

MINUTES OF CONVOCATION

Thursday, 22nd September, 2005
9:00 a.m.

PRESENT:

The Treasurer (George D. Hunter), Aaron, Alexander, Backhouse, Bourque, Boyd, Carpenter-Gunn, Caskey, Chahbar, Cherniak, Coffey, Copeland, Curtis, Dickson, Dray, Eber, Feinstein, Finlayson, Gold, Gotlib, Gottlieb, Krishna, Legge, MacKenzie, Millar (by telephone), Murphy, Murray, Pawlitza, Porter, Potter, Ruby, Sandler (by telephone), Silverstein, Simpson, Swaye, Symes, Topp, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

Congratulations were extended to Allan Lawrence who was named the 2005 recipient of the Churchill Society's Award for Excellence in the Cause of Parliamentary Democracy and to Professor Vern Krishna who was awarded the 2005 Ivy Thomas Award from the Certified General Accountants of Ontario.

Congratulations were also extended to former bencher Leonard Braithwaite and member Douglas Lawson of Windsor who were recently named to the Order of Ontario.

The Treasurer expressed Convocation's sympathy to the families of the following members who recently passed away.

The Honourable Samuel G. Grange, Q.C. passed away on August 26, 2005. He was called to the Bar in 1948 and had a long and distinguished career as lawyer, judge and commissioner before his retirement in 1995. He is survived by his children Alice and Dougall.

Former bencher Brigadier George Edwin (Ted) Beament of Ottawa passed away on September 8, 2005 in his 98th year. He was called to the Bar in 1934 and served his profession in many respects throughout his career. He is survived by his son Justin and daughter Meriel.

Mr. Ian Outerbridge, Q.C., a much beloved member of the profession passed away on September 9, 2005. Mr. Outerbridge was called to the Bar in 1955 and was a prominent Toronto litigator. The Treasurer extended condolences to Mr. Outerbridge's family.

The Treasurer thanked Katherine Corrick for her assistance in the preparation of the submissions made on behalf of the Federation of Law Societies of Canada before the Standing Committee for Justice of the House of Commons with respect to the mandatory review of the Anti-terrorism legislation.

The Treasurer announced the creation of Benchernet, the first website for benchers and thanked all staff who worked on this initiative, in particular Susan Xu and Kevin Davies who devoted countless hours designing the site.

DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Caskey, seconded by Mr. Chahbar, that the Draft Minutes of Convocation of June 22, July 12, July 18, July 22 and August 18, 2005 be approved.

Carried

MOTION – Tribunals Committee Appointment

It was moved by Ms. Dickson, seconded by Mr. Swaye, that Sy Eber be reassigned from the Emerging Issues Committee to the Tribunals Committee.

Carried

MOTION – Audit Sub-Committee Appointment

It was moved by Ms. Carpenter-Gunn, seconded by Mr. MacKenzie, that Marshall Crowe be appointed to the Audit Sub-Committee.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE reports:

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, September 23rd, 2005:

Jakub Adamski	Bar Admission Course
Marina Ambridge	Bar Admission Course
Kristyn Sarah Annis	Bar Admission Course
Nicholas Charles Bader	Bar Admission Course
Sharla Brynn Rodriguez Bandoquillo	Bar Admission Course
Lesley Carolyn Banton	Bar Admission Course
Roy Peter Beresowsky	Bar Admission Course
Michael Ryan Bertrand	Bar Admission Course
Robert Alan Betts	Bar Admission Course
Judy Beryl Bielefeld	Bar Admission Course
Dina Vivian Biro	Bar Admission Course
Gavin Thomas Bogle	Bar Admission Course
Monieka Nicole Alice Bos	Bar Admission Course
Elissa Catherine Mary Boyle	Bar Admission Course
Douglas Paterson Bryce	Bar Admission Course
Gregory Robert John Bullen	Bar Admission Course
Natalie Maria Clara Burgos	Bar Admission Course
Brendan Thomas Cahill	Bar Admission Course
David Lauri Campbell	Bar Admission Course
Cheryl Bernadett Chambers	Bar Admission Course
Sara Linda Coristine	Bar Admission Course
Maja Maria Czubernat	Bar Admission Course
Angela Daniels	Bar Admission Course
Lee Anne Margaret D'Aoust	Bar Admission Course
Thomas Steven Anthony De Prophetis	Bar Admission Course
Balinder Singh Dhillon	Bar Admission Course
John Joseph Dooley	Bar Admission Course
Michelle Odetta Pamela Dunbar	Bar Admission Course
Michael Simon Dunn	Bar Admission Course
Cairine Elizabeth Edwards	Bar Admission Course
Robin Leigh Edwards	Bar Admission Course
Philip Matthew Farb	Bar Admission Course
Cindy Ann Farrell	Bar Admission Course
David Joseph Faye	Bar Admission Course
Melissa Lynne Faye	Bar Admission Course
Nathalie Marie Lucille Ferland	Bar Admission Course
David Henry Ferris	Bar Admission Course
Ryan Usher Gelbart	Bar Admission Course
Lorena Anne Gepreags	Bar Admission Course
Sarah Alexandra Gingrich	Bar Admission Course

Andrew Douglas Gordon	Bar Admission Course
Nicolle Lee Anne Graham	Bar Admission Course
Rebecca Lynn Hartley	Bar Admission Course
Martin John Arthur Hastings	Bar Admission Course
Amanda Lee Heale	Bar Admission Course
Donald Simon Heeney	Bar Admission Course
Marie H��lou	Bar Admission Course
Catherine Helen Henderson	Bar Admission Course
Aubrey Danielle Hilliard	Bar Admission Course
Milana Homs��	Bar Admission Course
Andrew Jonathan Macivor Hood	Bar Admission Course
Meghan Manning Hull	Bar Admission Course
Cherry Evangeline Isaacs Reynolds	Bar Admission Course
Yovindranauth Jaimangal	Bar Admission Course
Andrea Lynn Jeffery	Bar Admission Course
Marie Nicole Catherine Jette	Bar Admission Course
Michael Eric Joseph	Bar Admission Course
Jason James Kee	Bar Admission Course
Maqsood Khan	Bar Admission Course
Muhammad Iqbal Khichi	Bar Admission Course
Stella Kim	Bar Admission Course
Christopher George Knowles	Bar Admission Course
Asaph Eli Ksienski	Bar Admission Course
Yannick Joseph Ernest Etienne Landry	Bar Admission Course
Herbert Hoo Bon Law	Bar Admission Course
Daniel Asher Lublin	Bar Admission Course
Ewan Lyttle	Bar Admission Course
Morgan Allen Mac Donald	Bar Admission Course
Gavin Neil Magrath	Bar Admission Course
Pinelopi Makrodimitris	Bar Admission Course
Farah Malik	Bar Admission Course
Paul Louis Manias	Bar Admission Course
Ranbir Singh Mann	Bar Admission Course
Sarah Kathleen Mc Lean	Bar Admission Course
Sarah Jane Moffat	Bar Admission Course
Hamdi Mohamud Mursal	Bar Admission Course
Sandra Monardo	Bar Admission Course
Timothy Merlin Morgan	Bar Admission Course
Muhammad Danish Munir	Bar Admission Course
Kathleen Mavourneen Murphy	Bar Admission Course
JeevanPreetam Marc Mykoo	Bar Admission Course
Prakash Narayanan	Bar Admission Course
Sophia Hettie Mary Newbould	Bar Admission Course
Richard Nsanzabaganwa	Bar Admission Course
Daniel Alexander Nugent	Bar Admission Course
Kevin Bradshaw O'Brien	Bar Admission Course
Beatriz Orrantia	Bar Admission Course
Christina Austin Palod	Bar Admission Course
Amber Gayle Pashuk	Bar Admission Course
Mary Jane Paterson	Bar Admission Course
Elizabeth Anne Patrick	Bar Admission Course

Alireza Pazuki	Bar Admission Course
Sarah Elizabeth Perkins	Bar Admission Course
Lukasz Petrykowski	Bar Admission Course
Vanessa Lee Pfeiffer	Bar Admission Course
Mathieu Raymond Poirier	Bar Admission Course
Lisa Crystal Pool	Bar Admission Course
Beth Ellen Tara Posno	Bar Admission Course
Janusz Zbigniew Puzniak	Bar Admission Course
Harjindar Rajwans	Bar Admission Course
Aneel Kaur Rangi	Bar Admission Course
Jeffrey Laurier Rouse	Bar Admission Course
Rita Roy	Bar Admission Course
Feras Saleh	Bar Admission Course
Guillermo Schible	Bar Admission Course
Daphna Anne Schwartz	Bar Admission Course
Seema Malini Seth	Bar Admission Course
Leila Shahparaki	Bar Admission Course
Dean Mukhtar Shaikh	Bar Admission Course
John Calderwood Sheard	Bar Admission Course
Ron Shulman	Bar Admission Course
Kenneth Aubrey Silverman	Bar Admission Course
Birinder Singh	Bar Admission Course
Sheila Snyder	Bar Admission Course
Andrew Lusby Spiro	Bar Admission Course
Natalia Lucyna Uscinowicz	Bar Admission Course
Jule Ann Wakeman	Bar Admission Course
Gurcharan Singh Woodwal	Bar Admission Course
I Lung Yeh	Bar Admission Course
Warren Wai Lerk Yeung	Bar Admission Course
Ma'anit Tzipora Zemel	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, September 23rd, 2005:

Dahlia Valrose Bateman	Province of Nova Scotia
David John Doyle	Province of Nova Scotia
Patrick Blair Fantillo	Province of Alberta
Jonathan Robert Graham	Province of Nova Scotia
Nicolette Rozier	Province of Nova Scotia
Brenda Lynn Vanderbeek	Province of Alberta
John William Vanderbeek	Province of Alberta
Laura Elizabeth White	Province of Nova Scotia

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

B.1.6. The following candidates have completed successfully the transfer examinations or the academic phase of the Bar Admission Course, filed the necessary

documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Friday, September 23rd, 2005:

Naim Alexandre Antaki
Nathalie Clark
Brandon Wiener
Dan Wolfensohn

Province of Quebec
Province of Quebec
Province of Quebec
Province of Quebec

B.1.7. (d) Full-Time Member of Faculty of Approved Ontario Law School

B.1.8. The following member of an approved law faculty, who has filed the necessary documents and complied with the requirements of the Law Society, asks to be Called to the Bar and admitted as a solicitor without examination, under sec. 5 of By-Law 11 made under the *Law Society Act*:

Abraham Drassinower

University of Toronto, Faculty of Law

ALL OF WHICH is respectfully submitted

DATED this 22nd day of September, 2005

Carried

LAWPRO REPORT

Ms. Carpenter-Gunn presented the LAWPRO Report.

LAWPRO REPORT TO CONVOCATION

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LAWYERS' PROFESSIONAL INDEMNITY COMPANY ("LAWPRO")
REPORT TO CONVOCATION – SEPTEMBER, 2005

INTRODUCTION

1. Each September since 1995, LAWPRO's Board of Directors has reported to Convocation changes to the Law Society's professional liability insurance program for the following calendar year. The timing of this report is necessitated by the logistics of renewing in excess of 20,000 policies effective January 1, and the need to negotiate and place any related or corollary reinsurance treaties.
2. This report is also an opportunity for LAWPRO's Board to review with Convocation issues of importance to its insurance operations and receive policy direction where necessary. Financial information on LAWPRO and the program is provided to Convocation throughout the year.
3. Convocation established LAWPRO's mandate in 1994 with the adoption of the Insurance Committee Task Force Report (Task Force Report). The mandate and principles of operation were to be as follows:
 - that LAWPRO be operated separate and apart from the Law Society by an independent board of directors;
 - that LAWPRO be operated in a commercially reasonable manner;
 - that LAWPRO move to a system where the cost of insurance reflects the risk of claims; and
 - that claims be resolved fairly and expeditiously; however, this was not to be a system of "no-fault" compensation and there would be certain circumstances where coverage was denied.

For 2006, we have conducted our annual review of the program, to re-validate the approach and rating structure in relation to these Task Force recommendations.

4. The LAWPRO Board of Directors believes that these recommendations have been achieved in LAWPRO's operations, and that the proposed program for 2006 continues to operate on these principles. This report deals solely with the mandatory professional liability program. Optional programs such as TitlePLUS®, and the Excess professional liability insurance program are operated on an expected break-even or better basis.

2006 PROGRAM SUMMARY

5. The following summarizes the 2006 professional liability insurance program, as provided for in this report.

Premium pricing for 2006

- (i) The base premium is increased by \$75 to \$2,700 per lawyer for 2006, from the \$2,625 per lawyer charged in 2005 (paragraph 59).
- (ii) 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2006, subject to reinsurance protecting the program from aggregated losses (paragraph 63).

- (iii) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$21.0 million for the purposes of establishing the base premium for 2006 and other budgetary purposes (paragraph 59).
- (iv) \$6.1 million, (approximately \$300 per insured lawyer), will be drawn from the Premium Stabilization Fund built up in previous years (a \$24.5 million balance is forecast as at December 31, 2005) and applied to the 2006 insurance premium (paragraph 59).
- (v) To the extent that levies (noted in (iii) above) collected in 2006 are different than the budgeted amount, the surplus or shortfall will flow to/from the Premium Stabilization Fund (paragraph 59).

Changes to the insurance program for 2006

Changes in respect of the Mortgage Brokering Exclusion:

- (vi) In respect of Exclusion (g), concerning mortgage brokering-related claims, under the existing program policy:
 - a) The exclusion continues to apply in its current form, unless and until modified as provided for herein, or as otherwise directed by Convocation; and
 - b) Once legislation that is in substantially the same form as the draft Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act comes into force, LAWPRO will modify the program coverage in respect of the exclusion for any subsequent legal services provided, to ensure that:
 - (i) Legal services falling within the scope of regulation under the Act, but coming within specific exemption provisions for lawyers, are generally insured under the program policy;
 - (ii) Legal services otherwise falling within the scope of regulation under the Act, are not insured under the program policy; and
 - (iii) Coverage for legal services is not excluded under the program policy solely because the legal services happen to have been provided in conjunction with activities which are regulated and do not fall within the scope of exemption under the Act (paragraph 24).

Changes in respect of the Real Estate Transaction Levy Surcharge Endorsement:

- (vii) Subsection (b)(ii) of exclusion (v) of the Real Estate Transaction Levy Surcharge Endorsement to the program policy, concerning the scope of title insurers' release of Law Society members under the transaction levy exclusion for title-insured transactions, will be amended by removing reference to the word "negligence" (paragraph 30).

Changes to the Program Exemption in respect of Legal Aid Clinics:

- (viii) Subsection 9(1)5(i) of By-Law 16 under the Law Society Act, R.S.O. 1990, c. L.8, concerning the exemption of lawyers in respect of certain clinics, societies and corporations funded by Legal Aid Ontario, will be amended to refer to lawyers who will be "employed and/or volunteer" in such clinics, societies or corporations (paragraph 36).

CLE Premium Credit:

- (ix) The Continuing Legal Education Premium Credit will be continued in future years, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by the member between September 16, 2005 and September 15, 2006, for which the lawyer has successfully completed the online CLE Declaration Form (paragraph 83).
- (x) Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2005 will remain unchanged for the 2006 insurance program (paragraph 69).

E & O Fund

- (xi) The investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund will be made available to the Law Society during 2006 (paragraph 8).

Conclusion

- (xii) The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2006 and asks for Convocation's acceptance of this Report at the September Convocation so that the 2006 insurance program can be implemented by January 1, 2006.

PART 1 – THE ERRORS & OMISSIONS FUND

6. LAWPRO manages the Law Society's Errors & Omissions Fund ("Fund") which is currently in run-off mode. (The Fund was responsible for the insurance program prior to 1990, and for a group deductible of up to \$250,000 per claim prior to 1995.)
7. As of June 30, 2005, the Fund had outstanding claims liabilities of \$5.1 million. The number of open files for 1994 and prior years stood at 36. Since there are sufficient assets in the Fund to fully meet the outstanding liabilities, the LAWPRO Board is again satisfied that the investment income of the Fund is surplus to the needs of the Fund and can be used by the Law Society for its general purposes. It is expected that \$3.0 million of investment income would be transferred during the 2006 year.
8. Accordingly, investment income revenues of the Errors & Omissions Fund which are surplus to the obligations of the Fund will be made available to the Law Society during 2006.

PART 2 – CHANGES TO THE INSURANCE PROGRAM FOR 2006

9. The current program structure, as well as policy limits, coverage and available options, appear to meet the needs and practice realities of the profession for 2006. In developing the 2006 program, consideration was given to comments received from the profession in the previous year. As well, only a few changes to the policy coverage are contemplated. Some minor refinements may also be made in the policy wording to better ensure underwriting intention.

10. Accordingly, few modifications in the structure of the program, and in the form and substance of the policy, are contemplated for 2006.

Changes in respect of the Mortgage Brokering Exclusion

11. Under the existing program, coverage is not provided for: claims arising out of an insured lawyer acting as a mortgage broker or as an intermediary arranging any financial transaction usual to mortgage lending; or for claims arising out of an insured lawyer's legal services provided in conjunction with the same, by virtue of Exclusion (g) under Part III of the policy.¹

12. To accommodate proposed new legislation that will regulate mortgage lending and mortgage brokering-related activities in Ontario, it is important that LAWPRO be authorized to modify the program coverage in respect of Exclusion (g), once this legislation comes into force.

