recommendation:

> Ex-officio benchers that participate in the business of the Law Society and elected benchers shall be remunerated for duties performed as benchers, effective from the date of the Convocation meeting in June 2003.

Part II: Methods of Remuneration and Financial Implications

Methods of remuneration

48. There are various methods that could be used to remunerate benchers. The administrative processes required to manage bencher remuneration would vary from the simple to more complex depending on the method of remuneration.

49. If Convocation approves the recommendation that elected and participating ex-officio benchers be remunerated for participating in the business of the Law Society, Convocation must decide whether benchers will be remunerated according to an hourly rate, a daily rate and/or a meeting rate, an annual honorarium or a mixture.

50. *Hourly rate:* If the remuneration is intended to compensate for lost time, such as lost hours of billable time, this method of remuneration might best achieve this objective. It would, however, require the most complex administration and mean greater administrative costs.

51. *Daily or meeting rate:* This method would also compensate for lost time but not as accurately as a method of compensation based on an hourly rate. The administration of such a scheme would, however, not be as complex as the administration of an hourly rate scheme and administrative costs would be reduced.

52. *.Annual honorarium:* If the remuneration is intended to recognize the service to the public and the profession an annual honorarium might best satisfy this objective. It would require the least administrative involvement once rules for bencher eligibility are established.

53. *A mixture:* This would comprise an annual honorarium plus an hourly, daily or meeting rate. This method of compensation would recognize the service to the public and the profession and compensate for lost time related to bencher responsibilities. This method of compensation would require fairly complex administration and lead to high administration costs.

54. The Committee submits that one of the main objective of remunerating benchers is to recognize the service to the public and to the profession. The Committee recommends that the method of remuneration that would best achieve this objective is the adoption of an annual honorarium.

55. If an alternative method of remuneration is adopted, Convocation will have to determine which bencher activities should be compensated: discipline, Convocation, committee, call to the Bar and travel time.

56. The Committee submits that, at the very least, remuneration for time spent on disciplinary matters, including travel time, should be compensated. Time spent on extended disciplinary matters can be onerous.

Financial Implications

57. The Finance Department of the Law Society has estimated the costs of bencher remuneration for activities requiring extensive bencher time commitment. The following costs are based on calculations made by the Finance Department of the Law Society. The calculations take into account the remuneration of elected benchers (40) and participating ex-officio benchers (15). The Treasurer already receives an honorarium, so is excluded from the calculation. Lay benchers are excluded from the calculation as they receive remuneration from the provincial government to the amount of $177 per diem.

58. The following is an overview of costs for bencher remuneration based on an annual honorarium and on an hourly rate. The estimated costs for bencher remuneration based on a per diem at the highest legal aid rates is similar to the costs at an hourly rate.

59. *Annual honorarium:* Presented below is the cost of remunerating benchers on an annual honorarium for:

- 40 elected benchers;
- 20 elected outside Toronto benchers and 20 elected Toronto benchers (a different levels of compensation); or
- 55 elected and participating ex-officio benchers.

60. The following costs take into account the costs of remuneration for all elected benchers at the same level of compensation/ for elected outside Toronto benchers at a slightly higher level of compensation than for Toronto benchers to account for additional travel time/ for elected and ex-officio benchers at the same level of compensation. The table also presents the estimated costs to members based on 2003 projected membership of 28,000 full fee paying equivalent members.

RATE	NUMBER OF BENCHERS	TOTAL COST	COST TO MEMBER
$20,000	40 elected benchers	$800,000	$29.00
$20,000 $25,000	20 elected Toronto benchers 20 elected outside Toronto benchers	$900,000	$33.00
$20,000	55 elected and participating ex-officio benchers	$1,100,000	$40.00
$25,000	40 elected benchers	$1,000,000	$36.00
$25,000 $30,000	20 elected Toronto benchers 20 outside Toronto benchers	$1,100,000	$40.00
$25,000	55 elected benchers and participating ex-officio benchers	$1,375,000	$49.00
$30,000	40 elected benchers	$1,200,000	$43.00
$30,000 $35,000	20 elected Toronto benchers 20 elected outside Toronto benchers	$1,300,000	$47.00
$30,000	55 elected benchers and participating ex-officio benchers	$1,650,000	$59.00

61. *Hourly rate:* Remunerating elected and ex-officio benchers for hours devoted to all primary bencher activities is estimated to cost the Law Society just over $1.3 million. Primary bencher activities are discipline, Convocation, committee, call to the Bar and travel. The calculations are based on highest legal

aid rate of $88/hour (calculations for travel time are based on highest legal aid rate of $45/hour). The average annual income for outside Toronto benchers under the hourly remuneration method would be $26,347 and for Toronto benchers, $21,835.

62. The following table indicates costs, per activity, of remuneration on an hourly basis, average remuneration for elected and ex-officio benchers and the estimated costs to the membership based on 2003 projected membership of 28,000 full fee paying equivalent members.

ACTIVITY	COSTS (based on highest legal aid rate: $88/hour)	AVERAGE REVENUE PER BENCHER	COST TO MEMBER
Discipline	$497,000[17]	$9,036	$18
Convocation	$345,945[18]	$6,289	$12
Committee	$319,334[19]	$5,806	$11
Call to the Bar	$38,720[20]	$704	$1
Travel	$126,360[21]	$4512	$5
TOTAL	$1,327,359	$26,347[22]	$47

[17] The Hearing Coordinator maintains records of bencher attendance for discipline matters which includes time spent on pre-hearing conferences, discipline panels, appeal panels, appeal management tribunals and hearing management tribunals. It does not include time spent on Proceedings Authorization Committee, preparation time and time spent on decisions, and any other time related to discipline processes not included above. In the year 2001, the Hearings Coordinator recorded formal time spent on discipline matters of 2,823 hours by elected and ex-officio benchers (excluding lay benchers). This is doubled for other time spent (preparation, closing etc) outside the logged period, giving a total of 5,646 hours. Time spent by in-town and out-of-town benchers on discipline matters is approximately equal.

[18] There are normally ten regularly scheduled monthly Convocations during the year. During the year there are normally additional meetings such as Special Convocations and Committees of the Whole. There have typically been three of these additional meetings in recent years for an annual total of thirteen days or 91 hours. There are 40 elected benchers and 15 ex-officio benchers for a total of 55 benchers excluding lay benchers. If an attendance rate of 66% is assumed, 36 benchers need to be remunerated for 91 hours of attendance, for a total of 3,276 hours at $88 / hour for a value of $288,288. Adding 20% for preparation time gives a total of $345,945.

[19] There are normally nine regularly scheduled monthly Committee meetings during the year. In a typical year there are normally additional meetings for task forces and working groups, so three additional meetings per year can be added to account for this additional work load, for a total of twelve days or 84 hours. There are 40 elected benchers and 15 ex-officio benchers for a total of 55 benchers excluding lay benchers. If an attendance rate of 66% is assumed, 36 benchers need to be remunerated for 84 hours of attendance, for a total of 3,024 hours at $88 / hour for a value of $266,112. Adding 20% for preparation time gives a total of $319,334.

[20] There are normally two major calls to the bar in Toronto and one each in London and Ottawa for a total of four meetings to attend. If each meeting takes four hours (excludes travel) and bencher attendance is 50%, the four calls to the bar will cost approximately $38,720 at $88 / hour.

[21] The rate used to calculate compensation for travel time is the highest legal aid rate of $45/hour. An average time of 4 hours is used for return trips by out-of-town benchers only. No provision has been made for the travel time of in-town benchers.

[22] It is estimated that the average revenue per bencher would be different for outside Toronto benchers, at $26,347 and Toronto benchers, at $21,835.

63. The administrative costs and implications of maintaining an hourly rate remunerative system would be more onerous than the annual honorarium method. The Law Society would have to hire one person whose primary job would be to administer time dockets, tax issues etc. at a cost attributable to bencher remuneration of approximately $30,000.

Submissions

64. *Elected benchers:* If the remuneration is intended to recognize the service to the public and to the profession an annual honorarium may best satisfy this objective. The Committee believes that a fair level for bencher remuneration would be $25,000 for elected benchers for a total cost of $1,000,000. The cost to members is not significant at $36. The administrative costs for this type of bencher remuneration would be negligible and could be absorbed into the normal account payable function.

65. *Ex-officio benchers that participate in Law Society business:* The Committee recognizes that ex-officio benchers often spend long hours performing duties as benchers. The Committee submits that the Law Society should acknowledge the participation of ex-officio benchers in the business of the Law Society by providing an honorarium of $250 per half day (three hours or less) and $400 per day for time spent at Convocation, committee meetings (including task forces), calls to the bar and attendance at discipline matters. Such a policy would cost approximately $154,800[23] or $6 per member. The administrative costs and implications of maintaining a remunerative system based on a daily rate for ex-officio and life benchers would be more onerous than the annual honorarium method.

66. *Alternative submissions:* In the alternative, the Committee submits that at the very least, elected and ex-officio benchers should be compensated for time spent on disciplinary hearings, including preparation time and decision-writing time and travel time. The average level of remuneration for discipline matters is $9,036 for elected and ex-officio members for a cost of $497,000. The cost to members is nominal at $18. If travel time is also compensated, the average level of remuneration amounts to $9,678 for a cost of $532,280 and the cost to the membership is raised to $19. The Committee submits that the cost to the membership for compensating for disciplinary matters and travel time is nominal. However, the administrative costs and implication of maintaining this method of remuneration is more onerous than adopting a remuneration method based on an annual honorarium.

Request to Convocation

67. That Convocation consider the report of the Committee and approve the following recommendations:

> An annual honorarium at a rate of $25,000 for elected benchers will be paid on request from the bencher. The amount of $25,000 will be prorated for partial years.
>
> An honorarium of $250 per half day (three hours or less) and $400 per full day (over three hours) for participation in Law Society business will be paid to ex-officio benchers on request from the bencher. Time spent participating in Law Society business includes time spent at Convocation, at committee meetings including task forces, at calls to the bar and attending discipline matters.

Part III Referendum

68. The manner in which benchers have governed the profession is reflected in the by-laws made by Convocation pursuant to section 62 of the *Law Society Act*[24], which states that Convocation may make by-laws relating to the affairs of the Law Society.

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[23] The cost is based on the assumption that there are 15 participating ex-officio benchers. The costs are calculated based on the number of days spent at Convocation, committee meetings, calls to the bar and on discipline matters at a rate of $400 per day. Attendance rate for Convocation and committee meetings is assumed at 66% and at calls to the Bar at 50%. We assume that there are seven hours in one day. Travel time is not included in this calculation.