13. At present, Exclusion (g) and the policy definitions specifically provide that:

"This POLICY does not apply:

(g) to any CLAIM in any way relating to or arising out of an INSURED acting as a MORTGAGE BROKER or as an intermediary arranging any financial transaction usual to mortgage lending; or to any CLAIM in any way relating to or arising out of circumstances in which an INSURED provided PROFESSIONAL SERVICES in conjunction with the above;"

"(m) MORTGAGE BROKER means a person who lends money on the security of real estate, whether the money is the person's money or that of another person, or holds himself, herself or itself out as or who by an advertisement, notice or sign indicates that the person is a mortgage broker, or a person who carries on the business of dealing in mortgages."

14. In its 2004 budget, the Ontario government committed to review the existing *Mortgage Brokers Act*, R.S.O. 1990 c. M.39, with a view to introducing replacement legislation in 2005. A consultation paper was circulated for comment in 2004, and a consultative draft of the *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act*, with proposed regulations, was circulated for comment in March, 2005.²

15. This draft legislation is considerably broader in scope than the existing legislation, and proposes that those dealing in mortgages, trading in mortgages, carrying on business as a mortgage lender, and carrying on business as a mortgage administrator, be subject to licensing and the regulatory oversight of the Superintendent of Financial Services. However, certain classes of individuals -- including lawyers -- would be exempt from specific licensing requirements, in respect of:

¹ Mortgage brokering related claims were first excluded from program coverage in 1995, following adoption of the recommendations of the 1994 Task Force Report (pp. 63-65, 108) and consultation with the profession.

² A copy of the consultation draft, with proposed Act and regulations, is available on-line at <http://www.gov.on.ca/FIN/consultations/mortgagebrokers/english/index.htm>.

- Dealing in mortgages, if they negotiate or arrange a mortgage or assignment of a mortgage, or help another person enter into a mortgage, where those services constitute legal services;
- Trading in mortgages, if their trading in mortgages constitutes providing legal services, but would not apply in respect of lawyers buying, selling, or trading mortgages on their own behalf; and
- Carrying on business as a mortgage administrator, where lawyers administering mortgages do so on behalf of an estate and where such services constitute legal services.

16. In its submission in reply, the Law Society of Upper Canada recommended that exemptions for lawyers ensure that lawyers are not regulated under the proposed Act for the provision of legal services within the scope of their practices. The Law Society proposed that exemptions for lawyers provide for “a solicitor of the Superior Court of Justice who is providing legal services if the business carried on by such solicitor is itself a legal service or is incidental to and directly arising out of the legal services.”

17. The draft legislation offers significant benefits to lawyers, including the ability to receive referral fees, and the regulation of mortgage lending activities and mortgage brokering-related activities for all players involved in the conveyancing business. In this regard, the draft regulations require that mortgage brokerages maintain errors and omissions insurance (or an approved form of financial guarantee), including fraudulent acts coverage, for claims against the brokerage, its brokers and agents. Similar provision is included for those licensed as mortgage administrators.

18. To avoid any added regulation of legal services, to ensure the proposed legislation maintains the provision to exempt lawyers, and to continue to protect lawyers in respect of their traditional legal services, it is important that legal services falling within these legislative exemptions generally be insured under the program.

19. Accordingly, Exclusion (g) under the program policy should remain in force in its current form for now. Once legislation that is substantially the same form as the draft legislation comes into force, LAWPRO would modify the program coverage in respect of the exclusion in relation to subsequent legal services provided.

20. Specifically, coverage would be modified as appropriate, to ensure that the legal services falling within the scope of specific exemption provisions for lawyers under the legislation are generally insured; and that coverage for such legal services (as well as any other insured legal services not subject to regulation under the Act) not be excluded solely because these services happen to have been provided in conjunction with activities which are subject to regulation under the Act.

21. Lawyers could generally expect to be insured for their legal services falling within any specific exemption provision for lawyers under the legislation, as well as for their general conveyancing and other legal services provided in relation to the transaction, even where these legal services are provided in conjunction with the lawyer’s regulated activities under the Act, such as dealing or trading in mortgages.

22. However, coverage would not be provided under the program for any lawyer’s activities which are regulated (and not subject to exemption) under the legislation. Lawyers would obtain the required insurance protection or financial guarantee elsewhere, for their regulated activities

in dealing in mortgages, trading in mortgages, carrying on business as a mortgage lender, and/or carrying on business as a mortgage administrator.

23. LAWPRO is satisfied that the additional exposure to the program would be moderate, appreciating the regulatory and insurance requirements for the mortgage lending and mortgage brokering-related activities of all players involved in conveyancing, and the general reduction in the number of Ontario lawyers and law firms providing mortgage brokering related services since the introduction of the mortgage brokering exclusion in 1995. A significant portion of the pre-1995 mortgage brokering claims were the result of circumstances arising from mortgage syndications, and the 2006 policy revisions are not intended to respond to such circumstances. LAWPRO will, however, continue to actively monitor mortgage brokering-related claims reported under the program.

24. Accordingly, in respect of Exclusion (g), concerning mortgage brokering-related claims, under the existing program policy:

- a) The exclusion continues to apply in its current form, unless and until modified as provided for herein, or as otherwise directed by Convocation; and
- b) Once legislation that is in substantially the same form as the draft *Mortgage Brokerages, Mortgage Lenders and Mortgage Administrators Act* comes into force, LAWPRO will modify the program coverage in respect of the exclusion for any subsequent legal services provided, to ensure that:
 - (i) Legal services falling within the scope of regulation under the Act, but coming within specific exemption provisions for lawyers, are generally insured under the program policy;
 - (ii) Legal services otherwise falling within the scope of regulation under the Act, are not insured under the program policy; and
 - (iii) Coverage for legal services is not excluded under the program policy solely because the legal services happen to have been provided in conjunction with activities which are regulated and do not fall within the scope of exemption under the Act.

Changes in respect of the Real Estate Transaction Levy Surcharge Endorsement

25. As it is currently worded, the Endorsement relieves the insured lawyer from payment of the Real Estate Transaction Levy Surcharge where title insurers have entered into a release and indemnity agreement in which they have agreed to release their right to maintain a *negligence* claim against the acting Law Society member.

26. The full wording of the current Endorsement is as follows:

"No levy surcharge is payable by a member under this endorsement in respect of a real estate transaction if: ...

(v) the real estate transaction closes on or after January 1, 1998, and a title insurance policy(ies) is(are) issued in favour of all of the transferees and chargees obtaining an interest in or charge against the land which is the subject of the real estate transaction, provided that: ...

(b) the title insurer(s) issuing the title insurance policy(ies) has(have) in all cases entered into a Release and Indemnity Agreement with the Law Society of Upper Canada on behalf of its members, in a form acceptable to the Law Society of Upper Canada, wherein the title insurer(s) irrevocably agrees(agree) to:

- (i) indemnify and save harmless the member from and against any claims arising under the title insurance policy(ies), except for the member's gross negligence or willful misconduct; and
- (ii) release its right to maintain a *negligence* claim against the member(s) acting as solicitor(s) for the transferee(s), chargee(s) and/or the title insurer(s), except for the member's gross negligence or willful misconduct;" (*emphasis added*)

27. The LAWPRO Board advises that the specific reference to "negligence" should be removed from the endorsement wording. This change recognizes that, at present, the policy may be called on to respond when a title insurer's claim against a solicitor in respect of a title-insured transaction is not framed in negligence. Claims against solicitors under the program can be framed not only in negligence, but also in breach of contract and breach of fiduciary duty, for example.

28. However, the exclusion was intended to encompass these other forms of allegation in reference to the word "claim", which is therefore unduly restricted by the term negligence. To clarify this intention, it is proposed that the word "negligence" be deleted to ensure that the reference clearly refers to all forms of claim.

29. Last year, Convocation approved changes to this endorsement, so that the exclusion for title-insured transactions would only apply where the wording of the title insurers' release and indemnity agreement is provided in a form satisfactory to the Law Society.³ The form of this agreement will need to be updated to reflect the recommended change in endorsement, effective January 1, 2006. Title insurers were advised of the contemplated change in endorsement during discussions concerning the form of this agreement earlier this year.

30. Accordingly, subsection (b)(ii) of exclusion (v) of the Real Estate Transaction Levy Surcharge Endorsement to the program policy, concerning the scope of title insurers' release of Law Society members under the transaction levy exclusion for title-insured transactions, will be amended by removing reference to the word "negligence."

Changes to the Program Exemption in respect of Legal Aid Clinics

31. It is intended that the existing program exemption for Law Society members who are employed in certain clinics, societies or corporations funded by Legal Aid Ontario ("LAO"), be expanded to also apply to volunteer members who provide legal services for or on behalf of such clinics, societies or corporations.

32. In this regard, section 9(1)(5) of By-Law 16 under the *Law Society Act*, R.S.O. 1990, c. L.8 provides as follows:

9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

...

³ 2004 LAWPRO Report to Convocation, pp. 5-7

5. Any member who, during the course of the year for which a levy is payable,
- i. will be *employed* in a clinic within the meaning of the Legal Aid Services Act, 1998, a student legal aid services society or an Aboriginal legal services corporation, that is funded by Legal Aid Ontario, but will not be directly employed by Legal Aid Ontario,
 - ii. will provide legal service only through the clinic, student legal aid services society or Aboriginal legal services corporation to individuals in communities served by the clinic, student legal aid services society or Aboriginal legal services corporation and will not otherwise engage in the practice of law in Ontario, and
 - iii. demonstrates proof of coverage for the provision of such legal service under a professional liability insurance policy issued by a licensed insurer in Canada, such coverage to be at least equivalent to that required under the Society's insurance plan.”
(*emphasis added*)⁴

33. In discussions, LAO has asked that this program exemption be expanded to also apply to volunteer lawyers who provide legal services for or on behalf of such clinics, societies and corporations.

34. A review of the current professional liability insurance policy maintained by LAO indicates that it covers not only employed lawyers, but also volunteer lawyers, who provide legal advice and services for or on behalf of the independent community based legal aid clinics funded by LAO. In this regard, LAO confirms that it is committed to maintaining similar insurance covering volunteer lawyers going forward.

35. Notably, this change in exemption offers further support for lawyers who wish to provide legal services in Ontario on a volunteer basis, which has been a key focus of changes under the insurance program in recent years.⁵

36. Accordingly, subsection 9(1)5(i) of By-Law 16 under the *Law Society Act*, R.S.O. 1990, c. L.8, concerning the exemption of lawyers in respect of certain clinics, societies and corporations funded by Legal Aid Ontario, will be amended to refer to lawyers who will be “employed and/or volunteer” in such clinics, societies or corporations.

PART 3 — THE PROFESSIONAL LIABILITY INSURANCE PROGRAM

37. The program appears to be on track for 2005, with LAWPRO currently performing at or better than budget. An important reflection of the current program's success is the consistent “A” (Excellent) rating LAWPRO has received from A.M. Best Co. for each of the last five years.

38. While claim costs and other program expenses have been fairly consistent in recent years, some measure of conservatism is always warranted in anticipating the coming year's

⁴ As approved by Convocation in 1980, and reflected in section 9 of By-Law 16 under the *Law Society Act*, R.S.O. 1990, c.L.8 upon approval of the 2002 LAWPRO Report to Convocation (pp. 11-12).

⁵ Details concerning existing program provisions to facilitate the lawyers providing *pro bono* legal services are available online at <http://www.lawpro.ca/insurance/Probono.asp>.

claim costs. This is due to the uncertainties inherent in forecasting the frequency and severity of claims as well as the general economic and inflationary pressures upon the program.

39. Significantly as well, the revenues which supplement the base levies are expected to decline. Supplemental revenues from real estate transaction levies are expected to decline in line with an expected slowdown in the residential real estate market in 2006.

40. To ensure that the program continues to operate on a self-sustaining basis, and to preserve the company's sound financial position, the LAWPRO Board advises that the base insurance premium for the program needs to be increased by \$75 to \$2,700 per lawyer for 2006, which would bring the base premium back to 2002 levels. The LAWPRO Board advises that the program structure and pricing (other than for the amount of the base premium) would continue in its current form for 2006.

41. This increase in base rate of three per cent was largely anticipated in the previous Report to Convocation in September 2004.

Premiums – Costs, revenues and pricing

42. LAWPRO's revenue requirements for the 2006 insurance program are based on the anticipated cost of claims for the year, as well as the cost of applicable taxes and program administration. With some measure of conservatism, we estimate total funds required in 2006 to be \$78.5 million, which is consistent with forecasted and actual premiums for the mandatory program for each of the last six years. As the graph on the following page illustrates, claims numbers and costs for the coming year are expected to be roughly consistent with those of previous years, with approximately 1,900 new claims and \$68 million in loss costs anticipated.

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

(see graph in Convocation report)

43. As in past years, premium revenues to meet our fiscal requirements for 2006 will come from three principal sources: the base premiums, levy surcharges, and the Premium Stabilization Fund. The projected insurance revenues from these three sources are as follows.

Premium Revenues, by Source

(see graph in Convocation report)

a) *Levy surcharges:*

44. Based on recent forecasts published by Canada Mortgage and Housing Corporation (CMHC), residential sales are expected to decline in 2006 by approximately 6 per cent. Ontario housing starts are expected to drop by 16 per cent from 2004 levels.

45. The levy surcharges include a \$50 transaction levy paid by lawyers for each prescribed real estate and civil litigation transaction in which they are involved, as well as a claims history levy surcharge⁶. Revenues from these levy surcharges are applied as premiums, to supplement the base levy.

⁶ The claims history levy surcharge ranges from \$2,500 for a lawyer with one claim paid in the last five years in practice, to \$25,000 for a lawyer with five claims paid in the last five years in practice (an additional \$10,000 is levied for each additional claim paid in excess of five).

46. For 2006, LAWPRO estimates transaction and claims history levy surcharge revenues at \$21.0 million. This is down \$0.2 million from the \$21.2 million budgeted in 2005, and compares to \$26.4 million in 2004. Civil litigation and claims history levy surcharge revenues have been quite stable over time while real estate transaction levies have declined 20 per cent since 1999, despite an increase in residential real estate activity of 30 per cent during the same period.

Number of Levies v. Real Estate transactions (Units)
(see graph in Convocation report)

47. The increased use of title insurance is considered to be largely responsible for the reduction in real estate transaction levies since 1999. As discussed at paragraph 26, lawyers acting for those obtaining an interest or charge in the land in many instances are not required to pay a transaction levy, where the interests of all parties obtaining an interest or charge in the property are title-insured, and the acting lawyer or lawyers are provided with the appropriate release and indemnity protection by the title insurer. It is estimated that over 90 per cent of residential real estate transactions now handled in Ontario are title-insured.⁷

48. Some conservatism is incorporated into the levy surcharge revenue forecast, appreciating the real estate market uncertainties and the prospect of a shortfall. As well, the continuing incidence and costs of fraud-related claims⁸ continues to warrant attention and concern.

49. The use of transaction levies ensures an element of risk rating in the insurance program, as both real estate and civil litigation continue to represent a disproportionate risk when compared to other areas of legal practice. Their use also avoids the substantial dislocation which likely would occur if the base premiums were increased to reflect the risk, and reflects the consensus reached with the affected sectors of the bar and others in the profession as the most equitable way to achieve risk rating when introduced in 1995. (Risk rating is discussed in more detail in paragraphs 70 to 98 of this Report.)

b) Premium Stabilization Fund:

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

51. As well, through the use of a refund of premium provision in the policy, any surplus in funds resulting from claims costs being lower than budgeted are similarly transferred to the Premium Stabilization Fund for future insurance purposes. This return of premium provision, which has been in place since the 2000 policy period and considers premiums and claims costs

⁷ LAWPRO makes this estimate based on the correlation between real estate sales data and transaction levy filings.

⁸ Fraud-related claims by 'clients' represents more than 6 per cent of the number of claims and 12 per cent of the costs for 2005 reported claims (7 per cent of the number and 16 per cent of the costs reported in 2004).

under the program since the 1995 policy year, has generated \$32.1 million in return premiums in total to date.

52. At June 30, 2005, the Premium Stabilization Fund balance was \$27.9 million. The current forecast would see \$24.5 million in the Fund at December 2005. LAWPRO advises that \$6.1 million, (about \$300 per insured lawyer), would be drawn from that surplus and applied towards the 2006 program.

53. This represents about a quarter of the anticipated balance of the Fund as at December 31, 2005. Going forward, annual draws in the order of 25 per cent of the balance of the Fund are anticipated. Although the balance in the fund is expected to continue to decline over time, as draws exceed declining contributions in the form of surplus transaction levies and return of premiums in profitable years, the fund is expected to continue to offer a significant source of stability and revenue in determining the base rate over the next several years.

c) *Base premiums*

Base Premium, by Fund Year

(see graph in Convocation report)

54. For 2006, the LAWPRO Board advises that the base premium is to be increased by three per cent or \$75 to \$2,700 per member. Since 1995, the base rate has varied from \$5,600 per lawyer that year, to \$2,500 per lawyer in 2004 (see preceding chart). The proposed base premium is based on the following assumptions:

- 20,400 practising insured lawyers (full-time equivalents);
- \$68 million in anticipated total loss costs;
- \$21.0 million in budgeted transaction and claims history levy revenues;
- \$6.1 million drawn from the Premium Stabilization Fund; and
- 4.5 per cent return on investment.

55. Although the number of lawyers in practice year over year has grown steadily by one to two per cent, there has not been a corresponding increase in claims costs. For example, between 1995 and 2003, claims costs stood at about \$65 million annually, even though an additional 1,900 lawyers came into practice over this time. In fact, the number of claims has decreased from 129 per thousand in 1995 to 94 per thousand in 2004. This factor has contributed to stable claims costs, and enabled LAWPRO to gradually reduce premiums over the 1995-2003 period. Unfortunately, claims experience started to deteriorate in 2004, with an increased number of larger claims. As well, the cost of fraud-related claims remains significant to the portfolio.

56. For 2006, it is appropriate to include some measure of conservatism in forecasting the frequency and cost of claims under the program. Uncertainties associated with predicting fraud-related claims, which had a resurgence in 2004, as well as the uncertainties in anticipating claims associated with recommended program changes, and general economic and inflationary pressures on the program dictate this prudent approach.

57. Despite the increased penetration of title-insured transactions since 1996, real estate losses still account for about 30 per cent of the value of professional liability program claims. With residential real estate prices increasing by about 90 per cent in the last decade, we do not

expect to see a decline in the value of real estate claims in the professional liability program. It is interesting to note that title insurers reported \$40 million in claims costs in Ontario in 2004.

58. In setting a base rate for 2006, LAWPRO looked at a three-year planning horizon. Various scenarios were modelled for the three-year period to provide comfort that the rate proposed for 2006 was appropriate. Under a "status-quo" type scenario, with a similar level of subsidization from the Premium Stabilization Fund level of subsidy in each of the three years,⁹ we expect to be able to keep base premium levels constant over the period, as the graph at the bottom of page 14 shows. Many factors influence this forecast, most significantly interest rates, and the claims experience and the forecast should be considered illustrative, rather than definitive in nature. This does however represent an improved outlook from that noted in last year's Report to Convocation.

59. Accordingly:

- a) The base premium is increased by \$75 to \$2,700 per lawyer for 2006, from the \$2,625 per lawyer charged in 2005.
- b) Revenues from supplemental premium levies (real estate and civil litigation transaction levies, as well as claim history levies) are budgeted at \$21.0 million for the purposes of establishing the base premium for 2006 and other budgetary purposes.
- c) \$6.1 million, (approximately \$300 per insured lawyer), will be drawn from the Premium Stabilization Fund built up in previous years (a \$24.5 million balance is forecast as at December 2005) and applied to the 2006 insurance premium.
- d) To the extent that levies (noted in [b] above) collected in 2006 are different than the budgeted amount, the surplus or shortfall will flow to/from the Premium Stabilization Fund.

Reinsurance

60. LAWPRO annually assesses its need for reinsurance based on its capital position, its claims results and volatility. Overall, claims results have been relatively stable. LAWPRO's capital position has continued to improve beyond that seen three years ago, when it was first decided to assume 100 per cent of the risk of the program. Beyond LAWPRO's own resources, additional reserves are being carried in the Errors & Omissions Fund.

61. Accordingly, it is again proposed that LAWPRO not pursue the expensive course of purchasing reinsurance on a program-wide basis. Instead, as in the past three years, it is proposed that the retroactive premium endorsement effectively be used to backstop the capital held in LAWPRO with the Premium Stabilization Fund/E&O Surplus, to a maximum of \$15 million in the event that claims experience is outside of the expected range of outcomes.

62. For 2006, LAWPRO will consider purchasing reinsurance protection against the possibility of multiple losses arising out of a common event or nexus, as it has for 2005. This protection against aggregated losses extends across both the professional liability and TitlePLUS programs, and offers some measure of protection against a series of claims such as

⁹ Assumptions:

- Investment yields during the period have been held constant at 4.5 per cent.
- The number of practising lawyers is expected to grow at 1.8 per cent per annum.
- Claims costs are expected to remain constant.

fraud-related claims relating to a single lawyer, or a single defect in title affecting an entire condominium project.

63. Accordingly, 100 per cent of the premiums and losses for the Ontario professional liability program will again be retained by the company in 2006, subject to reinsurance protecting the program from aggregated losses.

The 2006 program

64. With the exception of the proposed policy and exemption changes detailed earlier, all aspects of the insurance program for 2006 would remain unchanged from that now in place.

65. As detailed in Appendix A, the current insurance program for lawyers in private practice encompasses the following:

- standard practice coverage, including Mandatory Innocent Party Coverage;
- policy options, including Innocent Party Buy-Up, Part-Time Practice, and Restricted Area of Practice; and

66. The current program also provides for premium discounts and surcharges. Discounts and surcharges expressed as a percentage of premium include:

- New Lawyer discount;
- Part-Time Practice discount;
- Restricted Area of Practice Option discount;
- adjustments for deductible options and minimum premiums; and
- a “no application form” surcharge.

67. Discounts and surcharges expressed as a stated dollar amount include:

- the Mandatory Innocent Party premium;
- optional Innocent Party Buy-Up premium;
- premium discount for early lump sum payment;
- e-filing discount; and
- Continuing Legal Education discount.

68. With regard to the renewal process for 2006, improvements continue to be made to make better use of the technology available. For example, in 2005, sole practitioners who electronically filed their insurance applications generally received instant delivery of their policy documentation and invoices online. Building on the success of this initiative, in 2006 most lawyers in firms whose applications are electronically filed (on a firm-wide basis), will benefit from this instant delivery. As was the case last year, practising lawyers will be able to easily access their 2006 policy documentation and invoices online through a secure section of the LAWPRO Web site; lawyers again can opt for hardcopy delivery of these materials. Other improvements, less visible to lawyers and law firms, will also minimize the administration associated with the renewal process.

69. Subject to the changes identified earlier in this report, the exemption criteria, policy coverage, coverage options, and premium discounts and surcharges in place in 2005 will remain unchanged for the 2006 insurance program.

Risk Rating

a) *Background*

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

71. Specifically the Report indicated that "... as a fundamental, shaping principle, the cost of insurance should generally reflect the differences in risk history, differing risks associated with different areas of practice, and differing volumes of practice. But no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."¹⁰

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

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

74. Risk rating, however, is not static. The relationship between the cost of claims and different areas of practice may change, and it is important that LAWPRO continue to monitor the program to ensure that risk rating continues to be achieved. The results of these earlier risk analyses are re-evaluated each year, and the factors used to assess risk and determine premium under the program re-evaluated for degree of relevance. The factors currently used to match risk to premium include: area of practice, years in practice, claims history, liability for partners and associates, and size of practice.

75. As in the past, our risk analysis also examined the degree of specialization, size of firm, and geographic location of practice, as possible factors to be used in assessing risk and setting premiums. The potential factors were examined individually and on a multivariate basis to determine any correlation or dependencies.

76. This review reaffirmed the validity and magnitude of the rating structure currently in place. No changes to the type or amount of surcharges or discounts, as a percentage of the base rate, are contemplated for 2006. The results of the customary re-evaluation of the earlier risk analyses are addressed in this report at paragraphs 70 to 98.

b) *Practice trends*

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

¹⁰ 1994 Task Force Report, at page 17.

- Overall, the practice of real estate and civil litigation represent a disproportionate risk when compared to other areas of practice, with these two areas of practice representing 61 per cent of the claims reported and 53 per cent of the claims costs under the program in 2004;

However:

- In 2004, the relative exposure relating to the practice of real estate law was less than it had been at its peak; last year, this practice area accounted for 29 per cent of the claims reported and 29 per cent of the claims costs under the program, well below the levels of 48 per cent and 58 per cent seen in the 1989-94 period; and
- In 2004, the relative exposure relating to the practice of civil litigation has again been substantially more than that traditionally seen, with civil litigation accounting for 32 per cent of the claims reported and 24 per cent of the claims costs under the program (well above the traditional levels of 27 per cent and 18 per cent seen in the 1989-94 period);
- In 2004, the nature of claims against civil litigators was also reaffirmed, with claims involving the general conduct or handling of the matter at 70 per cent compared to purely missed limitation period claims at 30 per cent; and
- Lawyers with a prior claims history continue to have a considerably greater propensity for claims than other practising lawyers; lawyers with claims in the prior nine years were three times as likely as those with no claims in the prior nine years to report a claim during the past year.

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

c) Risk management initiatives

79. A principal mandate of LAWPRO is to help the legal profession manage the risk associated with practice, by providing lawyers with tools and resources that help them manage risk and practise in a more risk-averse fashion. Among LAWPRO's major risk management initiatives are:

- TitlePLUS®*: Now in its eighth year, LAWPRO's successful title insurance program has had a significant impact on both real estate practice and real estate claims. Real estate claims today cost the program about \$6 million less than they did in 1996 – a decline that can be attributed to changes in the lawyers' practice environment and the insurance program, and to widespread acceptance of title insurance.
- practicePRO®*: Now in its seventh year, LAWPRO's successful risk management and claims prevention initiative continues to grow and mature. It is a recognized source of high quality risk management tools and resources, both inside and outside of Ontario. practicePRO has been active in helping lawyers avoid malpractice claims during the course of this year through its *managing* series of booklets (the seventh in the series, on *managing the security and privacy of electronic data* was released in 2005), articles in LAWPRO Magazine and other publications, and live presentations at CLE programs and

other law-related events. practicePRO is continuing to build a significant presence in the legal community by expanding relationships and actively working with its various constituents, including the Law Society of Upper Canada, the Ontario and Canadian Bar Associations, The County and District Law Presidents' Association, and others.

- *Fraud:* The June 2004 issue of LAWPRO Magazine focuses on the many faces of fraud, and brings home to the profession warning signs of the types of identity, corporate and value fraud schemes being witnessed. This issue updates the 2001 Special Report on Fraud, which alerted the profession to new sophisticated fraud schemes being witnessed, and helped lawyers to avoid being victims of fraudsters. With the use of technology and methods of doing business fundamentally changing, the instances of fraud are now more prevalent, complex and often more sophisticated than even a few years ago. LAWPRO is taking active steps to combat fraud through measures within its own operations, its relationship with the profession, and by working with law enforcement, registry, banking, insurance and other organizations and industries also affected by fraud.
- *Evolving law practices:* The transformation that is taking place in family law and real estate law practices has been a key focus this year and the subject of the July, 2005 issue of the LAWPRO Magazine. In this issue, family law practitioners discuss how their practices have evolved in a world of constantly changing expectations, regulations and support structures, and offer practical advice on how to manage change as well as client relationships. Family law practitioners are offered a view from the bench, as well as an overview of the new spousal support guidelines, and an analysis of why family law claims are on the increase. Real estate lawyers discuss the need to rethink the way they view their practice, and how they position themselves and go about their business.
- *Practicing with technology:* Taking advantage of the opportunities that technology presents in practice, and guarding against the downside, is the focus of the December, 2004 issue of the LAWPRO Magazine. Lawyers are provided with insights as to why extranets matter as a client service tool, how lawyers can create the kind of presence on the Web that will benefit their practice, and ways lawyers can manage the security and privacy of electronic data in a law office. Real estate practitioners are invited to consider the electronic handling of funds as well as the use of integrated technology to reduce time and cost in real estate closings. Lawyers are also alerted to internet phishing scams, and steps that can be taken to avoid fraud within the firm.

80. The Continuing Legal Education ("CLE") Premium Credit offered under the program is another significant LAWPRO risk-management initiative. In 2001, a premium credit of \$50 was first offered to lawyers using the practicePRO Online Coaching Center, an internet-based, self-coaching tool that helps lawyers enhance their business and people skills.

81. The premium credit was broadened in the following year to provide a \$50 credit (to a maximum of \$100 per lawyer in a year) for designated law-related courses and programs completed by the lawyer. These courses are offered by the Law Society, Ontario Bar Association, The Advocates' Society and other organizations, and must include a substantial risk management component. Much of the risk management content deals with the "soft" skills of lawyering — communication, documentation, and time management rather than substantive law, in keeping with the most frequent causes of loss.

82. For a credit on premiums for 2006, lawyers must have participated in LAWPRO-approved CLE programs between September 16, 2004, and September 15, 2005. In addition to the Online Coaching Centre, 90 programs qualified for the credit during this period, with an estimated 13,600 lawyers eligible for a premium credit. Traditionally, CLE programs focused solely on substantive law. Due to the credit, the content of a significant number of CLE programs has been broadened to include risk management and claims prevention content.

83. Accordingly, the Continuing Legal Education Premium Credit will be continued in future years, with a \$50 premium credit per course, subject to a \$100 per lawyer maximum amount, to be applied for pre-approved legal and other educational courses taken and successfully completed by the member between September 16, 2005 and September 15, 2006, for which the lawyer has successfully completed the online CLE Declaration Form.

d) Revalidating risk rating

84. It is important to periodically re-evaluate the program by area of practice to ensure that it continues to be effective in its risk rating. The chart on the following page shows the distribution of claims costs and expenses by detailed area of practice since 1989.

Distribution of Claim Cost and Program Expenses, by Grouped Area of Practice
(see graph in Convocation report)

85. Apparent from this chart are the significant but reduced claims costs associated with real estate claims; the significant and growing claims costs associated with litigation practice; and the variability associated with most other areas of practice. This variability is largely a reflection of the unpredictability associated with smaller group sizes.

86. The fact that few lawyers practise exclusively in one area provides a compelling reason to group together common or related areas of practice. However, to ensure that risk rating is being achieved, the program's anticipated losses must be compared to the premiums. Based on the most recent loss experience under the program (including that seen under the program in 2004 and the first six months of 2005), the following chart compares the anticipated losses distributed by area of law, to the proposed base levy premiums by the lawyer's primary area of practice. The premiums in this chart include only the proposed base levy premiums (together with discounts), and no amounts applied as transaction levies and claims history surcharges.

87. The shortfall between the anticipated claims costs and expenses to base levy premiums, for both real estate and the litigation grouping, is clearly significant. As already noted, it is proposed that \$21.0 million be provided through the transaction levies and claims history levy surcharges. Although clearly benefiting those whose primary area of practice is real estate or who are in the litigation grouping, these additional revenues also benefit those whose secondary and other areas of practice include payment of these levies.

Comparison of Projected 2006 Premium by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law
(see graph in Convocation report)

88. The latest program statistics indicate that without the benefit of the transaction and claims history levy revenues, base premium levies of about \$7,400 and \$4,200 would be required of members whose primary area of practice is real estate or civil litigation, respectively.

Comparison of Projected 2006 Premium + Levies by Lawyer's Primary Area of Practice to Claims and Expenses by Claim's Area of Law

(see graph in Convocation report)

89. Past reports have discussed the importance of using the transaction and claims history surcharge levies as premium, avoiding any substantial dislocation among the bar in the higher risk areas of practice which would otherwise occur with risk rating.¹¹

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

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

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

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

94. Appreciating the foregoing variables and possibilities of comparison, by area of practice, it appears that the program does substantially meet its objective of risk rating, and that the proposed program will continue to do so in the coming year. Although a small amount of subsidy may exist for some areas of practice, taking into account the commercial realities and the relatively small amount of the subsidy, the cost of insurance under the program is considered to generally reflect the risk. Notably, the Task Force Report acknowledged that "... no insurance program can be solely risk-reflective and there must be some sharing and spreading of risk."¹²

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

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

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

¹¹ 1999 LAWPRO Report to Convocation, pp. 18-22; 1998 LAWPRO Report to Convocation, pp. 35-37; and 1996 LAWPRO Report to Convocation, pp. 32-36.

¹² 1994 Task Force Report, at page 17.

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

CONCLUSION

99. The LAWPRO Board considers the proposed program changes to be appropriate and consistent with its mandate as set out in the 1994 Insurance Task Force Report. The LAWPRO Board offers this program of insurance for 2006 and asks for Convocation's acceptance of this Report at the September Convocation, so that the 2006 insurance program can be implemented by January 1, 2006.

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

September, 2005

Kim A. Carpenter-Gunn
Chairman, LAWPRO's Board of Directors

APPENDIX A

· Standard Program Summary & Options	33
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Appendix "A"

The Standard Insurance Program Coverage for 2006

Eligibility

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

Coverage limit

- \$1 million per CLAIM/\$2 million aggregate (i.e. for all claims reported in 2006), application to CLAIM expenses, indemnity payments and/or cost of repairs together

Standard DEDUCTIBLE

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

Standard base premium

- \$2,700 per insured lawyer

Transaction Premium Levy

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

Premium reductions for new lawyers

- Premium for lawyers with less than 4 full years of practice (private and public):
 - ❖ less than 1 full year in practice: premium discount equal to 40% of base premium;

- ❖ less than 2 full years in practice: premium discount equal to 30% of base premium;
- ❖ less than 3 full years in practice: premium discount equal to 20% of base premium;
- ❖ less than 4 full years in practice: premium discount equal to 10% of base premium.