[24] R.S.O. 1990, c. L8.

69. The Task Force on the 1999 Bencher Election and Referenda (the Task Force Report) outlined the advantages and disadvantages of referenda in political life. The advantages include the fact that it is democratic, allows for accountability and legitimacy and can be used as an educational tool. The disadvantages include the fact that it distorts policy-making, subverts parliamentary democracy, is unnecessary and expensive and there is a risk that well-funded interest groups may dominate the debate.

70. The Task Force Report also discussed the advantages and disadvantages of holding a referendum on the issue of bencher remuneration. In favour of a referendum, the report noted that bencher remuneration is a fundamental issue that voters, not Convocation, should decide; it can strengthen the profession's confidence in the Law Society and Convocation; and it can educate the profession.

71. The arguments against holding a referendum on the issues include the fact that the complex issue of increasing and diversifying access to the bench becomes a simplistic question of paying benchers; the possibility of undermining the delegated authority of Convocation and its legal obligation to govern the profession; the fact that the Law Society could consult through surveys, consultation hearings and the Internet at less expense; and some benchers will have significantly greater resources to lobby for their view points.

72. The Report indicates that those who believe that the use of referenda is a useful democratic device point out as well that this process should not be trivialized or overused.

73. A non-binding referendum question on the issue of bencher remuneration was included on the ballot in the 1999 Bencher Election. The results of the non-binding referendum indicated 48% of voters against and 34% for some form of bencher honorarium. A report including the results of the referendum was prepared but never considered by Convocation.

74. The Committee is of the view that the referendum was not binding and it is left to Convocation to make a final decision on bencher remuneration. It also notes that, even if a majority of voters were against bencher honorarium, a significant proportion of voters did not respond to the question. This may be due to a number of factors, including the location of the question on the ballot, the fact that the question was vague and did not include a description of the type of bencher remuneration, the level of remuneration or the costs to the membership. Further, although a list of arguments in favour of and against an honorarium was included in the *Bencher Election Guide for Voters*, the list was incomplete. The Committee submits that Convocation is the decision-making body of the Law Society and should vote on the issue of bencher remuneration.

75. The Committee is of the view that the Law Society should not hold a second referendum on bencher remuneration. The disadvantages of holding a referendum on bencher remuneration are more convincing than the enumerated advantages.

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

(1) Copy of the Women in the Legal Profession Committee Report from the Minutes of the November 25, 1994 Convocation..

(Appendix 1, pages 25 – 27)

(2) Copy of the Women in the Legal Profession Committee Report from the Minutes of the January 27, 1995 Convocation.

(Appendix 2, pages 28 – 55)

(3) Copy of the Finance and Audit Committee Policy Report from the Minutes of the February 28, 1997 Convocation.

(Appendix 3, pages 56 – 71.

(4) Copy of statistical information on diversity within the pool of candidates and elected benchers in the 1999 bencher election.

(Appendix 4, page 72)

(5) Copy of attendance of elected benchers at Convocation for the year 2002.

(Appendix 5, pages 73 – 75)

(6) Copy of Bencher Remuneration by other Law Societies.

(Appendix 6, page 76)

(7) Copy of Honorarium paid by various governing professions (Updated October, 2002).

(Appendix 7, pages 77 –80)

Re: Bencher Remuneration

It was moved by Mr. Copeland, seconded by Ms. Puccini that ex-officio benchers who participate in the business of the Law Society and elected benchers shall be remunerated for duties performed as benchers, effective from the date of the Convocation meeting in June 2003.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby spoke to the financial implications of the Equity & Aboriginal Affairs Committee Report on Bencher Remuneration as set out in the Finance & Audit Committee Report.

A lengthy debate followed.

It was moved by Mr. Wright, seconded by Mr. Wilson that the issue of bencher remuneration be referred to an independent commission, similar to the commission that reviews compensation for judges with a mandate to review the existing research, to consult as appropriate and to report to Convocation on whether benchers should be remunerated and, if so, for what work and at what rate and to suggest a process for periodic review of the recommendations in the report.

The Treasurer ruled the Wright/Wilson motion out of order.

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:10 P.M. AND RECONVENED AT 2:30 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Bindman, Bobesich, Boyd, Campion, Carey, Carpenter-Gunn, Cass, Chahbar (by telephone), Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Ducharme, Epstein, Feinstein, Finkelstein, Finlayson, Go, Gottlieb, Harris, Hunter, Laskin, Lawrence, Legge, MacKenzie, Marrocco, Millar, Minor Mulligan, Murray, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Ruby, Simpson, Swaye, Topp (by telephone), White, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE DEBATE ON BENCHER REMUNERATION

The debate on bencher remuneration continued.

The Copeland/Puccini motion was voted on and adopted.

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Bindman	For
Bobesich	For
Campion	Against
Carey	For
Carpenter-Gunn	For
Chahbar	Against
Cherniak	Against
Coffey	Against
Copeland	For
Crowe	For
Curtis	For
Diamond	For
Ducharme	Against
Epstein	Against
Feinstein	For
Finkelstein	Against
Finlayson	Against
Go	For
Gottlieb	For
Harris	For
Hunter	Against
Laskin	For
Legge	Against
MacKenzie	Against
Marrocco	Against
Minor	For
Mulligan	For
Murray	For
Ortved	Against
Pilkington	Against
Porter	Against
Potter	For
Puccini	For
Robins	Against
Ruby	Against
Simpson	For
Swaye	Against
Topp	Against
White	For

Wilson	For
Wright	Against

Vote: 22 For; 21 Against

Convocation took a brief recess and continued with the report on bencher remuneration.

The Treasurer called a special meeting of Convocation to be held on February 13, 2003 to debate the balance of the report on bencher remuneration.

A motion to challenge the Treasurer's ruling to adjourn to February 13th was brought by Mr. Gottlieb and seconded by Mr. Aaron.

The motion was voted on and lost.

The Treasurer thanked Messrs. Hunter and Lawrence, Mr. Jim Varro and the Emerging Issues Committee for their representations on behalf of the Law Society of Upper Canada before the U.S. Securities and Exchange Commission. He advised that the SEC had responded positively to the Law Society's concerns about the Sarbanes-Oxley Act of 2002.

EMERGING ISSUES COMMITTEE REPORT - For Information Only

Mandate of Working Group Lawyers Role in Corporate Governance
Submission to U.S. Securities and Exchange Commission

Emerging Issues Committee
January 23, 2003

Report to Convocation

Purposes of Report: Information

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

REPORT OF THE WORKING GROUP ON THE

LAWYER'S ROLE IN CORPORATE GOVERNANCE

MANDATE OF THE WORKING GROUP

1. At its October 30, 2002 meeting, following the Treasurer's direction, the Emerging Issues Committee ("the Committee") agreed to form a working group to examine the lawyer's role in corporate governance. This issue found its genesis in the review of issues relating to the Ontario Securities Commission's (OSC) inquiry of the Law Society on the possibility of regulations for lawyers appearing before the OSC, similar to the rules of the U.S. Securities and Exchange Commission required under the *Sarbanes-Oxley Act of 2002*.

2. At its November 20, 2002 meeting, the Committee determined that the working group's focus should be on the lawyer's role in corporate governance as that role relates to the Society's sphere of influence. To that end, the following mandate was adopted for the working group:

> To identify for the Committee the issues of corporate governance that relate to the lawyer's professional and ethical responsibilities as professional advisors to corporate clients, to determine if a gap exists in the Society's guidance to such members in light of the identified issues, and to develop means to address such gaps through specific solutions that fall within the Society's jurisdiction. Part of this work will involve monitoring developments in the area of corporate governance that impact on the legal profession and framing responses, as appropriate, for review by the Committee, in consultation with or with the assistance of other relevant Law Society committees.

CURRENT/PROPOSED ACTIVITIES OF THE WORKING GROUP

Submission to the U.S. Securities and Exchange Commission

3. The first project undertaken by the working group[1] was preparing a submission to the U.S. Securities and Exchange Commission ("the Commission"). On July 30, 2002, the United States' *Sarbanes-Oxley Act of 2002* became law. Section 307 of the Act requires the Commission to make rules governing the conduct of lawyers who practice before the Commission. On November 21, 2002, the Commission released its "Proposed Rule: Implementation Of Standards Of Professional Conduct For Attorneys" ("the proposed rules"). The proposed rules not only apply to American lawyers but foreign lawyers appearing and practicing before the Commission. The Commission requested comment from interested parties on the proposed rules by December 18, 2002.

4. The above issue was assigned to the Committee and through the Committee to the working group.

5. The working group prepared the submission for Convocation's review, and on December 6, 2002 Convocation approved the text and directed that it be sent forthwith to the Commission. The submission focuses on the Society's authority to regulate Ontario lawyers appearing before the Commission, the sufficiency of the Society's *Rules of Professional Conduct* as an instrument of regulation in respect of one particular requirement in the proposed rules (the "up-the-ladder" reporting requirement in circumstances in which the lawyer learns of corporate misfeasance), and concerns about the requirement for a lawyer's "noisy withdrawal" from representation and its impact on solicitor and client confidentiality.

Participation in the Commission's Roundtable on the Proposed Rules

6. With the assistance of the OSC, the Society received an invitation to participate in a roundtable discussion arranged by the Commission on the proposed rules. On December 17, 2002, the working group's chair, Allan Lawrence, attended the roundtable at the Commission's offices in Washington D.C. as the Society's representative, accompanied by the Committee's chair, George Hunter.

7. The following summary of the meeting is taken from a memorandum Mr. Lawrence provided to the Treasurer after the December 17 meeting:

> The roundtable was open to the public and was webcast. Chairman Pitt attended (only the first half of the afternoon) along with Commissioners Paul Atkins, Roel Campos and Harvey Goldschmid. While Mr. Pitt took part in the discussion, Mr. Campos and Mr. Goldschmid were the most active participants. Mr. Atkins did not participate in the discussion.

[1] The working group is chaired by Allan Lawrence and includes the Treasurer, Seymour Epstein, Gavin MacKenzie, Harvey Strosberg and non-benchers David S. Brennan, H. Garfield Emerson, L. David Jackson, Susan Wolburgh Jenah, John B. Laskin, Jon Levin, Richard Lococo, Philippe Tardif, Edward Waitzer and David A. Ward.