Mandatory Innocent Party Coverage

Eligibility

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

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

Premium

\$250 per insured lawyer

2006 Program Options

1. Deductible option

\$Nil deductible

- Increase in premium equal to 15% of base premium (\$405.00 increase).

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

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

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

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

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

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

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

- Increase in premium equal to 10% of base premium (\$270.00 increase).

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

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

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

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

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

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

2. Innocent Party Sublimit Coverage Options

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

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

Increase coverage sublimit to:	Additional annual premium:
\$500,000 per CLAIM/aggregate	\$150 per insured lawyer
\$1 million per CLAIM/aggregate	\$249 per insured lawyer

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

Coverage limits

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

3. Practice Options

Restricted Area of Practice Option

Eligibility

Available only to lawyers who agree to restrict their practice to criminal¹³ and/or immigration law¹⁴ throughout 2005.

Premium

Eligible for discount equal to 40% of base premium, to a maximum of \$1,080.¹⁵

Part-Time Practice Option

Eligibility

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

Premium

Eligible for discount equal to 40% of base premium, to a maximum of \$1,080.¹⁵

4. Premium Payment Options

¹³ Criminal law is considered to be legal services provided in connection with the actual or potential prosecution of individuals, municipalities and government for alleged breaches of federal or provincial statutes or municipal by-laws, generally viewed as criminal or quasi-criminal.

¹⁴ Immigration law is considered to be the practice of law dealing with any and all matters arising out of the *Immigration and Refugee Protection Act* (S.C. 2001, c.27) and regulations, and procedures and policies pertaining thereto, including admissions, removals, enforcement, refugee determination, citizenship, review and appellate remedies, including the application of the *Charter of Rights and Freedoms* and the *Bill of Rights*.

¹⁵ The maximum premium discount for Restricted Area of Practice, Part-Time Practice options and the New Practitioners' discount combined cannot exceed 40% of the base premium.

Instalment Options:

- Lump sum payment by cheque or pre-authorized payment: eligible for \$150 discount.
 - Lump sum payment by credit card
 - Quarterly instalments
 - Monthly instalments
5. E-filing Discount
- \$50 per insured lawyer (if filed by November 1, 2005)
6. Continuing Legal Education (Risk Management) Premium Credit
- \$50 per course, subject to a \$100 per insured lawyer maximum discount.
 - For pre-approved legal and other educational risk management courses taken and successfully completed by the insured lawyer between September 16, 2005, and September 15, 2006, where the lawyer completes and files the required LAWPRO CLE electronic declaration by September 15, 2006.
 - LAWPRO'S Online Coaching Centre is included as a pre-approved course, where the insured lawyer completes at least three modules between September 16, 2005, and September 15, 2006.

APPENDIX B

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Premium Rating Example	45
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Attached to the original Report in Convocation file, copies of:

- (1) Copy of Appendix B – Copies of graphs re: Distribution of Claims by geographic region; by firm size; years since date of Call and 80-20 Rule.
(pages 37 – 42)
- (2) Copy of Appendix C – Premium Rating Example.
(page 45)

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Swaye, that Convocation accept LAWPRO's Report so that the 2006 insurance program can be implemented by January 1, 2006.

An amendment to the main motion was proposed and accepted that Convocation accept the LAWPRO Report and approve the insurance program as recommended in the Report for 2006.

Carried

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Swaye, THAT By-Law 16 [Professional Liability Insurance Levies], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, April 30, 1999, May 28, 1999, September 24, 1999, September 19, 2002, June 26, 2003 and September 25, 2003, be further amended as follows:

1. Subparagraph i of paragraph 5 of subsection 9 (1) is amended by adding "or volunteer/ou bénévoles" after "will be employed/seront employés".

Carried

It was moved by Mr. Feinstein, seconded by Mr. Gottlieb, that the minutes of LAWPRO's shareholders meeting be distributed to benchers.

Carried

ROLL-CALL VOTE

Alexander	For	Legge	For
Backhouse	For	MacKenzie	For
Bourque	For	Murray	For
Carpenter-Gunn	For	Pawlitza	For
Caskey	For	Porter	For
Chahbar	For	Potter	For
Cherniak	For	Ruby	Abstain
Coffey	For	Sandler	For
Copeland	For	Simpson	For
Curtis	For	Swaye	For
Dickson	For	Symes	For
Dray	For	Topp	For
Eber	For	Warkentin	For
Feinstein	For	Wright	For
Finlayson	For		
Gold	For		
Gottlib	For		
Gottlieb	For		

Vote: 31 For; 1 Abstention

It was moved by Mr. Wright, seconded by Mr. Topp, that the issue of the transaction levy be referred back to the LAWPRO Board for further review.

Withdrawn

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Ruby presented the Finance & Audit Committee Report.

Report to Convocation
September 22, 2005

Finance & Audit Committee

Committee Members:
Clayton Ruby, Chair
Abdul Chahbar, Vice-Chair
John Campion
Marshall Crowe
Mary Louise Dickson
Allan Gotlib
Holly Harris
Ross Murray
Alan Silverstein
Gerald Swaye
Beth Symes
Robert Topp

Purpose of Report: Decision
 Information

(Andrew Cawse 416-947-3982)

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COMMITTEE PROCESS

1. The Finance and Audit Committee (“the Committee”) met on September 9, 2005. Committee members in attendance were: Clayton Ruby (c.), Abdul Chahbar (vc.), John Campion, Marshall Crowe, Mary Louise Dickson, Holly Harris, Gerald Swaye, Beth Symes
Peter Bourque was also present.
Michelle Strom (CEO) and Akhil Wagh (VP Finance & Treasurer) represented LawPro. Rich Wilson (Finance Committee), Janine Miller (Director), Suzan Hebditch (CEO), Mark Matson (Accountant) represented LibraryCo Inc.
Staff present were Malcolm Heins, Wendy Tysall, Katherine Corrick, Fred Grady and Andrew Cawse.
2. This report also brings forward a motion on bencher remuneration which was substantially addressed by the Committee on June 9, 2005. Committee members in attendance were: Clayton Ruby (c.), Abdul Chahbar (vc.), Peter Bourque, Andrew Coffey, Paul Dray, Holly Harris, Allan Lawrence, Ross Murray, Lawrence Pattillo, Laurie Pawlitza, Alan Silverstein, Gerry Swaye, Beth Symes and Bradley Wright.

FOR DECISION

BENCHER REMUNERATION

MOTION

That Convocation approves the definitions, processes, and reporting that will be used for the administration of bencher remuneration as summarized below.

- A. Elected benchers, former treasurers and ex-officio benchers will be remunerated for eligible activities.
- B. Remuneration at \$300 per half day and \$500 per full day will be made with an annual inflation adjustment or adjustment after review by the Finance & Audit Committee.
- C. Half and Full Days
 - (i) Inside Toronto Benchers: A half day will be work up to 3 hours in a 24 hour period. A full day constitutes work for more than 3 hours in a 24 hour period. Any work on eligible activity in another area, e.g. Ottawa, will comprise a full day.
 - (ii) Outside Toronto Benchers: Any work on eligible activity in Toronto will comprise a full day.
 - (iii) For work on eligible activity in the bencher's office area, a half day will be work up to 3 hours in a 24 hour period. A full day constitutes work for more than 3 hours in a 24 hour period.
- D. There will be an annual deductible of 26 days before benchers can be remunerated for their time. For purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded.
- E. The remuneration cycle will be based on the bencher year (June 1 to May 31) not calendar year.
- F. Eligible activities will include
 - (i) Convocation, meeting of committees, task forces, and working groups, special convocations, calls to the bar, bencher information sessions, mandatory bencher education sessions,
 - (ii) hearing panels, appeal panels, pre-hearing conferences
 - (iii) meetings attended as the Law Society's official representative at the direction of the Treasurer or Convocation as well as
 - (iv) time spent as the Law Society's appointed representative to boards of external organizations, and other roles in external organizations where that external organization permits remuneration.

- G. A benchner appointed to an external organization who is remunerated by that external organization will not be eligible for remuneration by the Law Society for the time spent, nor will the time spent on the external organization's business count toward the 26-day deductible.
- H. Attending a meeting by telephone is an eligible activity.
- I. Questions relating to specific attendance and eligible activity issues can be directed to the Chief Executive Officer. Changes to these guidelines must be approved by the Finance & Audit Committee.
- J. Benchers who opt for remuneration must submit quarterly activity sheets on the prescribed form. Benchers will certify this form.
- K. Payment of remuneration will only be made directly to individual benchers or their firm.
- L. The Finance Department will report on attendance, remuneration and expense reimbursement paid to individual benchers to the Audit Sub-Committee. Total amounts paid for benchner remuneration and expense reimbursements will be reported to the Finance & Audit Committee and Convocation on a quarterly basis. In addition, remuneration will be reported in total in the Annual Report.

Background, Definitions and Issues

1. Once the results of the referendum on benchner remuneration were known, the Finance & Audit Committee set up a working group comprising Holly Harris, Laurence Pattillo, Gerry Swaye and Brad Wright, to consider the definitions, processes and reporting to be used in the administration of benchner remuneration, and make recommendations thereon. The working group submitted its recommendations to the Committee on June 9. On September 9th, the new Committee reviewed the proposed guidelines and now submits its recommendations on benchner remuneration to Convocation as summarized above and discussed in more detail below.
2. *Who qualifies for benchner remuneration?*

Elected benchers (numbering 40), former treasurers (numbering 11) and ex-officio benchers (numbering 18) (for a current total number of 69) will be eligible for remuneration. The eight appointed benchers will not be eligible for remuneration beyond amounts paid by the province.
3. *How will the rates for remuneration be maintained?*

The current framework sets remuneration at \$300 per half day and \$500 per full day. It is suggested that a review of these rates be conducted by the Finance & Audit Committee on an annual basis.
4. *What is half a day and a day for remuneration purposes?*

The definition of half a day is intended to include eligible activity lasting up to 3 hours within a 24 hour period. 3 hours for a half day is similar to other organizations such as Legal Aid pursuant to the remuneration rate authorized by order-in-council, and consistent with Management Board directives on part-time government board appointees. This is also what Convocation previously appeared to be leaning towards, without concluding on the matter.

The definition of a full day is eligible activity in excess of three hours in a 24 hour period.

For all benchers, any eligible activity completed out of the bencher's office area (e.g. Ottawa benchers in Toronto, Toronto benchers in Ottawa) qualifies as a full day.

5. *How is the deductible calculated?*

The current framework sets a deductible of 26 days before benchers can be remunerated for their time. It is suggested that for purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded. This means that 26 half days and not 52 half days will fulfill the 26 attendances required by the deductible.

6. *Is the deductible calculated on a calendar year or bencher year?*

The Committee recommends that the bencher year (June 1 – May 31) not calendar year (January 1 – December 31) is appropriate. If a calendar year is used the months at the beginning (June 1 to December 31) and end (January 1 to May 31) of a non-re-elected bencher's term would be dormant periods for remuneration purposes as deductible days are accumulated.

The remuneration framework included in the referendum material specified that the remuneration cycle was based on the calendar year.

Remuneration is retroactive to May 28, 2004. Therefore if the bencher year basis is adopted the first year for bencher remuneration will be May 28, 2004 to May 31, 2004 and the second year will be June 1, 2004 to May 31, 2005.

7. *What are eligible activities?*

According to the framework included with the remuneration referendum material, an activity would include attendance at Convocation, meetings of committees, task forces, working groups (including the Ontario Lawyers Gazette Advisory Board), special convocations, calls to the bar, bencher information sessions, mandatory bencher education sessions, hearing panels, appeal panels, pre-hearing conferences and meetings attended as the Law Society's official representative. However some bencher work outside of these specified categories is difficult to classify.

It is suggested that benchers will only be remunerated for attending meetings of committees, task forces and working groups where they are a member of the committee, task force or working group or where they have been formally invited to participate by the relevant chair. Any bencher is able to attend any committee meeting but attendance will only be eligible for remuneration where such attendance is requested by the chair.

It is suggested that eligible activities also include:

- a) The maximum of one day allowed for writing reasons for a panel's decisions.
- b) Work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Benchers.

In addition, it is also suggested that meetings between benchers and staff will not be eligible against the deductible or for remuneration. This is because these meetings are typically of the nature of pre- or post- meeting work (i.e. preparation time). The only exception to this would be work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Benchers.

8. *Will a bencher acting as the Law Society's appointed representative be remunerated? (as opposed to the Law Society's official representative – see below).*

The Law Society, through Convocation, appoints a significant number of benchers to the boards of subsidiary and related organizations. These organizations are:

- a) LawPro
- b) LibraryCo
- c) BAR-eX
- d) the Canadian National Exhibition
- e) CanLII
- f) Civil Rules Committee
- g) Criminal Rules Committee
- h) Diane Martin Medal Selection Committee
- i) Family Rules Committee
- j) the Federal Judicial Advisory Committee
- k) the Federation of Law Societies
- l) the Judicial Appointments Advisory Committee
- m) Legal Aid
- n) Law Foundation of Ontario
- o) Law Society Foundation
- p) LINK / OBAP
- q) Ontario Bar Association Council
- r) Ontario Centre for Advocacy Training
- s) Ontario Judicial Council
- t) OJEN
- u) Pro Bono Law Ontario

Benchers are appointed to these other boards because of their role as a bencher. However once benchers have assumed the role of director of the other organization, their role as director comes with fiduciary duties to that other organization. These fiduciary duties may not always be congruent with the interests of the Law Society. The Committee did not feel that a bencher as director of an external organization being paid by the Law Society would aggravate this situation.

There is some uncertainty as to whether the directors / trustees of CanLII, the Federation of Law Societies, the Law Foundation of Ontario, the Ontario Bar Assistance Program, the Ontario Justice Education Network and the Law Society Foundation may

be barred from receiving remuneration for duties arising from that office. The by-laws / legislation governing these organizations contain terminology such as “no Director shall directly or indirectly receive any profit from his / her position as a Director of the Corporation”. The Finance & Audit Committee has requested each of these organizations be approached so that they can determine how the Law Society’s benchers remuneration policy affects their directors.

In addition, benchers appointed to these external boards may be eligible for director’s fees or other remuneration from these other organizations. The Committee agreed that a bencher appointed to an external organization who is remunerated by that external organization will not be eligible for remuneration by the Law Society for the time spent, nor will the time spent on the external organization’s business count toward the 26-day deductible. As an example, LawPro’s current by-law on remuneration of non-bencher directors, which could be extended to benchers on the LawPro board provides an annual retainer of \$12,000, increasing for chairs and vice chairs, \$1,250 per board meeting and \$750 per committee meeting.

9. *What is an official representative of the Law Society? (as opposed to the Law Society’s appointed representative – see above).*

It is suggested that where a bencher has been appointed by Convocation or requested by the Treasurer to represent the Law Society at a meeting, occasion or event, then that attendance would be eligible for remuneration as the Law Society’s official representative.

It was agreed in Convocation in October 2004 that “only official representatives of the Law Society who attend meetings are compensated.”

In certain instances, the Treasurer may request a bencher to attend a meeting, such as a swearing in ceremony, as representative of the Law Society or as a replacement for the Treasurer. Such meetings often require the official Law Society representative to play a role in proceedings. These types of meetings would be eligible for remuneration – whether the meeting takes the form of a business meeting, ceremonial event or swearing-in ceremony.

It is suggested that in the Treasurer’s remarks, Convocation be informed either in arrears or in advance, of the events attended by the Law Society’s official representatives. This will confirm the bencher’s attendance in an official capacity as the Law Society’s representative, assist benchers in their attendance reporting, as well as informing Convocation of ongoing events.

10. *What other bencher activities are specifically excluded from remuneration?*

There are a number of organizations that appear to prohibit or control remuneration for their directors discussed in Section 8 above.

It is also suggested that benchers attending meetings of organizations such as the Law Society Foundation, the Osgoode Society or CDLPA where their role may not be as official Law Society representative and has not been requested by the Treasurer or approved by Convocation would not be eligible for remuneration. The Law Society Foundation is illustrative because certain benchers are nominated to be members by the

Treasurer, not appointed, with their role as member and trustee later approved by the Law Society Foundation Board of Trustees.

Attendance at receptions, dinners, symposia and other like events will not be applied to the 26 day deductible nor be remunerated.

Reason writing time in excess of one day, travel time and preparation time will not be applied to the 26 day deductible nor be remunerated.

11. *How will emerging issues and questions on benchers remuneration be resolved?*

Questions relating to whether any specific activity is an eligible activity may be directed to the Chief Executive Officer. Any changes to these guidelines must be approved by the Finance & Audit Committee.

12. *Does attending a meeting by telephone qualify for remuneration?*

It is suggested that attending a meeting by telephone still qualifies as an eligible activity.

13. Examples of suggested eligible and ineligible activities for benchers remuneration are set out on Appendix D.

14. In October 2004, the framework for benchers remuneration was approved by Convocation. The framework as described in the referendum materials is attached as Appendix A.

Processes for Recording Benchers Activities

Quarterly Activity Sheets Submitted by Benchers Opting For Remuneration

15. Benchers who opt for remuneration must submit quarterly activity sheets.
16. It was noted that if all benchers submitted activity sheets the Law Society would be better able to maintain accurate statistical information on the volunteer services of benchers and be more able to make accurate projections of potential benchers remuneration costs for budgets and forecasts. It was noted that there was sufficient resistance to the option of mandatory record keeping to negate its usefulness.
17. A draft of the activity sheet is attached as Appendix B for Convocation's information. The activity sheets would be certified by benchers as being correct.
18. It is suggested that attendance sheets be submitted by the 15th of the month following quarter end to allow complete, accurate and prompt reporting and payment of remuneration.

Required Remuneration Documentation

19. Benchers receiving remuneration for their services must provide the following:
 - a. Their Social Insurance Number.

- b. The Canada Revenue Agency Personal Tax Credits Return Forms (TD1 series).
 - c. A bank account number for the electronic funds transfer of remuneration is strongly encouraged.
20. The SIN and TD1 forms are required for income tax purposes. Benchers will receive a T4 for all remuneration received and, if applicable, taxes and other deductions such as CPP will be withheld by the Law Society and remitted to the Canada Revenue Agency. Withholding tax will depend on the amount of individual remuneration expected to be paid. Annual remuneration under \$8,100 will probably not have tax withheld, although all remuneration will require the deduction of "employee / director" CPP and the payment of employer CPP and employer health tax. These "taxes" will approximate \$11,000 in total per year if total bencher remuneration in the year approximates \$160,000 (CPP: 5%, EHT: 2%)

Payment of Remuneration

21. Bencher remuneration will be paid on a quarterly basis. Benchers eligible for remuneration who submit forms by the middle of the following month, will see payment made by the end of that following month if all required documentation (SIN etc) is in place. For example, for fourth quarter (March, April and May of bencher year) activity sheets submitted by June 15, payment will be made by June 30.
22. Deferral of remuneration will not be allowed.
23. Payment of remuneration will only be made directly to individual benchers or their firm. Redirection of remuneration to charities is considered to be unworkable primarily because:
- a) The bencher must still receive a T4 for the gross amount of remuneration with the associated withholding tax implications.
 - b) Once remuneration has been received by individual benchers, those benchers can redirect the money based on their own objectives and there is no difference in financial implication.
 - c) The designation of numerous charities will be administratively onerous.
 - d) Redirection will complicate reporting of remuneration.
 - e) This redirection appears to defeat the motivating principles for bencher remuneration.

Retroactive Amounts

24. The proposal on bencher remuneration presented to members as part of the referendum package stated that remuneration would be effective from May 28, 2004. If the bencher not calendar year is used, it is suggested that those benchers who believe they have exceeded the deductible in the bencher year June 1, 2004 to May 31, 2005 and wish to be remunerated should submit attendance records for the period on the required forms discussed above. Similarly, if the calendar year is used, benchers should assess their

attendance in the period May 28 to December 31, 2004 and submit quarterly activity sheets if required.

Costs of Remuneration

25. When combined with benchers expense reimbursements, it is envisaged that the administration of benchers remuneration will require one full time person, particularly in the initial period. Once the process is established it is envisaged that a web-based input application could be developed to reduce administration time and expense.
26. If the suggestions for the implementation of remuneration as set out in this memo are agreed upon, estimated annual costs of remuneration are set out in Appendix C, providing a range for total remuneration from zero to \$1,200,000 per year, with a probable expense closer to \$490,000. These remuneration costs would increase by approximately 7% (say \$11,000) for employer CPP and health tax contributions. Administration costs at the implementation stage will approximate \$100,000 per year.
27. The 2005 operating budget included funding of \$200,000 for benchers remuneration this year. Any excess of actual remuneration paid over budget will be funded from the contingency account in the 2005 Operating budget. \$1.2 million was provided for this contingency account, of which \$399,000 has been allocated to date for 393 University Ave. rental costs, the Laskin legacy event and tsunami relief.

Opting Out of Remuneration

28. Benchers can decide not to accept remuneration for their services as benchers. Benchers who decide to forego remuneration must communicate this choice in writing to the Chief Financial Officer.

Reporting

29. The Finance Department will report on remuneration and expense reimbursements paid to individual benchers to the Audit Sub-Committee. Total amounts paid for benchers remuneration and expense reimbursements will be reported to the Finance & Audit Committee and Convocation on a quarterly basis.
30. In addition remuneration will be reported in total in the Annual Report. Information to support accruals for benchers remuneration will be required for year-end reporting purposes.
31. Individual benchers will also receive an individual report on their own attendance on a quarterly basis.

Appendix A

The framework for benchers remuneration which was the subject of the referendum, is as follows:

- a. In each calendar year, the first 26 days on which a bencher works will not be remunerated.
- b. Benchers will be remunerated for some of the activities undertaken for the Law Society, including attending Convocation and meetings of committees, working groups and task forces, sitting as members of the Law Society's Hearing and Appeal Panels, conducting pre-hearing conferences, and attending meetings of external organizations, such as LAWPRO, as the Law Society's official representative. One per diem amount will be paid to the bencher who writes the reasons for decision following a hearing or appeal.
- c. Only attendance at business meetings will be remunerated. Attendance at receptions, dinners, symposia and other like events will not be remunerated.
- d. Elected and ex-officio benchers will be eligible for remuneration.
- e. Remuneration would be at the rate of \$500 per day and \$300 per half-day.
- f. Travel time, preparation time and additional reason writing time will not be remunerated.

Appendix B

Law Society of Upper Canada

Finance & Audit Committee – Report to Convocation

Implementation of Bencher Remuneration - Bencher Activity Sheet

Appendix C

Law Society of Upper Canada

Finance & Audit Committee – Report to Convocation

Implementation of Bencher Remuneration

Estimate of Remuneration

Appendix D

Law Society of Upper Canada

Finance & Audit Committee – Report to Convocation

Implementation of Bencher Remuneration

Examples of Eligible and Ineligible Activities

.....

IN CAMERA

.....

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

FOR INFORMATION

LAW SOCIETY BUDGET PREPARATION

In preparation for the 2006 budget, to be presented to Convocation in October, the Committee reviewed the 2006 budget submitted by LibraryCo Inc and the major assumptions relating to the Law Society's own budget for 2006.

The Committee was cognizant of the increased level of Compensation Fund claims in the current year and the effect this may have on the Fund but according to Peter Bourque, Chair of the Compensation Fund Committee who was at the Finance & Audit Committee meeting, the Compensation Fund Committee and the Compensation Fund's actuary are satisfied with current arrangements.

The budget will undergo further Senior Management review and a proposal will be presented to the Finance and Audit Committee for recommendation to Convocation in October.

FOR INFORMATION

NORTH WING RENOVATION

Convocation approved the renovation of the North Wing of Osgoode Hall in late 2004 with a budget of \$9,028,000. In May 2005 an increase to the budget of \$700,000 was approved as a result of issues encountered during the course of the project. The project is progressing on schedule and is expected to be completed within the amended budget of \$9.8 million. Actual spending on the project to date is \$5,265,000.

FOR INFORMATION

MEMBERSHIP FEE CATEGORIES

The Committee reviewed membership fee categories with particular focus on the level of fees for out-of-province members. The Committee concluded it was not appropriate to recommend any changes to the fee structure at this time.

FOR INFORMATION

PENSION FUND ANNUAL FINANCIAL STATEMENTS

In June 2005, Convocation resolved to delegate the administrative oversight duties set out in the Pension Fund Governance Guidelines to the Finance & Audit Committee. The Committee reviewed the financial statements of the Fund of the Pension Plan for the Employees of the Law Society of Upper Canada for the year ended December 31, 2004.

FOR INFORMATION

GENERAL FUND - FINANCIAL STATEMENTS FOR THE
SECOND QUARTER ENDED JUNE 30, 2005

The second quarter financial statements for the General Fund are set out below for information.

Law Society of Upper Canada
General Fund
Financial Statement Highlights
For the six months ended June 30, 2005

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

At the end of June, the Society's unrestricted fund has a surplus of \$69,000 and an accumulated fund balance of \$1.4 million.

Balance Sheet

- Cash and short-term investments have decreased by \$7.025 million over the first half of 2004 primarily for two reasons - planned payments for the renovation of the north wing and the timing of the transfer of cash to the Compensation Fund. In 2005 the quarterly transfer to the Compensation Fund occurred prior to the end of June and in 2004 after the end of June. The downward trend in cash will continue over the remainder of the year. An additional \$4.5 million will be paid

from cash and short-term investments before the north wing project is complete in early 2006 with total estimated cost of \$9.8 million as reported to Finance and Audit Committee in May.

- Accounts receivable and prepaid expenses of \$5.7 million have increased marginally from 2004.
- Portfolio investments have increased slightly over 2004 as income earned and gains realized from investments have been re-invested in the long-term portfolio. Market value exceeds book value by \$178,000 at the end of the first half.
- Accounts payable and accrued liabilities have declined by \$773,000. This is primarily related to the reduction in the payable to the Compensation Fund offset by the accrual for an anticipated litigation settlement as well as an increase in normal operating payables.
- The decrease in the capital allocation fund balance of \$5.2 million from June 2004 reflects progress on the north wing project and is reflected in the increase in the invested in capital assets fund as the cost of renovating the north wing is capitalized.
- Deferred revenue of \$23 million is comprised largely of members' fees billed but not yet earned and Bar Admission Course tuition fees billed but not yet earned.

Revenue and Expenses

- Annual membership fee revenue is recognized on a monthly basis. Membership fees have increased from \$17.2 million in 2004 to \$17.9 million in 2005 with an increase in membership of approximately 1,000 members and an increase of \$30 in the per member fee.
- Litigation cost recovery of \$367,000 reflects the costs received by the Society for the copyright infringement case that was successfully argued at the Supreme Court of Canada.
- Overall, expenses have increased over 2004 in line with expectations. Other expenses have increased by approximately \$1.0 million reflecting an increase in an accrual of \$700,000 for the anticipated settlement of a long-standing claim against the Society and accrued severance payments for staff reductions resulting from implementation of the new licensing process.
- Included in the budget for other expenses is a contingency allowance of \$300,000 (one quarter of the annual \$1.2 million). To date we have allocated funding for Tsunami relief (\$44,000), leaseholds and rent at 393 University (\$320,000) and the Laskin legacy event (\$35,000). Of the \$320,000 approved for 393 University, \$140,000 has been transferred to the Capital Allocation Fund to cover the cost of leasehold improvements charged to that fund. The additional monthly rental costs of approximately \$14,000 per month are included in the facilities expense reported in the Unrestricted Fund.

- An allowance of \$200,000 for the costs of benchers remuneration was included in the 2005 budget. In September, a report on implementation will be going to Convocation. \$200,000 has been accrued in the first half representing the full amount budgeted for the benchers calendar year. No payments have been made for remuneration to date.
- The unrestricted fund shows a surplus of \$69,000. This compares to an anticipated budget deficit of \$330,000 in the first half. The 2005 budget was approved with an unrestricted fund deficit of \$1.4 million to be covered by the \$1.6 million fund balance from 2004.

Changes in Fund Balances

- The unrestricted fund balance ends the period at \$1.424 million.
- Invested in capital assets fund increases with the additional costs of the north wing renovation being transferred to this fund. Upon completion, the capital cost of the north wing will be depreciated over a ten-year span according to the Society's fixed asset policy.
- The county library fund holds funds collected from members' annual fees for transfer to LibraryCo for county library purposes. The balance of \$8,000 is not expected to vary greatly by year-end.
- The repayable allowance fund has made payments to students based on need in the amount of \$155,000 to 42 students for an average of \$3,700.
- The special projects fund includes payment of approximately \$100,000 for the referendum on Benchers remuneration.
- With the exception of the J. Shirley Denison Fund, the Society's endowment funds were approved for transfer to the Law Society Foundation by the Public Guardian and Trustee. Approximately, \$116,000 was transferred to the Law Society Foundation as a result of this approval. Payments of \$30,000 have been made from the J. Shirley Denison Fund to a total of eleven individuals.

FOR INFORMATION

LAWYERS FUND FOR CLIENT COMPENSATION - FINANCIAL STATEMENTS FOR THE SECOND QUARTER ENDED JUNE 30, 2005

The second quarter financial statements for the Lawyers Fund for Client Compensation are set out below for information.

Law Society of Upper Canada
Lawyers Fund for Client Compensation
Financial Statement Highlights
For the six months ended June 30, 2005

The first half of 2005 has been completed and the Lawyers Fund for Client Compensation ("the Fund") fund balance of \$17.1 million has declined from its March 2004 balance of \$18.8 million and its 2004 year-end high of \$19.5 million. Despite this decline, the fund balance is still well above its 10-year average balance of \$13.5 million. In only two of the last ten years has the year-end fund balance been higher than its current balance.

An actuarial valuation of the reserve for unpaid grants has been completed for June 2005 and the balance has been increased by \$2,010,000 over its valuation at December 31, 2004, of which approximately \$800,000 relates to the first quarter. This increase is largely due to four situations with ten or more potential claims. Individually, these situations are not significant but it is unusual for four to occur at the same time.

As a result of this increase in the reserve for unpaid grants and the significant increase in grants actually paid in the first half of 2005 over the same period in 2004, net grants expense has increased to \$4,015,000 from \$492,000 in the first half of 2004. Other expenses are in line with the 2004 amounts with the exception of insurance, which was eliminated in 2005.

Balance Sheet

- The significant changes in the Balance Sheet from June 2004 to June 2005 are the increase in long-term investments and the increase in the reserve for unpaid grants. The value of portfolio investments has increased consistent with the level of returns from the portfolio. Of note is the large positive variance (\$1,238,000) in the market value of the portfolio when compared to its book value. The increase in the reserve for unpaid grants is primarily the result of the four issues mentioned above.
- The reduction in interest and other receivables is a reflection of the funds being transferred from General Fund to the Compensation Fund prior to the end of the quarter in 2005.

Revenue and Expenses

- Fee revenues of \$3.0 million are down by \$319,000 from the first half of 2004. The reduction in the annual levy from \$230 to \$200 per member is offset by an increase in total membership. Annualized fee revenue for the Fund will approximate \$6 million.
- Investment income has decreased to \$750,000 from \$915,000. Again, it should be noted that the Fund's long-term investment portfolio has unrealized gains of approximately \$1,238,000.
- Grant payments of \$2,186,000 are significantly higher than for the similar period in 2004 as a result of increased payments of outstanding claims in the first half of 2005. The majority of the payments represent payments of claims previously reserved
- Net grants expense of \$4,015,000 compared to \$492,000 in 2004 is largely attributable to the actuarial valuation of the reserve for unpaid grants.

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

FOR INFORMATION

LAWYERS' PROFESSIONAL INSURANCE COMPANY FINANCIAL STATEMENTS FOR THE SECOND QUARTER ENDED JUNE 30, 2005

The second quarter financial statements for the Lawyers' Professional Insurance Company and the Combined Errors & Omissions Fund are set out below for information.

FOR INFORMATION

LIBRARYCO INC. - FINANCIAL STATEMENTS FOR THE FIRST QUARTER ENDED MARCH 31, 2005 AND SECOND QUARTER ENDED JUNE 30, 2005

The first and second quarter financial statements for LibraryCo Inc are set out below for information.

The Committee reviewed the first and second quarter financial statements of LibraryCo Inc. After review by staff and the Audit Sub-Committee both quarters now incorporate the changes to the format and commentary previously requested by the Committee. The second quarter financial statements complied with the Law Society's requests on timeliness and presentation.

The Audit Sub-Committee had noted that the approval of the financial statements at the LibraryCo level had not followed normal corporate governance processes in that the financial statements had not been approved by LibraryCo's board prior to submission to the Law Society. In the future, LibraryCo's board will approve the quarterly financial statements prior to submission to the Law Society.

FOR INFORMATION

INVESTMENT COMPLIANCE REPORTS

The investment compliance reports for the General Fund and Compensation Fund long and short-term portfolios at June 30, 2005 are set out below for information.

STATEMENT OF COMPLIANCE – LONG TERM

STATEMENT OF COMPLIANCE – SHORT TERM

COMPLIANCE REPORT – FOYSTON – GENERAL FUND

COMPLIANCE REPORT – FOYSTON – LAWYERS FUND FOR CLIENT COMPENSATION

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

- (1) Copy of Benchers Activity Sheet.
(Appendix B, page 17)
- (2) Copy of a table re: Estimate of Remuneration.
(Appendix C, pages 18 – 19)
- (3) Copy of a table re: Examples of Eligible and Ineligible Activities.
(Appendix D, pages 20 – 22)
- (4) Copies of the General Fund, Lawyers Fund for Client Compensation and Lawyers' Professional Insurance Company Financial Statements for Second Quarter Ended June 30, 2005 and the Financial Statements for LibraryCo Inc. for First Quarter Ended March 31, 2005 and Second Quarter Ended June 30, 2005.
(pages 29 – 75)
- (5) Copies of the Investment Compliance Reports.
(pages 77 – 83)

J. S. Denison Trust Fund (in camera)

It was moved by Mr. Ruby, seconded by Mr. Chahbar, that Convocation confirm the payment of \$1,000.00 from the J. S. Denison Fund to a member identified as IE.