I was the only Canadian participant. Akira Kawamura, a Japanese lawyer from the Tokyo firm of Anderson Mōri, represented the Japanese Federation of Bar Associations. Stephen Revell of London, England represented the London-based International Bar Association (IBA). John Fish of Dublin represented the Council of the Bars and Law Societies of the European Union (CCBE). Alison Hook, a staff member, represented the Law Society of England and Wales. Thomas Joyce of the London-based but multi-national firm Freshfields Bruckhaus Deringer represented six similar firms. José Visoso Lomelin of Mexico City represented his Mexican firm of Franck, Galicia y Robles S.C. All seven (including the Society) submitted presentations in advance. As well, Robert Mundheim of the New York office of Shearman & Sterling representing the ABA Task Force on Corporate Responsibility, and Damon Silvers, representing the AFL/CIO pension funds, were active participants.

The Office of International Affairs of the SEC (Ethiopis Tafara, Acting Director) had earlier issued a series of detailed questions for the participants to focus upon, and Giovanni Prezioso, the SEC's general counsel, conducted the roundtable.

The representatives of "the foreign bar" focused their emphasis on the three points in the Society's brief, identified below with a summary of the major points raised during the roundtable:

The proposed definition of "appearing and practising" before the Commission.
The concern was that the definition was too broad and should be narrowed to those lawyers who prepared submitted documentation that is of a material and substantial nature (one participant characterized it as "meaningful involvement" with US securities law). The idea of a non-US lawyer acting through a US lawyer was also raised. The discussion evolved into arguments on the "safe harbour" concept (an example is the QLCC concept) and whether the Commission should require a certification by a single practitioner or small group of practitioners that he or she or they take responsibility for the veracity of the documentation and representations.

As a general comment, Robert Mundheim suggested that if the purpose of *Sarbanes-Oxley* is to get information about illegality to the highest level in the corporation, rather than focus on lawyers, the focus should be on articulating expectations as a matter of corporate responsibility to get the information to that level. He saw using the corporate governance route as more effective in meeting the legislation's goals than limiting the responsibility to lawyers.

The "up-the-ladder" reporting requirement.
While the Society appears to be the only regulator at the moment which has this requirement in its Rules and commentary, the Law Society of England and Wales by implication approved of the proposed requirement. But both John Fish (CCBE) and Stephen Revell (IBA) cautioned that this concept could be incompatible with the requirements in some civil law and European jurisdictions. Neither the Mexican nor Japanese representatives raised any objections.

The proposed requirement for a "noisy withdrawal".
It was apparent that the Commission had fully discussed this issue, knew the objections, but were persevering nevertheless in light of their perceived mandate in Section 307 of the *Sarbanes-Oxley Act of 2002* to prescribe standards of conduct for attorneys. Commissioner Campos wanted to emphasize the need to establish qualified legal compliance committees (QLCCs) by issuers. The IBA representative indicated, however, that in many European countries, there are structural and legal barriers to establishing this type of committee. The discussion included arguments for a "quiet withdrawal" with the reporting requirement onus to be on the company, not the lawyer, as contrasted to the proposed "noisy withdrawal" by the lawyer.

Chairman Pitt is being replaced but the new Chairman will not be sworn into office until after the Senate conducts hearings to confirm the appointment. These hearings may not be completed by January 26, 2002, the date the Commission must publish the final rule amendment.

The Commissioners welcomed the opportunity to hear our concerns. Whether the objections were effective in changing the proposals will only be known when the Commission formally announces its decision next January.

Our involvement was worthwhile. No other Canadian organization was an invited participant even though requests from other Canadian organizations, and organizations elsewhere, were made. We made out points, we helped to lead the discussions, and we should continue to be involved in discussions after the Commission publishes the new rule.

8. The Commission's rules are required by legislation to be adopted by January 26, 2003. The Committee through its working group will continue to monitor this development. The Committee was encouraged by the fact that some accommodation was made by the Commission for foreign issuers in respect of the application of the Commission's new auditor independence rules.[2]

New Activities of the Working Group

9. The working group plans to consider the following questions:
   a. what specific standards of conduct are expected of lawyers who advise corporate clients?
   b. what do the *Rules of Professional Conduct* say about lawyers in these roles?
   c. are there gaps in the Society's regulatory scheme in this area?
   d. more specifically, is the Society's ethical guidance sufficient to help lawyers in balancing their roles as (1) strategic partners in achieving the client's business goals and (2) providing professional judgment and counsel to management about the legal boundaries, mindful that the client is the corporation and its shareholders?
   e. is there a competence gap?
   f. what are the key developments in Canada and abroad that are impacting or may impact on lawyers as advisors to corporate clients?

10. An initial task of the working group will be to review the *Rules of Professional Conduct* and determine what changes, if any, are required to the Rules to ensure that sufficient guidance is provided to lawyers who act as legal advisors to private or public corporations.

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Report of the Finance & Audit Committee for approval by Convocation.

Finance and Audit Committee
January 9, 2003

Report to Convocation

[2] The Commission issued a proposal that would enable non-management employees to serve on audit committees of foreign issuers even though they would not be deemed independent under United States securities laws.

Purpose of Report: *Decision*
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 January 9, 2003. Committee members in attendance were: Ruby C. (c), Crowe M. (vc), Epstein S. (vc), Cass R., Chahbar A., Coffey A., Diamond G, Divinsky P., Lawrence A., MacKenzie G., Porter J., Topp R., Wright B.. Other benchers in attendance were Krishna V. (Treasurer), Carey T., Copeland P., Potter J., Puccini H., Wilson R.. Staff attending were Heins M., Tysall W., Corrick K., Grady F., Qahawish Y., Cawse A..

2. The Committee is reporting on the following matters:

Decision

X Financial Information Systems Capital Expenditure

Information

X Financial Implications of the Equity and Aboriginal Affairs Committee Report on Bencher Remuneration
X Market Research on the Delivery of Legal Information
X Audit Committee
X Benchers' Festive Party

FOR DECISION

FINANCIAL INFORMATION SYSTEMS CAPITAL EXPENDITURE

3. The Committee reviewed a memorandum (page 8) summarising a proposal for the acquisition of Project Accounting and Purchasing Management modules to supplement the current Infinium Financial Management modules, as well as reporting software enhancements allowing better use of AS400 data. The attached memorandum estimates total costs of $435,000. Money for these enhancements is available from the Capital Fund.

4. A full report on the current status of the Law Society's financial information systems will be provided to the Committee at a future meeting.

The Committee recommends that Convocation approves the allocation of $435,000 from the Capital Fund for the acquisition and implementation of financial information system enhancements.

FOR INFORMATION

BENCHER REMUNERATION

5. The Committee reviewed the Report on Bencher Remuneration prepared by the Equity and Aboriginal Affairs Committee dated November 21, 2002.

6. Part of the Committee's mandate set by Convocation is "to review the plans for any expenditure arising during a financial year that was not included in the annual budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation." The Committee interprets this mandate as meaning that it is not merely to provide financial information to Convocation, but rather that it is to evaluate the costs of any proposal in light of the needs, values, goals and statutory mandate of the Law Society. It is to do all this while bearing in mind that other Committees of the Society have developed their own expertise and that appropriate deference should be given to the wisdom and experience of the Committee whenever a proposal emanates from a Committee.

7. The Committee notes that this item was not included in the 2003 budget. This sort of thing happens from time to time. No adverse inference should be drawn from it. But it does mean that at least six months of the expenditure or approximately half of it would have to be taken from the Reserve. The size of the Reserve was keenly discussed on a previous occasion by Convocation. This is exactly the kind of expenditure for which one has a reserve. But the Committee's notes that our budget was a difficult one to arrive at and cuts were made in a number of different aspects to make the overall cost of belonging to the Society affordable to our members.

8. However, it is the evaluative aspect of its responsibility that concerns the Committee most. In the Committee's view, the report needs further factual material and argument in order to command support in Convocation. Some of that material is factual and may be easily obtainable. Other parts need serious work, especially those which focus upon the complex question of whether paying Benchers would in fact increase diversity among the bench. Equally important, the Committee was of the view that other strategies C perhaps non-economic strategies C should be explored to see if other organizations have devised methods to deal with the vital issue of improved equity representation beyond remuneration.

9. Accordingly, we think it is premature at the present time to deal with this in Convocation and we are unable to recommend approval of the expenditure by Convocation.

10. We make these comments keenly aware of the disappointment this causes to those who have fought hard for this proposal. But we certainly do not foreclose consideration of it or another form of it in the future and we are very grateful to Paul Copeland, Helene Puccini, Judith Potter and Tom Carey who attended the Committee meeting to assist us in understanding the proposal.

DELIVERY OF LEGAL INFORMATION

11. The Committee reviewed a status report (attached page 25) from the working group examining the delivery of legal information through the Great Library, LibraryCo Inc. and CanLII. The report includes the budgeted expenditure of approximately $48,000 for market research on library services.

AUDIT COMMITTEE

12. At Convocation in November 2002 a motion "that an independent Audit Committee consisting of non-bencher experts be established to advise Convocation as required and to report to Convocation annually" was referred to the Finance and Audit Committee. The Committee reviewed a memorandum on the role of

the Audit Committee within the Law Society's governance structure (page 27). Appendix 1 of the memorandum sets out the current Audit Committee Charter and Appendix 2 of the memorandum provides a summary of research into the issues and recent developments regarding the role of Audit Committees.

13. It can be seen that the mandate of the Audit Committee is focused on oversight C but not management C of financial statements, certain matters of financial consequence, and the maintenance of an effective system of internal control. This is very distinct from the work of the Finance Committee. Members of the Audit Committee agreed that they gained insight and effectiveness by being members of the Finance Committee and, coincidentally, thought that their Finance Committee role benefitted from their exposure to the Audit Committee. But the Audit Committee must, of necessity, remain small in order to function effectively. It would not be practical to have all members of the Finance Committee on the Audit Committee.

14. Moreover, the expertise required for an Audit Committee is formidable. We believe that we have presently achieved the appropriate level of expertise. One member is a C.A. as well as a lawyer, one member has an extensive history in business including very large corporations, one member has a long history with government as a member of Cabinet with concern for expenditures and controls, and another member C a lay bencher C has for the past ten years helped run a large city as a member of its council. Moreover, they have available to them when required the facilities and information of the auditor appointed by the Law Society of Upper Canada.

15. The Committee was of the view that the scope of the Audit Committee's responsibility is appropriate and fulfills that obligation effectively at present. When we compare our functioning to that of other organizations, it is apparent that we meet the 'best practices' standard in every significant aspect. We are far ahead of most organizations with any similarity at all to us.