Carried

Benchers Remuneration

It was moved by Mr. Ruby, seconded by Mr. Chahbar, that Convocation approve the definitions, processes, and reporting that will be used for the administration of benchers remuneration as set out on pages 4 and 5 of the Report.

It was moved by Mr. MacKenzie, seconded by Mr. Wright, that the second sentence of paragraph D on page 4 of the Report be deleted.

Lost

ROLL-CALL VOTE

Aaron	Against	Krishna	Against
Alexander	Against	Legge	Against
Backhouse	For	MacKenzie	For
Bourque	Against	Murray	Against
Carpenter-Gunn	Against	Pawlitza	For
Caskey	Against	Porter	For
Chahbar	Against	Potter	Against

Cherniak	Against	Ruby	Against
Coffey	Against	Sandler	Against
Copeland	For	Silverstein	Against
Curtis	For	Simpson	Against
Dickson	Against	Swaye	Against
Dray	For	Symes	Against
Eber	Against	Topp	For
Feinstein	For	Warkentin	Against
Finlayson	Against	Wright	For
Gotlib	For		
Gottlieb	Against		

Vote: 23 Against; 11 For

It was moved by Mr. MacKenzie, seconded by Mr. Wright, that paragraph G on page 5 of the Report be deleted and that the following be substituted:

“A bencher shall not accept compensation from an external organization to which he or she is appointed as a bencher or otherwise accept compensation as a bencher except in accordance with this policy.”

Not Put

It was moved by Mr. Porter, seconded by Mr. Ruby, that the MacKenzie/Wright motion to delete paragraph G be adjourned until November 2005.

Carried

ROLL-CALL VOTE

Aaron	Against	Krishna	For
Alexander	Against	Legge	Against
Backhouse	For	MacKenzie	Against
Bourque	Against	Murray	Against
Carpenter-Gunn	For	Pawlitza	For
Caskey	For	Porter	For
Chahbar	For	Potter	Against
Cherniak	Against	Ruby	For
Coffey	For	Silverstein	Against
Copeland	For	Simpson	For
Curtis	Against	Swaye	For
Dickson	For	Symes	For
Dray	For	Topp	Against
Eber	For	Warkentin	For
Feinstein	Against	Wright	For
Finlayson	For		
Gotlib	Against		
Gottlieb	Against		

Vote: 19 For; 14 Against

It was moved by Ms. Curtis, seconded by Mr. MacKenzie, that the Benchers Remuneration matter be adjourned to November 2005.

Lost

ROLL-CALL VOTE

Aaron	For	Krishna	For
Alexander	Against	Legge	Against
Backhouse	Against	MacKenzie	For
Bourque	Against	Murray	For
Carpenter-Gunn	For	Pawlitza	Against
Caskey	Against	Porter	Against
Chahbar	Against	Potter	For
Cherniak	For	Ruby	Against
Coffey	Against	Silverstein	Against
Copeland	Against	Simpson	Against
Curtis	For	Swaye	Against
Dickson	Against	Symes	Against
Dray	Against	Topp	For
Eber	Against	Warkentin	Against
Feinstein	For	Wright	For
Finlayson	Against		
Gotlib	For		
Gottlieb	Against		

Vote: 21 Against; 12 For

The main motion except paragraph G was approved.

ROLL-CALL VOTE

Aaron	For	Krishna	Against
Alexander	For	Legge	For
Backhouse	For	MacKenzie	Against
Bourque	For	Murray	For
Carpenter-Gunn	For	Pawlitza	For
Caskey	For	Porter	For
Chahbar	For	Potter	Against
Cherniak	Against	Ruby	For
Coffey	For	Silverstein	For
Copeland	For	Simpson	For
Curtis	For	Swaye	For
Dickson	For	Symes	For
Dray	For	Topp	Against
Eber	For	Warkentin	For
Feinstein	For	Wright	Abstain
Finlayson	For		
Gotlib	Against		
Gottlieb	Against		

Vote: 25 For; 7 Against; 1 Abstention

Items For Information

- Law Society Budget Preparation
- North Wing Renovation
- Membership Fee Categories
- Pension Fund Annual Financial Statements
- General Fund – Financial Statements for Second Quarter Ended June 30, 2005
- Lawyers Fund for Client Compensation – Financial Statements for Second Quarter Ended June 30, 2005
- Lawyers' Professional Insurance Company Financial Statements for Second Quarter Ended June 30, 2005
- LibraryCo Inc – Financial Statements for First Quarter Ended March 31, 2005 and Second Quarter Ended June 30, 2005
- Investment Compliance Reports

REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

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

Report to Convocation
September 22, 2005

Professional Regulation Committee

Committee Members
Carole Curtis, Chair
Mary Louise Dickson, Vice-Chair
Laurence Pattillo, Vice-Chair
Gordon Z. Bobesich
Anne Marie Doyle
George D. Finlayson
Patrick G. Furlong
Alan Gold
Allan Gotlib
Gavin MacKenzie
Ross W. Murray
Judith Potter
Sydney Robins
Bradley Wright

Purposes of Report: Decision and Information

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

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For Decision

Amendments to By-Law 17 for the 2005 Member's Annual Report

For Information

Review of the Requirement for Reporting Member Misconduct with respect to Ontario Bar Assistance Program (OBAP) Lawyer Counsellors

Professional Regulation Division Quarterly Report (April to June 2005)

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on September 8, 2005. In attendance were Treasurer George Hunter, Carole Curtis (Chair), Mary Louise Dickson and Laurie Pattillo (Vice-chairs), Patrick Furlong, Allan Gotlib, Ross Murray and Judith Potter. Staff attending were Naomi Bussin, Anne-Katherine Dionne, Mark Goodman, Terry Knott, Jennifer Olivia, Zeynep Onen, Elliot Spears, Jim Varro and Andrea Waltman.

FOR DECISION
AMENDMENTS TO BY-LAW 17 FOR THE 2005
MEMBER'S ANNUAL REPORT

MOTION

2. That By-Law 17 [Filing Requirements] made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999, May 28, 1999, October 29, 1999, January 27, 2000, June 22, 2000, October 19, 2000, April 26, 2001, October 25, 2001, October 31, 2002, September 25, 2003 and October 28, 2004 be further amended by revoking Form 17A and substituting the following:

Introduction and Background

3. By-Law 17 (Filing Requirements) governs the filing of the annual information report by members with respect to their practices and related activities, including trust account holdings. This report is called the Member's Annual Report (MAR). Section 2 of the By-Law reads:
 2. (1) Every member shall submit a report to the Society, by March 31 of each year, in respect of the member's practice of law and other related activities during the preceding year.
 - (2) The report required under subsection (1) shall be in Form 17A [Member's Annual Report].
4. In an effort to improve the form, the integrity of the information sought through the MAR and its "user-friendly" component, the Director of the Administrative Compliance

Processes department, in consultation with staff, including senior managers, and with LawPRO, reviews the MAR annually and brings forward to the Committee suggested changes to the MAR. If changes are made to the MAR, an amendment to By-Law is required as the form is prescribed under the By-Law as Form 17A.

5. The Committee reviewed and agreed with the proposed amendments to the MAR for 2005 based on these discussions, and requests that Convocation approve the amendments which are explained in the following section.
6. The amended prescribed MAR (Form 17A), which as a prescribed form does not include year references, appears in the motion at paragraph 2. The amended MAR with year references for the 2005 filing year appears after paragraph 61.

Explanation of Changes to the 2005 MAR

(page references are to the MAR numbered pages and corresponding pages of this report)

Page 1 (page 26 report) - Front Page/Section A

7. "Marking Instructions" have been simplified to assist in completing the MAR. The instructions directly below the marking instructions have been expanded to advise a member of the availability of "The Bookkeeping Guide" on the Law Society website.
8. The headings for each section have been changed to create a consistent flow for the member. Each section heading (A to H) has specific instructions that provide clearer direction for completing the 2005 MAR.
9. The "NOTES ABOUT THIS SECTION" box has been expanded to advise a member that if his or her address has changed after November 2005, the address information on the cover of the member's 2005 MAR will be different.
10. A "Privacy Option" heading has been added to request that members indicate if they do not wish the Law Society to provide the member's name or business address to any professional legal association, institution or organization.

Page 2 (page 27 report) – Inside Front Cover Page

11. The non-mandatory (survey) questions have been slightly modified as follows:
 - a. Question 1 "Provisions of Legal Services in French": the content has not changed, but the table has been separated from the other questions on the page;
 - b. Question 2 "Continuing Legal Education": the questions and layout have been modified to permit the Professional Development & Competence department to identify with greater ease the current and future needs of Continuing Legal Education (CLE) programs offered.
12. Question 4 "Electronic Filing" has been added to request that members indicate if they prefer to receive details on e-filing rather than receiving a paper form.

Page 3 (page 28 report) – Year End Status/Section B

13. The title heading was modified to read "YEAR END STATUS" instead of "STATUS".

14. The “NOTES ABOUT THIS SECTION:” language has been amended to reinforce that a member is to choose only one status regardless of changes in employment during the 2005 calendar year. Details regarding an employment change during 2005 can be provided on either the Notice of Change of Information form, or the area provided below this section.
15. The status option table has been restructured to make choosing a specific status easier by incorporating darker horizontal colour bands into the table. Clearer headings have been added to each column from left to right i.e., “Mandatory Sections” & “Complete if Applicable”, to make the choice for status clearer.
16. The status option “Not working or on parental leave or unemployed” has been expanded to include members who may have chosen not to work because they are on parental leave.
17. A specific text box has been added for the status “In a situation not covered above” which permits a member to provide further details relating to this status choice.

Page 3 (page 28 report) – Allocation of Legal Services/Section C

18. The section heading remains the same, but instructions within the heading now advise a member to use the MAR Guide for further assistance when completing this section.
19. “NOTES ABOUT THIS SECTION:” has been moved to appear directly below the section heading to provide clearer direction to the member.
20. The table “What approximate percentage of the time spent providing legal services was devoted to:” has been re-formatted by removing percentage ranges for each question, allowing a member to write actual percentages, which must still approximate 100%.

Pages 3 and 4 (pages 28 and 29 report) – Areas of Practice/Section D

21. The section heading remains the same, but instructions within the heading have been added to advise a member on who must complete this section. The responses to all questions in this section are to be written instead of answered by filling in percentage ovals.
22. Question 1 “Canadian Law Practice in Ontario” has been reworded to request that members describe the portion of their law practice relating to the provision of legal services in Ontario.
23. Question 2 “Canadian Law Practice other than Ontario” has been added to permit members to describe the portion of their law practice relating to the provision of legal services in specified areas of law in or in respect of Canadian jurisdictions other than Ontario.
24. Question 3 “Canadian Law Practice other than Ontario” has been added to identify those members who may be practicing in other provinces as a result of mobility.
25. Format changes only have been made to Question 4 “Details of Real Estate Practice”.

Page 5 (page 30 report) – Professional Development/Section E

26. The section heading remains the same, but instructions within the heading now advise a member to use the MAR Guide for further assistance when completing this section.
27. In “NOTES ABOUT THIS SECTION:”, the first note reinforces that the MAR Guide should be used if a member requires clarification on how to complete this section. The second note clarifies the annual minimum expectations of a member for self-study and for CLE (50 hours self-study, 12 hours CLE).
28. Minor formatting changes have been made in this section. The only major change is the addition of a text box at the bottom of the section following Question 2d.

Pages 6 and 7 (page 31 and 32 report) – Individual Member Questions/Section F

29. The section heading remains the same, but instructions have been changed this year to ask that *all* members complete this section regardless of status as each question may apply to any member.
30. In “NOTES ABOUT THIS SECTION:”, the following notes were added to maintain formatting consistency and provide greater direction when completing the MAR:
 - a. The Law Society web address has been added for members who wish to refer to the bookkeeping Guide on-line.
 - b. The statement “For further direction refer to the 2005 MAR Guide for definitions if necessary” was added.
31. Question 1 “Cash Transactions” is a new question relating to the money laundering regulations in By-Law 19, and requests member to advise if they received cash in the amount of \$7,500.00 or more in any one client matter or transaction during the 2005 calendar year.
32. Question 2 “Trust Property”, an existing question, has been amended with the addition of a new note to the header advising that a response is required to Questions 2a) to 2c) before a member can proceed to question Question 3.
33. Question 3 “Estates and Power(s) of Attorney”, an existing question, has been amended with the addition of a new note to the header advising that a response is required to Questions 3a) to 3e) before a member can proceed to Question 4.
34. Question 3a) iii) is a new question requesting information on the total number of open estate files.
35. Question 3b) iii) is a new question requesting information on the total number of files in which the member exercised a Power of Attorney.
36. Question 3a) iv) has been expanded to ask for investments in estate files in addition to the total dollar value of all separate bank accounts referred to in Question 3a) iii).
37. Question 3b) iv) has been expanded to ask for investments in Power of Attorney files in addition to the total dollar value of all separate bank accounts referred to in Question 3b) iii).

- 38. Question 3c) has been added to obtain further information on the control a member may have over estate assets as a solicitor, not as an estate trustee, in Ontario.
- 39. Question 3e) has been revised to become a separate question within this section. Last year, some members missed this question as it was a note only and apparently was unclear.
- 40. Question 6 on "Private Mortgages", included in the "Mortgage Transactions" section on the 2004 MAR, has been given its own heading and reformatted to obtain more information about members who may conduct private mortgage transactions as part of their practice.

Pages 8 to 11 (pages 33 to 36 report) – Financial Reporting/Section G

- 41. The instructions to the right of the section header have been expanded to advise that this section is "To be completed by: Joint Filing Member, Sole Practitioners, Partners/Employees/Associates of a Law Firm, Legal Aid Lawyers responsible for trust accounts and all other members who held or continued to hold client monies or property from a former legal practice in Ontario as at December 31, 2005." Further detail was added to the instructions to remedy the vague instructions last year that section G should be completed by those members in private practice. Reference is also made to the 2005 MAR Guide for further assistance.
- 42. In "NOTES ABOUT THIS SECTION:", all the important instructions on completing this section in the previous MAR have been incorporated and moved directly below the section header.
- 43. Question 1 "Trust and General Accounts" has been expanded to ask "As at December 31, 2005, did either you or your firm operate any trust and/or general accounts in Ontario?" This will capture responses from members who may operate general and trust accounts. The question has been given its own heading to make the question more visible.
- 44. In Question 2 "Joint Filing Option", "PART I" has been dropped from the heading to simplify navigating the form. The instructions within the title heading have been revised to inform a member that the "report is not considered complete without either the Joint Filing Member's signature on Line 2c) below OR the submission of the Joint Filing Declaration/letter by the Joint Filing Member." The "Name of Firm" line found of the 2004 MAR has been removed as redundant.
- 45. Section G has been re-formatted to simplify all directions within this section, utilizing borders and shading to make directions clearer.
- 46. In Question 3 "Firm Records", "PART II" has been dropped from the heading to simplify navigating the form.
- 47. Question 3, "Were books and records for your firm's general and trust accounts maintained throughout 2005, on a current basis in accordance with By-Law 18 made under the Law Society Act?" has been expanded in an effort to include members who do not hold funds in a specific trust account for their clients.

48. The deficient records table (below Question 3) has been re-formatted to make the question easier to answer. The instruction that this table should *only* be used if the member answers “No” to Question 3 has been made clearer.
49. Question 4 “Comparison of Trust Bank Reconciliations and Trust Listing of Client Liabilities as at December 31, 2005.” has been re-formatted by adding borders and shading to assist members in completing this section.
50. Assistance for completing the “Reconciliation” by reference to the MAR Guide for a sample of a reconciliation has been emphasized in the note above Question 4a).
51. In Question 4a) i) “Mixed trust bank accounts”, members are now requested to provide the number of mixed trust bank accounts in addition to the dollar amount of these accounts.
52. In Question 4b) i) “Separate interest bearing trust accounts”, members are now requested to provide the number of interest bearing trust accounts in addition to the dollar amount of these accounts.
53. In Question 4c) i) “Separate Estate and/or Power of Attorney accounts and investments”, members are now requested to provide the number of separate Estate and/or Power of Attorney accounts and investments in addition to the dollar amount of these accounts.
54. A vertical column has been added to explain how values should be totalled from Questions 4a to 4k, with the addition of +, –, or = symbols.
55. The instruction has been clarified to indicate that if a member’s books do not reconcile, and differences exist between the reconciled bank balance and total client trust liabilities, the member must provide a written explanation in the text box below Question 4k.
56. Question 5 “Overdrawn Accounts” has been re-formatted to include details on an overdrawn account in the answer. The question has been clarified to elicit the actual “dollar value” of overdrawn clients’ trust ledger accounts (see Question 5(ii)), and the total “number” of overdrawn clients’ trust ledger account deposits as at December 31, 2005 (see Question 5(iii)).
57. Question 6 “Outstanding Deposits” has been reformatted to include details on an outstanding deposit in the answer. The question has been clarified to elicit the actual “dollar value” of outstanding trust account deposits (see Question 6(ii)), and the total “number” of outstanding trust account deposits as at December 31, 2005 (see Question 6(iii)).
58. Questions 7 and 8 “Unchanged and/or Unclaimed Client Trust Ledger Account Balances” have been given a specific heading. Minor formatting changes have also been made. A text box has been added to the bottom of page 11 (page 36 report) for members who wish to provide more information relating to “G Financial Reporting”.
59. The “Specifics Page” has been removed as this page was not being used by members for MAR related information.

Page 12 (page 37 report) – Certification and Signature/Section H

- 60. Minor formatting changes were made to this section. A new addition is the individual boxes for the member's signature and date the form is completed.
- 61. A final reminder to members to include relevant information before the report is submitted has been added.

FOR INFORMATION

REVIEW OF THE REQUIREMENT FOR REPORTING MEMBER
MISCONDUCT WITH RESPECT TO ONTARIO BAR ASSISTANCE
PROGRAM (OBAP) LAWYER COUNSELLORS

Introduction and Background

- 62. The Executive Director of the Ontario Bar Assistance Program (OBAP), John Starzynski, requested that the Society consider amending the lawyer's obligation in the *Rules of Professional Conduct* to report the professional misconduct of another lawyer to exempt OBAP lawyer counsellors from reporting the misconduct of another lawyer disclosed in the course of counselling that lawyer.
- 63. The issue first arose at the Society as a result of discussions between OBAP representatives and benchers Gary Gottlieb in 2002. Mr. Gottlieb had previously raised this issue in Convocation at the end of the debate on adoption of the Discrimination and Harassment Commissioner (DHC) by-law in June 2001 with a suggestion that it be referred to the two committees (the Professional Regulation Committee and the Equity and Aboriginal Issues Committee Comité sur l'équité et les affaires autochtones) which met jointly to review the DHC by-law provisions on confidentiality. The DHC confidentially assists anyone who may have experienced discrimination or harassment by a lawyer or within a law firm, and is not required to report lawyer misconduct disclosed in the performance of the his or her duties.
- 64. OBAP is a program that provides assistance, based on the principles of confidentiality and voluntary access, to members of the legal profession and their families with issues such as addictions, stress/burnout, work and family pressures and mental or physical health. Assistance is provided through one-on-one peer support, assessment, referrals to services, counselling, links with related services, education and information. A key part of OBAP's success is its network of lawyer volunteers who provide an invaluable counselling resource for lawyers who access the program. OBAP is one of several provincial lawyer assistance programs in Canada, which are networked through the national Legal Profession Assistance Conference (LPAC) of the Canadian Bar Association. OBAP is funded by the Law Society and LawPRO.

OBAP's Request to the Law Society and the Committee's Review

- 65. OBAP's specific request was that the same exemption from reporting lawyer misconduct applicable to the DHC apply to lawyer counsellors. The DHC exemption is found in By-Law 36, which governs the office of the DHC. The relevant part of the By-Law reads:

Confidentiality

6.(1) The Counsel shall not disclose,

- (a) any information that comes to his or her knowledge as a result of the performance of his or her duties under clause 4 (1) (a) [counseling, program development, etc.]; or
- (b) any information that comes to his or her knowledge under subsection 4 (3) that a benchler, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12 [information about members or students from Law Society records].

Rules of Professional Conduct

- (2) For greater certainty, clause (1) (a) prevails over the Society's Rules of Professional Conduct to the extent that the Rules require the Counsel to disclose to the Society the information mentioned in clause (1) (a).

66. The current reporting requirement applicable to OBAP lawyer counsellors is found in rule Rule 6.01(3) of the Society's *Rules of Professional Conduct* and commentary, which read:

Duty to Report Misconduct

- (3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege,
 - (a) the misappropriation or misapplication of trust monies,
 - (b) the abandonment of a law practice,
 - (c) participation in serious criminal activity related to a lawyer's practice,
 - (d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced, and
 - (e) any other situation where a lawyer's clients are likely to be severely prejudiced.

Commentary

Often, instances of improper conduct arise from emotional, mental, or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the Ontario Bar Assistance Program (OBAP), LINK, and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

67. This requirement dates from March 1998. Prior to that date, lawyer counsellors working with OBAP and other lawyer assistance programs were subject to the reporting requirement applicable to all lawyers who learn of lawyer misconduct. In 1998, OBAP

approached the Law Society with a request to change this reporting obligation for lawyer counsellors. After reviewing extensive material provided by OBAP and discussing the issues with OBAP representatives, the Committee provided options to Convocation on a revised reporting requirement for lawyer counsellors. OBAP's request at that time was that lawyer counsellors not be required to report any lawyer misconduct revealed by a lawyer in the course of counselling.

68. In March 1998, Convocation adopted the new commentary to the Rules noted above. Convocation agreed that confidentiality of the information provided by lawyers to law assistance program counsellors was crucial to the integrity of the program and to ensuring that lawyers facing personal difficulties, including addiction and mental health issues, sought the appropriate help. However, Convocation limited the exemption from the reporting requirement, requiring a report for current or future serious misconduct or criminal activity related to the lawyer's practice. Although OBAP wished to have full exemption for its counsellors with respect to reporting lawyer misconduct, it was pleased that the Law Society agreed to provide the partial exemption and saw this as a major step forward for the program.
69. The Committee began its review of OBAP's recent request in the spring of 2003 and discussed the issue over a series of meetings up to September 2005. The Committee reviewed the background to the current reporting requirement, received information on the office of the DHC and the background to its structure, and received a presentation from Mr. Starzynski on why he believes the reporting requirement should be changed for OBAP lawyer counsellors. The committee also discussed the referral relationship between OBAP and LINK¹, which was also the subject of comment by Mr. Starzynski.
70. Mr. Starzynski highlighted the following reasons for the request for a reporting exemption:
 - a. Complete confidentiality would encourage more lawyers to access OBAP for assistance with personal problems;
 - b. If discussions between an OBAP peer support lawyer and a caller appear to be leading to issues that relate to what must be reported to the Society, the caller will be advised of the confidentiality standard in the Rules, but this may end a request for assistance;
 - c. If callers are referred by OBAP to LINK, advice about the confidentiality standard/reporting requirement is not required. However, an OBAP peer support lawyer may be the better choice for the caller. The reporting issue should not get in the way of the best choice for lawyer assistance;

¹ LINK is a not-for-profit corporation overseeing the delivery of EAP services to the legal profession in Ontario. Sponsored by the Law Society, it is supported by the Ontario Bar Association, Advocates Society, County and District Law Presidents' Association, Criminal Lawyers' Association, National Association of Women and the Law, OBAP and Women's Law Association of Ontario, which have representation on LINK's board of directors. LINK provides a professional counselling and referral service for all members through Warren Shepell Consultants and works on a complementary basis with OBAP's volunteer peer support. As LINK counsellors are non-lawyer professionals, the issue of reporting misconduct does not arise when a lawyer access LINK.

- d. LINK cannot refer callers to OBAP without advising of the OBAP reporting requirements;
 - e. Lawyers have a “fear” of the Society and a concern about OBAP being forced to disclose information to the Society. Ensuring confidentiality would remove this barrier for certain callers; and
 - f. Consistency with the DHC standard would eliminate confusion about the varying standards and allow the programs to work harmoniously with each other.
71. With respect to the last point, the Committee was assisted by the information received from Josée Bouchard, the Society’s Equity Advisor, on the DHC program. In discussing the purpose and design of the program, Ms. Bouchard advised that discrimination and harassment is an abuse of power, and in most cases, the victims are vulnerable and react with confusion, anger and silence about the incident. Research on the subject indicates that in processes to address discrimination and harassment, information, advice and options on how to deal with the matter need to be provided in a confidential way. Because of the sensitive nature of the issues, experts have said that the only way to get individuals to speak about the matter is by ensuring confidentiality. This also gives the victim some control. The DHC deals with the victim, and rarely interacts with the respondent.

The Committee’s Conclusions

72. The Committee concluded that no change should be made to the reporting requirement for OBAP lawyer counsellors, for the following reasons.
73. OBAP has been operating under the current rules since 1998 and, according to information obtained in informal discussions, is able to manage the requirement to report with the ability to provide the required advice and counselling services in the rare instances in which these issues directly intersect during a call. As indicated in Mr. Starzynski’s information, lawyers who contact OBAP are advised in advance of the obligations of the lawyer counsellors. Based on the information it received, the Committee concluded that the lack of a full exemption from reporting misconduct for lawyer counsellors has not had a significant effect on the integrity of the program or its ability to offer the necessary services to lawyers.
74. A distinction can be made between the functions the DHC performs and the functions that OBAP lawyer counsellors perform. The DHC is accessed by victims of certain types of conduct who, as noted above, need the assurance of confidentiality to come forward and discuss what are often very difficult issues. OBAP lawyer counsellors deal with lawyers, who, while obviously needing help, may also be potential perpetrators of misconduct. In the Committee’s view, this distinction weighs against providing OBAP lawyer counsellors with the same confidentiality standard of the DHC, which would mean that serious misconduct would likely not be reported to the Society.
75. The Society is accountable for the manner in which it regulates lawyers in the public interest. While the Law Society supports financially and morally OBAP’s efforts to deal with lawyers who seek help, amending the reporting requirement to give immunity to a specific group of members from the requirement on this basis cannot be justified. Members who are seeking help must also realize that in dealing with the problem that

led them to OBAP, they may be required to address serious professional conduct issues with the Law Society.

REPORT FROM THE PROFESSIONAL REGULATION DIVISION

76. The Professional Regulation Division's Quarterly Report, provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period April to June 2005.
77. Ms. Onen highlighted the statistics appearing on pages 13, 18 and 24 of the report, which disclose the efforts being made in Complaints Resolution and Investigations to meet targets for the timely handling of complaints, and which document the number of active files in the Discipline Department. Ms. Onen noted that the effect of completing investigations on an increased number of older cases in the Complaints Resolution and Investigations stream is being felt at the Discipline department level, in that more cases are being authorized for disciplinary action and at the same time are increasing in complexity. A number of prosecutions with respect to members involved in mortgage fraud are also contributing to this effect.

THE PROFESSIONAL REGULATION DIVISION QUARTERLY REPORT April – June 2005

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

- (1) Copy of the amended prescribed MAR (Form 17A) without year references.
(pages 5 – 16)
- (2) Copy of the amended MAR with year references for the 2005 filing year.
(pages 26 – 37)
- (3) Copy of the Professional Regulation Division's Quarterly Report, April – June 2005.
(pages 45 – 87)
- (4) Copy of a memorandum from Jim Varro, Policy Advisor to Convocation re: Amendments to By-Law 17 for the 2005 Member's Annual Report (MAR) Professional Regulation Committee Report Convocation Materials, Tab 6 together with attachments – (1) a corrected page 14 of the Report and (2) French language version of the MAR.
(copy of memorandum in Convocation file)

Amendments to By-Law 17 (Filing Requirements) for the 2005 Member's Annual Report (MAR)

It was moved by Ms. Curtis, seconded by Ms. Dickson, that By-Law 17 be further amended by revoking Form 17A and substituting the form in the Report with the corrected page 10 and the French language version of the MAR contained in the handout.

Carried

It was moved by Mr. Gottlieb that the Member's Annual Report be amended as follows:

- (a) that a "not applicable" box be added under paragraph 2 (Canadian Law Practice other than Ontario) on page 29 of the MAR form; and
- (b) that a "not applicable" box be added under paragraph 2 (Joint Filing Option) on page 33 of the MAR form.

Failed for want of a seconder

Ms. Curtis thanked Terry Knott and other staff who worked on the Member's Annual Report.

Items for Information

- OBAP's Request for an Amendment to the Confidentiality Standard for OBAP Lawyer Counsellors
- Professional Regulation Division Quarterly Report (April to June 2005)

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IN PUBLIC

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REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Change to the Call to the Bar Process

Ms. Carpenter-Gunn presented the item in the Report on the Change to the Call to the Bar Process.

Report to Convocation
September 22, 2005

Professional Development, Competence & Admissions Committee

Committee Members
William Simpson (Chair)
Constance Backhouse (Vice-Chair)
Gavin MacKenzie (Vice-Chair)
Peter Bourque
Kim Carpenter-Gunn
James Caskey
Sy Eber
Gary Lloyd Gottlieb
Thomas Heintzman
Vern Krishna
Laura Legge
Bonnie Warkentin
Bradley Wright

Purpose of Report: Decision
 Information

Policy Secretariat
(Sophia Sperdakos 416-947-5209)

COMMITTEE PROCESS

1. The Committee met on June 9, 2005. Committee members George Hunter (Chair), Gavin MacKenzie (Vice-Chair), Bill Simpson (Vice-Chair), Peter Bourque and Kim Carpenter-Gunn attended. Staff members Caterina Galati, Diana Miles, Nancy Reason and Sophia Sperdakos also attended.
2. The Committee met on September 8, 2005. Committee members Kim Carpenter-Gunn (chairing the meeting), Peter Bourque, James Caskey, Sy Eber, Laura Legge and Bonnie Warkentin attended. Staff members Diana Miles and Sophia Sperdakos also attended.
3. The Committee is reporting on the following matters:

Decision

- *In camera* matter
- Revised call to the bar ceremonies

Information

- Director of Professional Development and Competence's Quarterly Report (September 2005)

CALLS TO THE BAR

MOTION

21. That Convocation approves the following call to the bar procedure for the new licensing process, which begins in 2006:
 - a. There will be three in-person calls to the bar; in September, January and June. The June calls to the bar will be the ceremonial calls that occur in Ottawa, London and Toronto. Whenever possible, the September and January calls will occur on regularly scheduled Convocation dates.
 - b. A new "paper" call to the bar procedure will be introduced for transfer candidates and for admission of law professors and deans.
 - c. Transfer candidates and law professors or deans will be eligible for a live call should they wish to attend one. Ontario candidates will be required to attend a live call.
 - d. The Director of Professional Development and Competence, or her designate, will, however, have discretion in exceptional circumstances to allow an Ontario candidate to be called to the bar through the paper call.

Introduction and Background

22. Under the former Bar Admission Course the in-person ceremonial calls to the bar took place in July, with smaller in-person calls to the bar held at the monthly Convocations in September, October and November and from January to June, whenever numbers warranted them.
23. The vast majority of bar admission course graduates are called to the bar at the ceremonial calls. Since the introduction of the National Mobility Agreement in 2003, most of the candidates who take advantage of the monthly calls are transfer candidates, already lawyers in other signatory jurisdictions who are eligible for transfer without having to pass examinations. The exception to this has been the monthly calls that follow bar admission course examination rewrites when the number of Ontario candidates for admission is somewhat higher.
24. In the new Licensing Process, there will be three licensing examination offerings – June/July, November and March. Candidates will be able to write their examinations and any rewrite examinations in any of these sittings. Because of the shortened duration of the Licensing Process the typical candidate will complete the licensing requirements approximately thirteen months after completion of law school. Most candidates will have completed the examinations and skills program requirements before they complete the articling requirement. The vast majority of candidates will therefore be eligible for call to the bar in June. In the case of candidates who must rewrite examinations, or who choose to space out the writing of their licensing examinations, it will require approximately 6 weeks to process their examinations, and if the candidates are successful, ready their files for call to the bar.
25. The administrative effort and cost associated with 8 monthly calls and 5 ceremonial calls (3 in Toronto, 1 in Ottawa and 1 in London) are significant. As the new Licensing Process begins, it is appropriate to consider whether a new approach to calls to the bar may be advisable. The goals of such a new approach would be to,
 - a. call candidates to the bar as expeditiously as possible following their completion of the licensing requirements;
 - b. administer only as many calls as is necessary to accomplish (a);
 - c. use alternatives to the in-person monthly calls to the bar where appropriate; and
 - d. be cost efficient.
26. Based on these goals the following new approach is proposed:
 - a. There will be three in-person calls to the bar; in September, January and June. The June calls to the bar will be the ceremonial calls that occur in Ottawa, London and Toronto. These will accommodate the vast majority of students who complete the licensing requirements within the typical 13-month period, as well as those who have written or re-written examinations in March. The September and January calls will accommodate primarily those students who have written or re-written examinations in June/July (September call) or November (January

call). Depending upon numbers, these two additional in-person calls to the bar will take place on a Convocation date.

- b. A new “paper” call to the bar procedure will be introduced for transfer candidates and for admission of law professors and deans. As stated above, currently most of the candidates at the monthly calls are transfer candidates. A paper-based call for these transferring lawyers and law professors or deans will obviate the need for monthly calls, will save staff time and resources, and will be cost efficient. Paper-based calls are already used in some other Canadian law societies, such as British Columbia.
 - c. Transfer candidates and law professors or deans will be eligible for a live call should they wish to attend one. Ontario candidates will be required to attend a live call. The Director of Professional Development and Competence, or her designate, will, however, have discretion in exceptional circumstances to allow an Ontario candidate to be called to the bar through the paper-based call.
27. This new proposed approach would accomplish the goals set out in paragraph 25 above and be flexible enough to address candidates' needs.
28. If the Committee recommends this approach to Convocation and it is approved, amendments to the appropriate by-laws will then be drafted for the Committee and Convocation's approval. It is important to determine this issue as soon as possible so that candidates can be notified well in advance of the commencement of the Licensing Process in 2006.

INFORMATION
DIRECTOR'S QUARTERLY BENCHMARK REPORT

29. APPENDIX 1 contains the Director of Professional Development and Competence's quarterly benchmark report for Convocation's information.