16. We do not think it advisable to attempt to introduce the Law Society, a not-for-profit organization, to measures that are appropriate to competitive commercial organizations within the for-profit sector. These corporations can often be controlled by one person or group who appoint the Board of Directors or control them, and whose motive for dishonesty or impropriety might be personal enrichment. None of this is possible at the Law Society. Each Bencher has a right to be here independent of any other Bencher; their tenure cannot be threatened. The opportunities for financial impropriety by the governing body and its members is low. Thus, the alternative of appointing external members of the Audit Committee is unnecessary. If retained, as mere officials, or mere appointees, the necessary independence would not approach that of a Bencher. And there are problems associated with having non-Benchers appropriately represented in Convocation.

17. In short, we do not think that the present system is broken and we do not think any general review is required.

18. Shortly after Mr. Krishna became Treasurer, the Finance Committee moved to improve the independence of the Chief Financial Officer. A letter was tabled before Convocation making it clear that when appropriate the Chief Financial Officer has access to various figures at the Law Society to present information that the Chief Financial Officer thinks is required. The Committee thought that this issue, together with the related question of whether our system of internal control is as effective as it might be, should be referred to the Audit Committee for investigation. When that report is received, it will be forwarded to Convocation together with the views of the Finance Committee as a whole.

19. The Committee considered whether there was any advantage to having the Chair of the Audit Committee report directly to Convocation. Clearly this could be done. But the Committee was of the view there was no need for it. The possibility that not only the Chair but all the members of the Audit Committee would decide that some important matter should be concealed from Convocation, given that each was an independent Bencher, was quite remote.

20. The current Audit Committee members are Messrs. Wright (c), Finkelstein (v-c), White (v-c), Chahbar and Lawrence.

21. The Committee noted that all Benchers were independent of management as defined by all regulatory definitions, and that there was sufficient financial expertise amongst the pool of benchers. Under the mandate of the current Audit Committee external experts beyond the auditors could be retained when required.

22. To optimise monitoring and compliance the following issues were referred to the Audit Committee:
    a. An assessment of the adequacy of existing financial control mechanisms.
    b. An assessment of the adequacy of existing financial reporting mechanisms, including the ability of the Chief Financial Officer to communicate independently with the Audit Committee and Convocation.
    c. An assessment of whether a whistleblowing mechanism is required.

BENCHERS' FESTIVE PARTY

23. At Convocation in November 2002 a question on the costs of the Benchers' Festive Party was referred to the Finance and Audit Committee. A memorandum on the 2002 costs is attached (page 40).

MEMORANDUM

To: Finance and Audit Committee

From: Wendy Tysall

Date January 9, 2003

Re: 2003 FINANCIAL INFORMATION SYSTEMS CAPITAL EXPENDITURE

BACKGROUND

The Society is committed to the IBM AS400 platform for the deployment of its major information systems. The Finance Department utilizes AS400 compatible financial software (Infinium) as its system of choice. The department is seeking the approval of Convocation to finance the expansion of its financial systems capabilities to support the monitoring of the Society's core business and improve its financial reporting capabilities.

The department proposes the acquisition of two additional accounting modules to supplement the current Infinium Financial Management modules. These are Project Accounting and Purchase Management. In addition the Department proposes the acquisition of an enhanced reporting tool to allow for the collection of data from a variety of AS400 based sources.

This proposal, in its selection of additional Infinium modules, is consistent with the Society's long term commitment to the AS400 platform. Infinium is a premiere AS400 based financial management system and these additional modules represent incremental changes to our financial management systems. These modules are critical for improved financial controls, enhanced financial reporting and the ability to support the tracking of complaints processes over multiple years.

It is expected that these additions to our financial systems would be fully functional within six months from the acquisition of the software. The financial risks associated with the implementation are minimal as these additions represent add-on modules to our core general ledger system. These systems have been operational for ten years and the addition of new modules will have the same look and feel as the current applications. This will minimize implementation and training time and costs. The project will be managed in house and our implementation partner will have well defined deliverables and timelines. The actual costs of the project include approximately $196,000 for software and $200,000 for implementation and training and $39,000 for maintenance for a total of $435,000.

These costs are current estimates and if final negotiated costs vary by more than 20% we will report back to the Committee for information.

FUNDING

The 2003 Capital Budget raised $700,000 for information technology projects. The budget as presented detailed $355,000 in technology spending. The department proposes the balance of $345,000 be utilized to fund this project. The balance of the funding required (approximately $90,000) will come from the unapplied balance in the Capital Fund at the end of 2002.

RECOMMENDATION

That: The Finance and Audit Committee recommend to Convocation the allocation of $435,000 from the Capital Fund for the acquisition and implementation of financial information system enhancements.

The Law Society of Upper Canada | Barreau du Haut-Canada

Financial Systems Management Strategy

Author: Fred Grady/Paul Laginski/Ray White
Role: Finance & Administration
Date: January 13, 2002
Version Number: Convocation V0.2

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Introduction

1.1 Purpose

This document is to provide a strategic direction for improvements to the Law Society's financial information systems, systems of financial control and financial reporting.

2. Overview

The Law Society of Upper Canada has been in a state of reorganization since 1999. The Society under went a major restructuring known as Project 200 over the period 1998 to 2000. This restructuring was intended to integrate the Society's myriad of data sources into a single enterprise wide database, upon which the Society's core computer applications would be built. The project ultimately proved unsuccessful and the implementation of the enterprise system was halted in late 2000 and ultimately terminated in the spring of 2001.

Over the period 1998 – 2000 systems development on the AS400 was suspended as part of Project 200 with the intended decommission of the platform. Consequently the Finance Department did not pursue additional functionality available for its AS400 accounting systems (Infinium) or development of an integrated billing system. In fact, the Society was so committed to the enterprise model, that release upgrades and annual maintenance on Infinium were allowed to lapse and member billing for 2001 was scheduled for production on the new enterprise solution.

With a halt to Project 200 and a strategic organization-wide recommitment to the AS400, the Finance Department spent most of 2001 and a significant portion of 2002 utilising the resources of the IS Department (IS) to upgrade our existing Infinium software to current releases and developing and implementing an interim solution to membership billing.

Since the summer of 2001, the Society has continued to restructure using an incremental approach. New senior managers with new accountabilities have been put in place to manage the Society's core functions. With these new accountabilities has come a new demand for information that is not readily attainable with the systems currently at the disposal of the Finance Department. The current financial applications were adequate to meet the information needs of the Society in the mid 90's but, with technological advances, increased expectations for immediate, accurate and relevant information are inadequate to respond to the challenges faced in 2003.

Recent accounting scandals, primarily in the USA, have increased the visibility and responsibility of directors in their oversight role of the financial operations of the organization. This has led Convocation to explore the role and responsibility of the Audit Committee to ensure itself that adequate and appropriate controls exist within the Society's financial operations to satisfy Convocation that it can rely on the financial information presented to it. The Society's recent good financial health has Convocation seeking greater assurance as to the accuracy of predicted results, to ensure that members are being billed appropriately with the adoption of the annual budget.

The Society will soon embark on a major, multi-year capital plan to renovate the education wing and restore the historic south wing, including the upgrade of its major mechanical systems. As part of its continuing restructuring process, the Society is preparing for the implementation of a regulatory case management system, resident on the AS400, which will track files as they flow through the regulatory process. These files are likely to pass through multiple departments over multiple fiscal periods. As an adjunct to the case management system, the Society's financial information systems will track the cost of regulatory files as they flow through its regulatory processes. The existing financial systems of the Society are incapable of tracking these types of operational expenditures and capital projects without involving significant manual intervention and source data manipulation.

To meet this increasing demand for relevant and timely information the Finance Department has reviewed its existing financial information systems with a view to identifying their strengths, deficiencies and opportunities for enhancement or replacement. This document is intended to provide a strategic direction for the department and its financial information systems, consistent with the Society's commitment to the AS400 as its primary business application platform.

The AS400 system sits securely behind firewalls and houses the Society's information about Members, billings, accounting records and by late 2003, complete Student data. The AS400, which is built for fault-tolerance, security and database integration, is the Society's focal point for information storage, retrieval and integration. All other systems, e.g., e-mail messaging, file and print services, are really only transport layers and services. Critical data, whether transactional or accounting, will be stored in the integrated data systems of the AS400.

To be effective, the various systems need to talk to each other. During the past year, stand-alone and "at risk" databases on PCs have been brought into the AS/400 for integration and integrity purposes. Specialist Certification, and CLE systems are examples of this, with both residing now on the AS400. The telephony-based LRS system is already served by AS400 applications and, with the addition of a LRS web component in 2003, this will also be integrated with existing databases.

With "information supply" points rapidly approaching full coverage, the challenge is to build the links to integrate this information further, whether it is transactional or accounting. The proposed enhancement of the Society's Infinium financial applications, with a common structure and set of interfaces, present a single source for integration to business systems, such as the member database.

In brief, the AS400 computing platform is secure, reliable, battle-hardened, and the fully integrated environment in which to develop and capitalize upon data relationships in the Society and its various lines of business.

3. The Society's Strategic Direction

At the Society's most recent Town Hall meeting in September the CEO outlined the current successes of the Society and his vision for its future direction. Specifically, the Law Society of Upper Canada has set as its goal the distinction of becoming "best in class" as a leading regulatory organization. Going forward, the focus of the Law Society will be in four strategic areas:

- Professional regulation
- Professional development and competence
- Policy development
- Equity and access to justice

Over the next 18 months the Society will focus on two dominant areas:

- Professional regulation – to address issues of timeliness, fairness, transparency and effectiveness of the complaints processing throughout the entire process from the time a complaint comes into the Law Society to the final outcome of each matter, including divisional issues of enhanced support, training and expertise.

- Professional development and competence – to continue to focus on the true needs of the profession, from acceptable practices through to excellence in practice, and to provide learning and information supports to assist members to meet competence goals.

3.1 Supporting the Society's Strategic Direction

The Society has entered a new era of accountability and responsibility. It has set a goal of being best in class. The Finance Department, as a key support to the achievement of this goal, is dedicated to providing information to its users in a timely, meaningful and user-friendly manner. In an era of accountability, the tracking of financial results is an important component of assessing accountabilities.

The Finance Department has ascertained that the existing financial management reporting will be insufficient to meet the needs of an organization focused on accountability. The Department is responsible for the provision of financial information to managers who are accountable for the delivery and outcomes of the Society's core programs and services. The Department takes this responsibility seriously and after discussions with senior managers it is apparent that the ability of the present financial systems to meet the needs of the Regulatory and Professional Development & Competency divisions is deficient. For example, management reporting of the CLE function is unable to produce profit and loss information related to individual programs. Similarly, determining the costs associated with specific lengthy complaints/discipline matters is difficult if not impossible to obtain. In addition the Department is under increased pressure to provide improved financial reports to Convocation that accurately predict the end of year financial position of the Society.

A less immediate but equally significant issue will be the need to address the Society's multiple billing system. It is the desire of the Finance Department, supported by Information Systems, to move to one billing platform employing an integrated billing system extracting information from a single member database. As the Information Systems Department moves forward with the integration of the member database, the ability to develop a billing system that is driven from a single data source will be a reality.
The development of such a system will reduce the need for annual intervention of IS resources in multiple billing processes. This will ultimately lead to improved, more accurate billing and the freeing of IS resources for dedication to the core business processes of the Society.

4. Financial Management Systems Current State

4.1 AS400 Platform

The Society has utilized the IBM AS400 series server for over a decade. As part of Project 200, the AS400 was to be decommissioned and the Society was to move its core applications to an Oracle-based platform. This project was ultimately terminated and the Society made a strategic commitment to the AS400 as its platform of choice for servicing the core business functions of the Society. The AS400 environment has been extremely stable and robust along with having the scalability for changing business conditions. The major financial systems of the Society now reside on the AS400. The Society deployed Infinium Financial Management software in 1992 and, beyond version upgrades, has made no modifications or additions to the financial modules available from Infinium to meet changing business requirements.

4.2 Infinium Financial Management

Currently the finance applications include General Ledger, Payables Ledger and Accounts Receivable. These three modules have been in use since 1992 and were recently upgraded to the most current releases. These applications have formed the backbone of the Society's financial systems for the past ten years. As previously discussed, these applications were to be replaced by Oracle-based financial applications as part of Project 200.

The Infinium Financial Management software is a modular package that can be expanded as the business needs of the organization change. The General Ledger acts as a repository of summary information contained in various sub-systems or modules. This has implications for financial reporting, as the basic Infinium tool for the production of financial reports, know as Report Writer, is able to extract information from the general ledger only. This report writing tool is adequate for reporting on department budgets on a year-to-date basis comparing budget to actual but is inadequate to report on operations that are multi-departmental or span multiple fiscal periods. This report deficiency will have serious implications with the role out of the regulatory case management system and the regulatory division attempts to track costs associated with individual files through the entire complaints/discipline process.

For the role out of the regulatory case management system to be successful, this reporting deficiency must be addressed by the Society if there is any intention of monitoring the ultimate cost of individual complaints from cradle to grave.

4.3 Payroll

The Law Society uses Ceridian payroll software for the production of bi-weekly payroll and associated payroll services. Information is passed between Ceridian and Infinium's General Ledger on a regular basis. The Law Society has recently expanded the use of Ceridian services to include a Human Resources Information Services application.

Payroll data produced from the Ceridian payroll application is recorded into the general ledger using an interface developed and maintained by the IS group. Payroll reports generated for the use of departmental managers are also developed and maintained by the IS group. The current service from Ceridian meets the requirements of the Society for the production of bi-weekly payroll in a cost effective way. However, the Finance Department has limited reporting capabilities and this issue should be considered as part of an overall financial reporting strategy.

4.4 Purchasing

The Department currently employs Purchasing Plus, a PC based, stand alone application for the production of purchase orders and goods receipting. It is not integrated with Infinium Financial Management products and has very limited reporting functionality. The existing system, beyond printing purchase orders, provides little in the way of value added service to the Department or the Society. Since Purchasing Plus is not integrated with Infinium a host of inefficiencies and deficiencies exist. For example both Infinium Payables Ledger and Purchasing Plus require a vendor master file that is maintained separately in each system. This creates needless duplication as two entirely separate master files are maintained for the same information.

The relieving of commitments upon the payment of an invoice and the tracking of invoice payments against outstanding purchase orders is not available unless the Department was to duplicate invoice entry and payment in Purchasing Plus.

The limitations of the Infinium Report Writer tool for financial reporting has a significant impact on the reporting and tracking of outstanding commitments of the Society. The fact that Purchasing Plus is not integrated with Infinium prevents integrated reporting of actual expenditures plus outstanding commitments against approved budgets. This is a deficiency that should be addressed, both from a budgetary control perspective and to enhance the ability of managers, who are ultimately accountable, to monitor these budgets.

Finally, the purchasing system, as a stand alone PC based product is extremely limited in its ability to "grow" with the organization's changing business requirements. The system does not have the capacity to provide on-line requisitioning for users. All requisitions are paper based and only the purchasing staff can generate purchase orders. Its lack of integration means that information entered into the purchasing system such as vendor, general ledger distribution and amount must all be re-entered into Infinium Payables Ledger at the time of invoice payment. Once again, this creates needless and wasteful duplication of effort.

The replacement of the current purchasing software is of critical importance if the Finance Department is to provide value added service in support of the Society's strategic direction. The current system is limited in scope and functionality, lacks integration and is incapable of supporting an on-line requisition and payment approval system.

4.5 Billing Systems (Member, Student, LRS, Specialist Certification, CLE)

Currently there are five different billing platforms to allow for periodic billing for the above noted revenue sources. These platforms also have different databases, some being PC based. The different billing platforms also have different reporting functionality. All information is updated in the Infinium Accounts Receivable database utilizing different formats and different interface programs. Different platforms were developed to accommodate the varying requirements of each revenue source.

These systems currently require significant intervention by IS group whenever bills are to be generated. The lack of a single data source for member information makes the billing of multiple fees on a single invoice impossible. For example, the billing a member for participation in the Lawyer Referral Service and designation as a Specialist could not be billed on a single invoice. These billings are performed by separate systems, using separate customer master files maintained in inconsistent formats. This creates duplication of effort, increased time and cost spent on maintaining separate membership data files and increases the probability of error as information on members is maintained in multiple data bases and modified by a multitude of individuals with access to varying information on a member.

As IS makes strides in the development and production of single membership data base, the practicality of an integrated billing system using member data from a single source will be a reality. The Finance Department believes that consolidation of all billing activities within a single system will improve the quality and timeliness of billings, provide better information to internal users and ultimately provide an improved quality of service to members of the Law Society in a more cost effective manner.

While the Finance Department believes the development of an integrated billing system will enhance service, improve internal controls, lower overall operating costs and facilitate the coordination of various billings, it acknowledges that the development of such a system would strain the IS resources of the Society. In addition, the project would be long, and require a major financial commitment by the Society. The Department is not proposing, at this time, to proceed with the development of this system. The Department believes however, that this system will serve the best interests of the Society and should be considered a priority for development at such time as the availability of the Society's technical and financial resources permit. The Department will re-examine the feasibility of this project as part of the 2004 budget process.

5. Addressing the Issues

5.1 AS400 Platform

Due to the qualities of the AS400 the organization has concluded that this will be the environment of choice moving forward. The Finance Department supports the direction that core business applications reside on the AS400. Consequently the Department does not support the replacement of AS400 based financial software, as it believes the ability to extract non-financial data from AS400 libraries to match with AS400 based financial information will provide enhanced opportunities for reporting on operations as financial results are linked to operational outputs.

5.2 Infinium Financial Management

Infinium Financial Management is a premier AS400 based financial management product utilized extensively by major corporate customers. The Society's current modules, as previously mentioned, have been allowed to languish at the minimum level possible to support the Society's operations. The Finance Department supports the continued use of Infinium with additional functionality being provided by the addition of two modules the Department believes are key to supporting the operations of the Society. The Department is not supportive of moving away from Infinium for the following reasons. First the product is a premier AS400 product and the Department supports the strategic direction of the Society in its choice of the AS400 for deployment of major applications.

Second, the addition of two modules to supplement existing Infinium applications is consistent with the incremental change philosophy adopted by the CEO in his efforts to restructure the Society's operations. The implementation of additional Infinium modules would require the least change in the Department, minimize training and implementation costs as users are familiar with other Infinium products and be the least disruptive to operations as modules are introduced and integrated into the existing Infinium Financial Management modules.

Third, conversion issues and attendant costs. The conversion of data from the current Infinium modules to any replacement financial system would be time consuming and extremely expensive and prone to errors. The prospect of data conversion and its potential risks, are in the opinion of the Department, sufficient in their own right to recommend the continued use of Infinium.

Finally, the Department believes that Infinium, with the addition of two modules, supported by an enhanced report writing and data extraction tool, has the capability to service the Society's needs well into the foreseeable future.

5.3 Payroll

Currently the services provided by Ceridian are satisfactory and meet the needs of the Law Society. The Department is satisfied that this service is sufficient to support its need for payroll administration services. The Department will continue to assess the service and make recommendations on the future direction of payroll administration after its immediate and medium-term objectives have been achieved.

5.4 Purchasing

Purchasing Plus, the stand alone application currently in use should be replaced. It lacks any of the functionality necessary to act as a value added product for the operations of the Law Society. For this reason, the Department supports the acquisition of the Infinium Purchase Management to replace the current Purchasing Plus software. This product will provide the functionality necessary to support the Society's operations, provide enhanced financial control, opportunities for automating the requisitioning and payment approvals process and reduce costly duplication of effort and the maintenance of two identical vendor master files.

5.5 Financial Reporting

The primary tool currently employed for the generation of financial reports is Infinium Report Writer, acquired as part of the basic Infinium General Ledger Module. The product is only able to extract information directly from the general ledger. Information stored in subsidiary modules and other AS400 databases, such as Purchasing Manager is inaccessible to Infinium Report Writer. In addition, the product is written in PL1 and has for all intents and purposes reached the end of its useful life. It is entirely adequate for providing routine reports from data in the general ledger but is incapable of extracting and using data from subsidiary systems. Report Writer would be unable to include information from the Purchase Management module in financial reports to provide information on outstanding commitments in addition to actual expenditures.

Therefore, the Department recommends the sourcing and acquisition of a viable financial reporting tool that will extract information from any library stored on the AS400. The product should be easily installed, user friendly and have built in controls to restrict access to information to those users approved to view such information. End-users

should have rapid access to centralized information, enabling them to create and run queries as scheduled or on an ad hoc basis. It should allow end-users to pull up reports whenever they need via a browser interface while efficiently utilizing system resources. Repetitive tasks such as report processing and delivery should be automated. The process of sharing information with remote workers and other user departments should be simplified. Ideally the product should be able grow and adapt to the changing business of the Society and if possible be able to extract and report on non-financial data stored on the AS400. All of these options should be available immediately to improve the current management reporting process.

The Department also requires the ability to allocate costs for capital and non-capital projects from inception to completion. For example, the new regulatory case management system will require the tracking of costs over several fiscal years and pass between multiple departments and divisions. Along with tracking of significant expenditures over multiple years the Department requires real time, automated internal controls with regards to compliance of expenditures against budget. Allocation of overhead costs among multiple projects will also be required. Standardized project accounting reporting must be available to allow for reporting project costs from start to finish while encompassing strong internal controls.

6. Vendor Selection Process

As a result of the release of the Information Systems – 2003 Work Plan and Requirements on September 6, 2002 by IS Director Erik Sorenson the Finance Department deemed it necessary to rationalize its infrastructure and programmes in place and articulate a financial architecture and integration strategy that could be supported corporately.

To assist in this process, the consulting services of Synthasys were utilized. Synthasys is a full service systems consulting group that has expertise in Infinium applications and development of business requirements and technological strategies for a wide range of North American corporations. The Law Society had an existing business relationship with Synthasys and this relationship and knowledge of our operations made this a natural fit.

Synthasys helped in the development of our short and long term strategy and utilized its extensive business contacts to assist us in evaluating the various software solutions available that fit our strategic direction.

Early on in this process, IS Director Erik Sorenson was engaged to ensure that our strategy and direction was consistent with the overall corporate plan. With this support the Controller, Manager of Finance and Synthasys Partner, Joe DiBartolomeo undertook to develop the strategy, direction and recommendations contained herein.

We have undergone a thorough and extensive vendor selection process for both software and implementation based on relationship fit, quality of work and cost. This included face to face meetings with vendors to make sure they understood our business requirements, on site demonstrations of the product and contacting customer references for both non-profit and profit organizations.

On site demonstrations were attended by a large contingent of staff at both the operational and senior management level. This approach allowed for the concerns and views of staff across the organization to be considered and addressed while at the same time included these individuals in the decision making process.

Utilizing this approach proved fruitful because the demonstrations were enthusiastically attended and supported by all in attendance. In particular the Directors of Professional Development & Competence, Regulation and Client Service all saw the immediate benefits of these application enhancements as well as additional future uses for their own areas of responsibility and the corporation at large. The Director of IS has also endorsed our plan.

The software vendors selected are Infinium (Project Accounting, Purchase Management) and SPSS (Showcase - Management reporting tool). The following Recommendation section of this document details costs with respect to these software license fees and our implementation strategy. Each component is also discussed in further detail.

7. Recommendations

7.1 Acquisition of Additional Infinium Modules

7.1.1 Project Accounting

To proactively facilitate the allocation of costs for capital and non-capital projects from inception to completion the purchase of the Infinium "Project Accounting" module is recommended. As described previously, the roll out of the regulatory case management system will require the tracking of costs in a manner that currently is impossible with existing accounting software. Regulatory files will potentially remain open over several fiscal years and pass between multiple departments and divisions. Project Accounting provides the functionality to track this type of multi-year cross-departmental activity. This ability is critical for the pending rollout of the Regulatory case management application and the renovation of the Education wing. Both of these initiatives will require the tracking of significant expenditure over multiple years. Project Accounting offers inherent flexibility allowing for growth and adaptation to changing business conditions. It also allows for the identification and allocation of overhead costs among multiple projects. Project Accounting offers tight integration with Infinium Financial Management and Infinium Purchase Management.

This module, combined with enhanced reporting tools, will also satisfy our requirement to produce profit and loss statements as requested by the Professional Development and Competency Department.

7.1.2 Purchase Management

To ensure a tight level of integration with other Infinium modules, we would recommend purchasing Infinium Purchase Management. Purchase Management provides the functionality to track outstanding commitments against appropriate budgets, reduces needless duplication in vendor file maintenance, provides for greater budgetary control and integration between the procurement and payment functions of the Law Society.

Functionality is available to automate the purchasing process from the online initiating of purchase orders up to and including vendor payment.

7.1.3 Timelines

The Society had gone through an extensive vendor selection process for both software and implementation based on relationship fit, quality of work and cost. This included contacting customer references for both non-profit and profit organizations. The software vendors selected are Infinium (Project Accounting, Purchase Management) and SPSS (Showcase - Management reporting tool). The following costs with regards to software license fees are based on initial negotiations with both vendors. We would expect final negotiations to occur very soon after "go ahead" approval is given.

As part of our implementation strategy we would be engaging an implementation partner to assist in the tasks and deliverables required to ensure a timely, on budget and successful rollout. The implementation partner's role may include software installation, configuration and training. The Society will strive to ensure that any activity that can be performed by in-house resources will be not assigned to the implementation partner. Based on the RFP's received by the Society our vendor selection has been completed and we have chosen Synthasys Management Consultants. Other implementation partners costs, such as Infinium were 20% to 30% above Synthasys. We are confident in the choice of Synthasys and will continue to engage them in future projects.

The purchase and implementation estimated timelines are due to the following reasons:

1) The Showcase management reporting software implementation is not difficult and allows for quick results and benefits to users;
2) Finance would like to have the Showcase reporting tool available for Q1 03. This would give end-users rapid access to the current data, enabling them to create and run queries as scheduled or on an ad hoc basis. Current reporting would have increased flexibility and timeliness. However, Showcase would not be fully utilized until both Project Accounting and Purchase Management had been implemented. During this time frame we would be using Showcase on a daily basis and users would become "experts" in the functionality;
3) Estimated implementation timelines for Infinium Project Accounting and Purchase Management is ninety days. Finance would like to have theses additional modules available for Q2 03.

Costs are based on deliverables being met. We may expect from an implementation standpoint that scope change or slippage may occur. Costs will be aggressively monitored and any changes to the project baseline will need appropriate approval.

The following are estimated timelines associated with the purchase and implementation of the additional Infinium modules:

Task:	# Of Days:	Completion Date
1) Software Purchase		01/30/03
2) Business Requirements		
3) Vendor Statement of Work - Synthasys		02/20/03
4) Implementation – with Synthasys		
5) Training – concurrent with implementation		02/27/03
6) Go Live		
	90	05/23/03
	10	05/23/03
Note: *Timelines are projected based on purchase date of software*		05/30/03

7.1.4 Enhanced Report Writing Tool

The existing tool utilized by the Society provided with Infinium General Ledger will not be adequate to support the financial reporting needs of the Society. The Department recommends the acquisition of a new tool to extract and report on data from current Infinium Modules as well as those recommended for purchase. The Department has considered several products including Cognos, Timeline and Showcase. The Department is recommending the acquisition of Showcase as a supplement to Infinium Report Writer to provide the enhanced reporting and control capabilities previously described.

7.1.5 Timelines

The following are estimated timelines associated with the purchase and implementation of the Showcase reporting tool:

Task:	# Of Days:	Completion Date
1) Software Purchase		01/30/03
2) Business Requirements		
3) Vendor Statement of Work - Synthasys		02/13/03
4) Implementation		
5) Training – concurrent with implementation		02/18/03
6) Go Live		
	8	02/28/03
	3	02/28/03
Note: Timelines are projected based on purchase date of software		03/03/03

8. Implementation Strategy

8.1 Strategy

The implementation strategy will use a project methodology and plans. These plans will include tasks and deliverable dates. As part of our implementation strategy we will be engaging an implementation partner to assist in the tasks and deliverables required to ensure a timely, on budget and successful rollout. The plans will be developed with our implementation partner, Synthasys. The Society will strive to ensure that any activity that can be performed by in-house resources will be not assigned to the implementation partner. There will also be plans put in place for knowledge transfer, application documentation, training and ongoing support. These plans will be developed with user input and be part of the overall project documentation.

LAW SOCIETY OF UPPER CANADA
DEPARTMENT OF FINANCE

TO: Wendy Tysall

FROM: Andrew Cawse

DATE: December 22, 2002

SUBJECT: Audit Committee

At Convocation in November 2002 a motion “that an independent Audit Committee consisting of non-bencher experts be established to advise Convocation as required and to report to Convocation annually” was referred to the Finance and Audit Committee. This memo raises issues for the Finance and Audit Committee to consider, describes the existing Audit Committee arrangements, provides some best practice information, and some practical issues to consider.

The Law Society is a not-for-profit organisation and the degree of risk associated with Law Society operations is relatively low compared to most other organisations even within the not-for-profit sector. Major revenues are predictable and collectible, salaries and wages comprise the major part of expenses etc. Unlike public corporations, our financial statements are seldom relied upon to make business or investment decisions. However organisations must not just have sufficient governance, they must be seen to have sufficient governance.

The Law Society essentially has five options for the future direction of its Audit Committee:

- Maintain the status quo,
- Adopt the November Convocation motion,
- Adopt the stringent private sector model,
- Adopt an Audit Committee role as recognized by best practices in the not-for profit sector,
- A hybrid of the last two, perhaps incorporating the Audit Committee as a committee within the Finance and Audit Committee with a common Chair.

The Charter of the current Audit Committee of the Law Society is attached as Appendix 1. The existing Charter already contains many of the best practice objectives which are discussed in Appendix 2. For instance non-bencher members are allowed, a level of financial literacy is required and the Committee responsibilities exceed the traditional Audit Committee model. However the Charter does not address the position and status of the Committee within the governance structure.

The current Audit Committee members are Messrs Wright (c), Finkelstein (vc), White (vc), Chahbar and Lawrence.

Some questions for the Finance and Audit Committee to consider:

A. Should we make the Audit Committee a standing committee of Convocation?
This will not only follow best practices of ensuring the Audit Committee is the cornerstone of financial oversight in assisting Convocation to fulfill its responsibilities. It will also increase internal assurance by facilitating the interrelationship between management, external auditor, Audit Committee and Convocation.

B. Should there be an obligation for all or some of the Committee members to be non-benchers?
An "unrelated director" is defined in corporate governance disclosure guidelines applicable to TSX listed issuers as "a director who is independent of management and is free from any interest and any business or other relationship which could, or could reasonably perceived to materially interfere with the director's ability to act with a view to the best interests of the corporation". Similar definitions for "independent directors" are discussed later in this memo.

C. Should there be an obligation for all or some of the Committee members to be experts or financial literates?
Following best practices it is Convocation's responsibility to define what is "financial literacy". This is explored in the "Audit Committee Expertise" section of Appendix 2.

D. How frequently should the Audit Committee report to Convocation?
At present the Audit Committee reports through the Finance and Audit Committee to Convocation quarterly on the three interim and then the annual financial statements. This appears to be the minimum requirement given the increasing importance placed on continuous disclosure and the expanding mandates of Audit Committees.

E. If the mandate of the Audit Committee is separated from the existing Finance and Audit Committee will the remaining Finance and Audit Committee mandate be sufficient to adequately fulfill the function of a committee of Convocation?

As discussed in Appendix 2 the main change to bring the Law Society's current Audit Committee arrangements in line with the for-profit sector's best practices would be to elevate the Audit Committee to a committee of Convocation. However this may have the effect of changing the governance structure as the Finance and Audit Committee's mandate may have to be refocused.

The current mandate of the Finance and Audit Committee is

(a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;

(b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;

(c) to recommend the appointment of the external auditor and to review the proposed audit scope, audit fees and the annual auditor's management letter;
(d) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and
(e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

Practical Considerations

Reducing or changing the role of the Finance and Audit Committee may have the further effect of changing the hierarchy of the Law Society's officers as under Section 17 of Bylaw 6 the Chair of Finance is second in line to the Treasurer.

An Audit Committee comprised only of non-benchers would result in a number of problems:

- The members of the Audit Committee would have problems being represented at Convocation. An extension of voting rights would be required to confer sufficient status and this would require an amendment to the *Law Society Act.*
- Convocation is ultimately responsible for the Financial Statements of the Law Society and would have difficulty asserting proper representation on a non-bencher Audit Committee to ensure that the Audit Committee has fulfilled its mandate. There would be an unnecessary disconnection with the processes and communications necessary for effective governance. There may be a real or perceived abdication of responsibilities arising from this disconnected delegation to non-benchers of a crucial stewardship role.
- The lack of direct access between Convocation and the Audit Committee, and a Committee composed of non benchers will lead to a lack of accountability.

By-law 9 would have to be amended to include the Audit Committee as a standing committee and if non-bencher members are attractive then the By-law 9 provision that standing committees comprise at least five benchers would have to be changed.

Non-bencher members of an Audit Committee will have a lack of accountability which is detrimental to the governance process. Non-bencher members of an Audit Committee would be a precedent for other committees to have non-bencher members. Non-bencher members are currently prohibited from committees, but not working groups.

External members of an Audit Committee would have to be remunerated. At a minimum rate of $250 / hour for quarterly meetings for five members including preparation the annual cost would be at least $25,000. Costs of supporting this form of Committee would increase. Resources to be placed at the disposal of the Committee would depend on the Committee's mandate and member's expertise.

An expansion of directors and officers insurance may be required.

The current Audit Committee should be given an opportunity to self assess it's responsibilities, abilities and usefulness.

If the Audit Committee is promoted to a standing Committee, the mandate of the Finance Committee would concentrate on the budget and assessing the resources available to programs. This evaluation role would be beneficial in assuring Convocation of the financial efficacy of programs and policies.

The existing Finance and Audit Committee is too large to fulfil the requirements of an Audit Committee. The size makes decision making difficult, the extreme range of expertise makes it difficult to focus on Charter responsibilities, and non-financial considerations may become excessively prominent in a large committee.

Most Audit Committee charters allow for the retention of internal or external advisors if insufficient skill sets are available among existing members to address a particular issue or as a resource to enhance effectiveness.

Sources

This memorandum was prepared from following sources: TSE, NYSE, OSC, SEC, Ontario and Canadian Chartered Accountants Institutes, large accounting firm educational materials, large law firm publications, executive discussion groups, federal government publications, other law society's and related companies. In addition we have consulted on governance with Doug Barrington, Vice Chair of our auditor, Deloitte and Touche LLP and used Deloitte's recently published book on Audit Committees, "Integrity in the Spotlight". Mr. Barrington is available to assist at a future Finance & Audit Committee meeting if required.

The Finance and Audit Committee is requested to discuss the role of the Audit Committee within the Society's governance structure.

Appendix 1

LAW SOCIETY OF UPPER CANADA
AUDIT COMMITTEE
CHARTER

Mission Statement

To enhance effectiveness in the oversight of financial reporting by optimising the quality, not just the acceptability of financial reports. To oversee the process of identifying, measuring and prioritizing business and financial reporting risks.

Membership Requirements

Under the Law Society's Governance Policies, the Audit Committee has been set up as a Working Group of the Finance and Audit Committee.

Members of the Audit Committee should be able to maintain an independent mind, and be financially literate, particularly in the area of not-for-profits and fund accounting.

Committee Structure

X The Audit Committee should comprise at least three members.
X A majority of members being physically or electronically present, constitutes a quorum for the purposes of the transaction of business.
X Committee members can be elected, non-elected or lay benchers or independents at the discretion of the Finance and Audit Committee.
X The Committee Chair is to be a Bencher, and is elected by the members of the Audit Committee.
X Membership of the Audit Committee should turnover once every three years so that a balance of institutional knowledge and new ideas is maintained.
X Members of the Audit Committee should educate themselves through bencher orientation and with the assistance of management, auditors and third party sources, concerning the knowledge and skills required to fulfill the committee's mandate.

Committee Process

X The continuous disclosure procedures of the Law Society do not mandate quarterly or other periodic meetings unless required. Any Audit Committee member, member of senior management, or the auditor can request a meeting of the Audit Committee.
X The Committee should meet at least once to review the published year end financial statements, and to discuss these statements with management and the auditors. This meeting should precede the relevant

Finance and Audit Committee meeting, Convocation and Annual General Meeting by sufficient time to allow processing of any actions requested by the Audit Committee.

Scope of Audit Committee's Responsibilities

The Audit Committee is not a decision-making body, but a fact-finding one. It reports findings to the Finance and Audit Committee, and onwards to Convocation and the members.

The Audit Committee's duties concerning the Law Society's General Fund, Compensation Fund Errors & Omissions Fund and LibraryCo Inc. are not limited to year-end financial reports, but are facilitated by continuous disclosure resources. At the Law Society, continuous disclosure resources primarily take the form of unaudited, quarterly financial reports and management's related discussion and analysis.

The Audit Committee is responsible for the oversight, but not the management of:

X The preparation, integrity consistency and fair presentation of financial statements in accordance with generally accepted accounting principles
X The design and implementation of an effective system of internal control
X Other matters of financial consequence such as insurance coverage, significant non-recurring items, actuarial calculations, related party transactions or equivalents, subjective items such as accruals, provisions, estimates etc.

The Audit Committee should understand the nature and the extent of the work performed by the independent auditor and actuary, and make additional requests if desired. The Audit Committee should discuss and review specific issues with the auditor, such as ensuring their audit approach maximised opportunities to add value, and recommendations for improving the Law Society's performance.

The Audit Committee should review the Management Letter from the auditor, and any other communications from the auditor which comments on the Law Society's systems and internal controls, and obtain management's representations and intended course of action to address any concerns of the auditor.

The Audit Committee should review the minutes of audit committee meetings of LPIC, LibraryCo Inc. and any other subsidiaries for any significant issues or auditor recommendations.

The Audit Committee should consider any other matter that in its judgement should be taken into account in reaching its recommendations to the Finance and Audit Committee concerning the approval of the financial statements.

The Audit Committee should review the auditor's engagement letter. The Audit Committee is responsible for the evaluation of the auditor, and is responsible for recommending a change in auditor, or the retention of the existing auditor to Convocation, and ultimately the members at the Annual General Meeting

The Audit Committee should ensure that the auditor submits a formal written statement regarding relationships and services which may effect objectivity and independence.

The Audit Committee should communicate Committee expectations and the nature, timing, and extent of committee information needs to management, auditors, and others.

The Audit Committee does not have primary responsibility for the implementation and policing of the Law Society's Business Conduct Policy, as the CEO reports directly to Convocation on this matter.

Scope of Independent Auditor's Responsibilities

The auditor is ultimately accountable to Convocation and the Audit Committee.

The auditor's basic responsibility it to express an independent opinion on the Law Society's annual financial statements.

In addition to the auditor's responsibility under generally accepted auditing standards the auditor will:

X Discuss with the Audit Committee, the auditor's judgements about the quality (relevance, reliability, comparability, understandability), not just the acceptability of the Law Society's accounting principles, and lead discussion on the subjective issues reflected in the financial reports.

X Discuss such matters as:
- S illegal acts;
- S significant transactions that are inconsistent with the ordinary course of business;
- S unusual actions which significantly increase the risk of loss to the Law Society;
- S actions which might cause serious embarrassment to the Law Society.

Scope of Management's Responsibilities

Management has primary responsibility for:

X The preparation, integrity consistency and fair presentation of financial statements in accordance with generally accepted accounting principles;

X The design and implemention of an effective system of internal control;

X The management of the Law Society's affairs in compliance with applicable laws, regulations and standards of conduct;

X Acting as a resource for the Audit Committee. The Chief Financial Officer will provide the primary support to the Audit Committee.

Appendix 2

AUDIT COMMITTEE MEMORANDUM
AIDS TO DISCUSSION

In North America a sweeping package of corporate governance reforms are currently being put in place through legislation, rules and guidelines in reaction to accounting scandals. In the United States governance reforms have been both legislated, witness the *Sarbanes Oxley Act* of 2002, and regulatory reform such as listing requirements on the New York Stock Exchange. In Canada, the Ontario Securities Commission is preparing new rules for publicly traded companies that will be less stringent than *Sarbanes Oxley*. What is common to all these reforms is the greater role and prominence afforded Audit Committees in the overall structure of corporate governance models.

These reforms are directed at publicly traded, private sector companies. The purpose of these reforms is to protect investors who rely on the integrity of financial information for their investment decisions. Virtually none of the legislative or regulatory reforms are directed at the not-for-profit sector. That is not to say that the Law Society cannot draw value from the general direction of the proposed reforms. Rather, a reasoned approach as to what value can be added to the Society's current financial reporting and monitoring from some or all of these proposals should be undertaken. If not-for-profits do not hold themselves close to the standards of their for-profit peers they risk diminishing stakeholder perceptions. Costs may also increase if service providers such as insurers perceive governance differences.

Context

The Audit Committee carries out its duties within the framework of the governance principles and practices established by Convocation. With Convocation deciding on the right things to do and management deciding on the right way to do them, the Audit Committee should act as a liaison between the two arms of the organisation. Good governance promotes accountability of the key players and ensures that management works in the best interests of the Law Society and its stakeholders.

Who are these stakeholders? The Law Society was established by the *Law Society Act* in 1797 as a corporation without share capital. In the absence of shareholders the Law Society's funding structure and mandate suggests that our stakeholders are our members and the public.

Legal Overview

The Law Society's public accountability is very similar to a public company, and the governance standard for public companies is the benchmark we are likely to be measured against. In Canada the legal requirement for public companies to have an Audit Committee was first introduced in 1970 and there has been little change by legislation or litigation since then. There is no requirement for a private corporation or non-corporate entity to have an Audit Committee.

In the United States the requirement for an Audit Committee is mandated by stock exchanges supplemented by the recent *Sarbanes Oxley Act* of 2002. *Sarbanes Oxley* does not apply directly to not-for-profits but the provisions may migrate to this sector either through local legislation or stakeholder pressure.

The responsibilities of an Audit Committee relevant to the Law Society under current Canadian corporate and securities law are listed below (this list has not been updated to accommodate the recent developments in best practices and U.S. legislation).

- review the annual financial statements prior to approval by Convocation;
- review of the unaudited interim financial statements can be delegated by Convocation to the Audit Committee;
- review the Management Discussion and Analysis.

Changes in Corporate Governance System

Stakeholder expectations imposed on an Audit Committee have evolved considerably from the above list of responsibilities summarised as affirming the independence of the external auditor. Under the above "traditional" system the four key players in the financial governance process, namely Convocation, the Audit Committee, management and the external auditor had a relationship in that linear, hierarchical order.

In their book[1] Maureen Sabia and James Goodfellow refer to a new model of corporate governance relevant to Audit Committees which meets the evolving expansion of an Audit Committee's role including oversight of internal control and the management of risk over and above the obligations for annual and quarterly reporting. The increasing expectations of Audit Committees leads to an expansion of their charter. Changes in Audit Committee oversight can be set out in the following table.

OVERSIGHT ROLE	TRADITIONAL RESPONSIBILITY	INCREASED RESPONSIBILITY
Oversight of External Audit	Audit scope, fees, and findings	Quarterly reviews and Management Discussion and Analysis Continuous auditing, internal audit etc.
Oversight of Risk Management and Control	Financial Statement Risks	Principal business risks Risk reporting Risk management processes Examples of risk are computer systems, data integrity, strategic, physical loss, financial, service delivery, public opinion, compliance.
Oversight of Financial Reporting	Annual Financial Statements	Quarterly financial statements and other continuous disclosure
Other Oversight	Compliance with laws and regulations	Ethics, Code of Conduct etc Whistleblowing Financing and reserve structure

The evolving role of the Audit Committee can be assessed in more detail by reviewing current best practices for Audit Committees.

[1]Integrity in the Spotlight, Opportunities for Audit Committees published by the Canadian Institute of Chartered Accountants in 2002

Best Practices

Developments in best practices have been initiated by a number of very recent corporate governance initiatives in the United States and Canada, specifically:

Canada:

- The Auditor-General of Canada's report on Governance of Crown Corporations (2000) extends best practices in audit committees from publicly traded companies to Crown Corporations and could be further extended to other not-for-profit entities. Notably:
  - The Audit Committee should be composed of at least three directors, the majority of whom should not be officers or employees;
  - Audit Committees should be the most qualified and experienced directors on the Board. Financial literacy includes the ability to ask probing questions.
- Joint Committee on Corporate Governance ("JCCG") by the CICA and stock exchanges (2001) generally recommended the adoption of the recommendations of the Blue Ribbon Committee (below) specifically:
  - Audit Committee members should be composed of outside (non-management) directors who are also unrelated (independent of management and free from any conflict of interest)
  - All Audit Committee members should be financially literate and at least one member should have accounting or related financial management expertise. The definition of "financial expertise" should be decided by each Board.
  - Audit Committees should disclose a formal mandate and be assessed on it. The mandate should affirm that the external auditor is accountable to the Board and the Audit Committee who have the ultimate authority to select the external auditor
  - The Audit Committee should periodically review the need for an internal audit function
  - Audit Committees should ask the external auditors to review the quarterly financial reports
- TSE Corporate Governance Policy (2002) which amended guidelines to accommodate the JCCG report, particularly that all members of the audit committee will be required to be "financially literate" and at least one member of the audit committee will be required to have accounting or related financial expertise.

- The Ontario Securities Commission is in the process of being granted the authority to introduce rules by the provincial legislature. OSC chairman David Brown has proposed less stringent rules for small companies and those controlled by a single shareholder[2]. While large, widely held companies will be required to have completely independent audit committees small companies would need to have only a majority of independent directors, and closely held companies could have representatives of a controlling shareholder on their committee. The proposed rules are aimed at enhancing investor confidence without imposing too much hardship on smaller companies.

  The proposed OSC rules do not go as far as the *Sarbanes Oxley* legislation which requires all companies, big and small, to have audit committees composed entirely of directors independent of management. Closely held companies are exempt, but controlling shareholders cannot sit on the Audit Committee.

  Mr. Brown has said "The needs of small companies have to be considered; so do the unique situations of controlled companies."

  In the ongoing debate on *Sarbanes Oxley* several Canadian regulators, including the heads of the Toronto and Venture stock exchanges, have argued that Canada should establish general principles rather than rules and leave it up to companies to determine what they need to do to meet them.

[2] Globe & Mail, December 6, 2002, Address to Canadian Institute of Charted Accountants

United States:

- SEC's Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Comittees (1999) put forward a program aimed at improving the credibility of financial reporting including:
    - Members of the Audit Committee should be independent (they have no relationship to the entity which may interfere with the exercise of their independence)
    - Audit Committees should have at least three members each of whom is financially literate and at least one member has accounting or related financial management expertise
    - Audit Committees should have a formal written charter which should be periodically assessed as certified in corporate reporting
    - The charter should specify that the external auditor is accountable to the Board and the Audit Committee.
    - The Audit Committee should receive a confirmation of relationships from the external auditor revolving around any impairment of independence
    - The external auditor should discuss the quality, not just the acceptability of the entities' accounting principles with the Audit Committee
- *Sarbanes Oxley Act* (2002) linked with proposed Audit Committee requirements for NYSE listed companies. The highlights are:
    - All members of Audit Committees must be independent (may not accept any fee from the company other than that related to Board or committee work, and may not be an affiliated person of the company)
    - Audit Committee members may not earn consulting fees from the entity
    - The Audit Committee must oversee and negotiate the compensation of the external auditor
    - Audit Committees must establish procedures for receiving complaints or issues
    - Audit Committees must have the resources to retain their own advisors
    - Audit Committees must have a published charter.

The common threads running through the above best practice documentation are:

- The high stature of the Audit Committee within the governance system.
- Audit Committee members should be independent / unrelated / external. Benchers are all of these.
- Audit Committee members should be financially literate with at least one having expertise. Benchers can satisfy this requirement.

Other Law Societies

The Law Society of England and Wales has an Audit Committee along with a Finance and Resources Committee whose membership is comprised of Council members (Benchers). The Audit Committee assists the Board. In the Audit Committee Report in the Law Society's Annual Report, the Committee not only approved the financial statements and external auditor but also reported on risk management assessments and internal control reviews.

The Law Society of British Columbia has an Audit Committee along traditional lines with three members out of eight being non-benchers. These non-benchers are lawyers and not financial experts. The LSBC does not have a Finance Committee.

The Law Society of New South Wales has an Audit Committee and a Finance Committee with members all being Councillors, although under the committee selection process it is possible for non-Councillors to be selected.

LawPro and LibraryCo

The Audit Committee of LawPro is made up of directors of Law Pro, specifically the Law Society CEO, benchers, corporate directors and an insurance consultant.

The Audit Committee of LibraryCo is made up of directors of LibraryCo, specifically LibraryCo's Executive Director, benchers, a Law Society employee and a CDLPA representative.

Audit Committee Expertise

The Blue Ribbon Committee and JCCG were consistent in recommending financial literacy for Audit Committee members and that the definition of financial literacy be left to Boards as there is no "one size fits all" approach. Potential criteria are

- The ability to read, comprehend and analyse financial statements
- The ability to understand accounting policies and judgements
- An understanding of the business of the Law Society and related strategies
- An ability to understand the Law Society's risk environment

Sabia and Goodfellow *supra* recommend in their book that financial literacy should have a broad definition to encompass a range of expertise. They note that limiting Audit Committee members to accountants and financial managers has the risk of miring the Committee in technicalities or the Committee may identify to closely with management.

McDaniel, Martin and Maines[3] compared how experts and literates differed in their evaluation of financial reporting. They found experts identify less prominent but recurring issues, whereas literates identify prominent but nonrecurring issues, so using both promotes "complementary diversity".

The SEC has drafted a number of proposed rules in response to the *Sarbanes Oxley Act*, in particular:

- Require a public company to disclose annually the number and names of audit committee members that the Board has determined to be financial experts, and whether those persons are independent. Otherwise, explain why it does not have such an independent financial expert.
- The SEC's proposal also broadens the definition of financial expert to include a person who has experience as a public accountant or auditor or been educated to be one; a principal financial officer, controller, or principal accounting officer of a public company; or someone who has experience in one or more positions that involve the performance of similar functions (or that results, in the judgment of the Board, in the person's having similar expertise and experience).

The proposed rule includes the SEC's view that the designation of financial expert should not impose a higher degree of individual responsibility or obligation on a member of the audit committee. Also, the SEC does not intend the designation to decrease the duties and obligations of other audit committee members or the board as a group. Further, a financial expert would not be considered an expert for purposes of liability.

Many not-for-profits, especially in the charity and health sectors, recruit non-directors for Audit / Finance Committees. This is often done because of limited expertise at Board level and for numerous other reasons such as assessment of potential Board members, fund raising etc.

The current Audit Committee (which is not a Committee of Convocation) Charter permits non-bencher members. The Committee is also able to retain external experts to provide assistance on specific issues if the Committee does not feel fully qualified to deal with the issue itself.

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

(1) Copy of a memorandum from Jim Varro, Secretary, Working Group on a Strategy for Legal Information for Ontario Lawyers to the Finance Committee dated January 7, 2003 re: Market Research by Great Library Consultants.

(pages 25 – 26)

[3] L. McDaniel, R. Martin, L. Maines "Evaluating financial reporting quality, the effects of financial expertise versus financial literacy" – University of North Carolina 2002

(2) Copy of a memorandum from Wendy Tysall to the Finance and Audit Committee dated January 9, 2003 re: 2002 Bencher Festive Party.

(page 40)

Re: Financial Information Systems Capital Expenditure

It was moved by Mr. Ruby, seconded by Mr. Wright that the allocation of $435,000 from the Capital Fund for the acquisition and implementation of financial information system enhancements be approved.

Carried

Items for Information

Financial Implications of the Equity & Aboriginal Issues Committee Report on Bencher Remuneration
Market Research on the Delivery of Legal Information
Audit Committee
Benchers Festive Party

CONVOCATION ROSE AT 5:00 P.M.

Confirmed in Convocation this 27th day of February, 2003

Treasurer