APPENDIX 1

QUARTERLY BENCHMARK REPORT
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT
(Product Usage Statistics as at June 30, 2005)

FOR INFORMATION ONLY

Prepared by:

Diana Miles
 Director, Professional Development & Competence
 (416) 947-3328
dmiles@lsuc.on.ca

September 2005

BENCHMARKS AND KEY INDICATORS REPORT

Practice Management Guidelines

Web traffic report for Practice Management Guidelines (number of visits)

Guideline	November & December 2002	2003	2004	To June 30, 2005
Executive Summary Page	741	5,085	2,934	1,579
Client Service & Communication	71	1,488	5,088	1,268
File Management	108	930	3,317	2,261
Financial Management	93	553	1,190	999
Technology	71	597	1,723	871
Professional Management	43	584	1,620	1,146
Time Management	83	924	2,287	1,073
Personal Management	33	423	1,691	1,715
Closing Down Your Practice	32	558	1,365	919
Total	1,275	11,142	21,215	11,831

Best Practices Self-assessment Tool

The Best Practices Self-assessment Tool was launched on June 25, 2004.

	2004	To June 30, 2005
Registered Users	654	89

Certified Specialist Program

The Certified Specialist Program redesigned was launched in January 2004.

	2001	2002	2003	2004	To June 30, 2005
Number of Specialists	617	611	609	682	695
Number of applications in process	-	-	-	-	19
Specialists in Toronto Area	349	344	341	384	392
Specialists outside Toronto	268	267	268	298	303
Number of Specialty Areas	10	10	10	13	13

Continuing Legal Education

	2001	2002	2003	2004	To June 30, 2005
Total number of CLE programs (<i>all formats</i>)	67	63	71	72	42
Attendance at all CLE programs (<i>all formats</i>)	8,539	11,788	18,269	20,187	8,840
Average attendance per program	127	187	262	280	209
Number of programs for law clerks (<i>included in total</i>)	-	10	5	8	5
Number of programs on the Interactive Learning Network (<i>included in total</i>)	-	-	35	45	23
Attendance at ILN locations	-	-	4,014	3,595	1,138
Average attendance at ILN locations per program	-	-	115	80	49
Number of Teleseminars (<i>included in total</i>)	-	-	5	9	3
Attendance at Teleseminars	-	-	2,468	3,762	735
Average attendance at Teleseminars	-	-	494	418	245
Number of live webcast programs on BAR-eX	N/A	N/A	12	29	26
Attendance at live webcast programs	N/A	N/A	213	1,198	1,170
Average attendance at live webcast programs	N/A	N/A	18	41	45
Bursaries provided	140	151	243	215	128
Units/publications sold (paper, CD and PDF)	8,249	11,424	11,028	12,963	5,362

e-Transactions Site

	2003	2004	To June 30, 2005
Number of visits on CLE page of e-Transactions	38,954	70,890	31,509

Web purchase report for CLE portion of e-Transactions site

Product	2003	2004	To June 30, 2005
Book purchases	524	1,259	1,678
Program registrations	1,103	1,651	1,192
ILN program registrations	503	536	198
Teleseminar registrations	321	517	80
Video streams	27	90	117
PDF purchases	36	45	124
CD-ROM purchases	9	167	74

Practice Management Helpline

	2001	2002	2003	2004	To June 30, 2005
Total member calls for advice	5,435	5,715	5,303	5,780	2,816

Breakdown of Callers

	2001	2002	2003	2004	To June 30, 2005
Sole practitioners	2,363	2,465	2,399	2,363	1,272
Other members	2,150	2,354	2,372	2,332	1,144
Non-members ¹	922	896	532	1,013	400

Practice Advisory Mentor Program

	2001	2002	2003	2004	To June 30, 2005
Number of new mentors	N/A	N/A	6	17	11
Number of matches	N/A	30	91	86	40

¹ Non member category consists of the following: Articling students, Secretary or Bookkeeper at firm, Manager or Administrator at firm, Law Society staff, Law Clerk or Paralegal at firm and other (sales person, lawyer outside Ontario, etc.)

Spot Audit

Number of Audits Conducted

	2001	2002	2003	2004	To June 30, 2005
Books and records audits	718	506	529	476	240
Complex audits	319	401	528	663	326
Total audits	1,037	907	1,057	1,139	566

Audits referred to Investigations/ undertakings obtained	42	70	56	57	46
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Practice Review

	2001 (first year of new process)	2002	2003	2004	To June 30, 2005
Number of authorizations into program	16	20	19	45	15
Number of authorizations through internal referrals	3	8	11	11	5
Total	19	28	30	56	20

Total Practice Reviews Conducted ²	18	50	45	50	31
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² A portion represents follow-up practice reviews for members that volunteered into the program prior to mandatory reviews being enacted in 1999. As a result, more reviews are being shown as conducted than authorized. A significant number of reviews in 2002 & 2003 fall within this category.

Bar Admission Course Reference Materials

	2001	2002	November & December 2003	2004	To June 30, 2005
Number Members who have purchased the materials online for \$0	N/A	N/A	2,546	6,525	1,307

Bar Admission Course

	2001	2002	2003	2004	To June 30, 2005
New Enrolment	1,247	1,312	1,317	1,356	1,388
Average attendance skills phase (May-June)	80%	72%	74%	69%	54%
Average attendance substantive phase (July – Aug)	48%	42%	48%	39%	N/A
Tuition Fee	\$4,400	\$4,400	\$4,400	\$4,400	\$4,400
National Mobility Agreement transfer candidates	-	-	41	76	27
Non-National Mobility Agreement transfer candidates	-	-	26	13	4
Total Transfer candidates	61	93	67	89	31

Articling and Placement Services

	2001	2002	2003	2004	To June 30, 2005
International Articles	29	16	11	15	4
National Articles		14	16	12	10
Part time Articles		5	8	7	1
Joint Articles		0	2	5	4
Biographic paragraphs posted	53	62	99	93	25

Job postings	163	129	104	75	53
New Articling Mentors	N/A	N/A	N/A	5	0
New Articling Mentees	N/A	N/A	N/A	57	25
Students actively seeking placement	N/A	N/A	130	124	40

Education Support Services

	2001	2002	2003	2004	To June 30, 2005
Distance education – number of locations	15	29	71	62	31
Distance education – number of students ³	28	46	103	66	47
Number of students who have received accommodation ⁴	11	29	27	38	14
Number of accommodations provided	N/A	N/A	126	128	14
Number of students who have received special needs accommodation ⁵	47	33	33	56	42
Number of special needs accommodations provided	N/A	N/A	147	320	140
Number of students who have received tutoring	60	72	45	47	9
OSAP – number of applicants	333	258	342	365	354
Repayable Allowance Program approvals	47	57	37	87	30
Repayable Allowance Program amount awarded	\$170,700	\$213,395	\$117,167	\$290,295	\$105,469

³ Represents individual students and does not account for returning students

⁴ Accommodation requests cover issues such as bereavement, pregnancy and time conflicts

⁵ Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, and hearing and vision impairments

BAC e-Learning Site

Web traffic report for BAC e-Learning Site

	2003	2004	To June 30, 2005
Number of visits	55,660	67,496	33,185

Great Library

	2001	2002	2003	2004	To June 30, 2005
Materials catalogued and classified	1,806	2,005	2,179	1,305 ⁶	608
Number of visits on the Great Library Web site ⁷	N/A	651,826	608,781	621,675	40,566
Catalogue searches on Web site	N/A	132,923	199,191	166,432	94,554
Number of information requests	71,000	47,000	48,800	47,100	22,500
Pages copied in custom copy service	68,437	56,159	43,815	40,391	26,217
Pages copied on self-copiers	481,473	397,957	337,313	297,223	146,060
Attendance at orientation tours and general instruction	413	350	360	448	316
Corporate Records and Archives new entries into records database	N/A	2,157	5,199	5,185	4,479

⁶ Low due to processing the migrating records into the new electronic catalogue

⁷ New Web tracking system so the yearly comparative factor is not applicable in 2005

It was moved by Ms. Carpenter-Gunn, seconded by Mr. Simpson that Convocation approve the following call to the bar procedure for the new licensing process, which begins in 2006:

- a. There will be three in-person calls to the bar; in September, January and June. The June calls to the bar will be the ceremonial calls that occur in Ottawa, London and Toronto. Whenever possible, the September and January calls will occur on regularly scheduled Convocation dates.
- b. A new “paper” call to the bar procedure will be introduced for transfer candidates and for admission of law professors and deans.
- c. Transfer candidates and law professors or deans will be eligible for a live call should they wish to attend one. Ontario candidates will be required to attend a live call.
- d. The Director of Professional Development and Competence, or her designate, will, however, have discretion in exceptional circumstances to allow an Ontario candidate to be called to the bar through the paper call.

It was moved by Ms. Curtis, seconded by Mr. Porter, that the motion be amended by deleting the words “and for admission of law professors and deans” from paragraph ‘b’ and deleting the words “and law professors or deans” from paragraph ‘c’.

The amendment was accepted.

The motion as amended was voted upon and carried.

Reports for Information Only

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

- Ontario Human Rights Commission Consultation – Human Rights and the Family in Ontario
- Final Report on the Tsunami Project
- Report of the Activities of the Discrimination and Harassment Counsel, January 1 to January 30, 2005
- Equity Public Education Events Schedule – 2005-2006

Report to Convocation
September 22, 2005

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

Committee Members
Joanne St. Lewis (Chair)
Paul Copeland (Vice-Chair)
Marion Boyd
Richard Filion

Thomas Heintzman
Tracey O'Donnell
Mark Sandler
Bradley Wright

Purpose of Report: Information

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

COMMITTEE PROCESS

1. The Committee met on September 8, 2005. Committee members participating were Joanne St. Lewis (Chair), Dr. Richard Filion, Thomas Heintzman and Mark Sandler. Invited members participating were Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario (AJEFO)), Brian Eyolfson (Co-Chair of Rotiio> taties Aboriginal Advisory Group) and Milé Komlen (Chair of the Equity Advisory Group (EAG)). Staff members in attendance were Josée Bouchard, Sudabeh Mashkuri, Marisha Roman and Rudy Ticzon.
2. The Committee is reporting on the following matters:

Information

- a. Ontario Human Rights Commission Consultation - Human Rights and the Family in Ontario;
- b. Final Report on the Tsunami Project;
- c. Report of the Activities of the Discrimination and Harassment Counsel, January 1, 2005 to June 30, 2005;
- d. Equity Public Education Events Schedule– 2005-2006.

FOR INFORMATION

ONTARIO HUMAN RIGHTS COMMISSION CONSULTATION - HUMAN RIGHTS AND THE FAMILY IN ONTARIO

BACKGROUND

3. The Law Society of Upper Canada received a letter dated May 12, 2005 from François Larsen, Director of the Policy and Education Branch of the Ontario Human Rights Commission (OHRC), informing the Law Society that the OHRC has initiated a consultation on human rights issues related to family status. It is the OHRC's intent to develop a policy statement on preventing discrimination on the basis of family status.
4. As a first step in the consultation, the OHRC prepared a Discussion Paper entitled Human Rights and the Family (available on-line at:

<http://www.ohrc.on.ca/english/consultations/family-status-discussion-paper.pdf>). The Discussion Paper has been sent to a range of institutions and individuals for feedback and comment. The Discussion Paper identifies specific questions to guide the consultation and is intended to be a point of departure for discussion with individuals, organizations and government with expertise or a particular interest in the issues it raises. To this end, the OHRC indicates that it would like to be informed of the Law Society's views on the issues raised in the Discussion Paper. Although the deadline for written submissions was July 22, 2005, the OHRC has indicated to the Law Society that it would welcome its views and the participation of the Law Society in the next phases of the consultation, which will continue in the fall of 2005.

5. The Committee was asked to decide whether the Law Society should participate in this consultation.

THE OHRC DISCUSSION PAPER

6. The Ontario *Human Rights Code* (the *Code*) prohibits discrimination on the basis of family status in the areas of employment, housing, and services and facilities. The *Code* defines family status as "the status of being in a parent child relationship".
7. The Discussion Paper notes that while there is relatively little awareness of these human rights protections, and the Commission receives relatively few complaints citing family status as a ground of discrimination, today's families are more diverse than ever, negative attitudes and stereotypes may be at the root of discrimination against families and employees are feeling increasing stress to balance work and family responsibilities.
8. The majority of the family status complaints filed to the OHRC are in the social area of employment. Issues raised include the duty of employers to accommodate family responsibilities, policies and practices that may create systemic barriers to individuals with care giving responsibilities, bias on the basis of family status, and nepotism and anti-nepotism policies.
9. The Discussion Paper also raises issues of discrimination based on family status in the area of services, goods and facilities. The Discussion Paper notes accessibility barriers faced by families with very young children to inaccessible facilities, the needs of individuals with care giving responsibilities when designing programs, procedures and facilities and the duty to accommodate to the point of undue hardship for needs related to family status.
10. The Discussion Paper poses a series of questions that may be relevant to the legal profession and to the Law Society, such as:
 - a. What are the roles of the Commission, government, and other actors in resolving the issues raised in the Paper?
 - b. Is the definition of "family status" in the *Code* overly narrow?
 - c. How do gender, race, sexual orientation, and other *Code* grounds impact on discrimination because of family status?

- d. What more could or should be done by government, employers or others to assist employees to balance their work and family responsibilities?
- e. What programs or policies should employers put in place to ensure that their workplaces do not disadvantage individuals on the basis of family status?
- f. Recognizing the necessity to balance the needs of both employers and employees, what is the extent of an employer's duty to accommodate needs related to an employee's family status?

THE LEGAL DEBATE ON THIS ISSUE

11. A considerable amount of debate has surrounded the definition of family status. Case law has interpreted the provisions in the *Code* that prohibit discrimination based on family status to include an obligation for employers to accommodate employees' significant family responsibilities. It should be noted however, that not every aspect of care in a parent and child relationship is entitled to accommodation at work, and that the exact accommodation required can vary greatly depending on the exact context. Three cases have recently applied provisions related to accommodation for employees with family responsibilities. The cases are summarized below to illustrate the difficulties faced by the judiciary and the legal profession in defining the ground of "family status" and in accommodating employees based on that ground.
12. In *Brown v. Canada (Department of National Revenue, Customs and Excise)*¹, the complainant could not find a babysitter to look after her newborn child overnight. Both her and her husband were required to work shifts, and her husband could not regularly adjust his shift work to fit in with hers. The complainant requested that she be accommodated by being put on straight day shifts or by being allowed to go on an unpaid care and nurturing leave. The tribunal noted the obvious dilemma facing the modern family where present socio-economic trends find both parents in the work environment, often with different rules and requirements. More often than not, the female parent is the one required to strike a balance between family needs and employment requirements. Family status means a parent's right and duty to strike a balance coupled with a duty on the part of the employer to facilitate and accommodate that balance.
13. In the case of *Wight v. Ontario (Office of the Legislative Assembly)*², a new mother at the end of her maternity leave had difficulty securing a day care placement in the regulated day care centre of her choice. She made no substantial efforts to secure alternate child care arrangements and refused to return to work until getting a day care placement at the facility of her choice. Although the employer offered her another two weeks of leave, it would be months before she could get the daycare placement. The board found that it is not unreasonable for an employer to expect an employee to return to work at the end of a leave, and to expect the employee to do what is necessary to ensure return. In this case, the complainant steadfastly refused to take any alternate steps or change her plans to seek an alternative daycare. The complainant was seeking accommodation that would relieve her of her obligation to return to work at the end of the leave, and this is not required under the law. Accommodation in such a case is meant to

¹ [1993] C.H.R.D. No. 7, No. T.D. 7/93

² [1998] O.H.R.B.I.D. No. 13.

assist a person returning to work. There are obligations on the employee, not just the employer, to cooperate in the accommodation process and show some willingness to be flexible.

14. Most significantly, a recent British Columbia Court of Appeal case³ has confirmed that the protected ground of 'family status' means that at least some family care obligations will be protected under human rights legislation. Therefore, employers have a duty to accommodate parents and children with those family care obligations that are protected.
15. Although the court in *Campbell River* found that the enumerated ground of 'family status' does not refer only to the status of being a parent or child per se, it also ruled that 'family status' does not necessarily encompass all of the everyday obligations of care in the relationship between parent and child. The appropriate determination of what falls under 'family status' is somewhere between these two extremes. Specifically, the court noted that a prima facie case of discrimination is present where a requirement or standard is imposed that results "in a serious interference with a substantial parental or other family duty or obligation of the employee."⁴ The court stated that the determination of whether a family duty meets this standard will vary from case to case, but noted that on the facts of that particular case, the employer had a duty to accommodate the parent whose child had a major psychiatric disorder that required the mother's attendance during after school hours. The *Campbell River* case is significant in that it is the first appellate case on this point and is relevant to other jurisdictions, such as Ontario, which prohibit discrimination on the ground of family status.
16. The Ontario and British Columbia decisions on this topic have created tremendous uncertainty and controversy amongst employers, employees and unions regarding the interpretation of the term family status and the extent of the obligation to accommodate in circumstances of discrimination.
17. With the increase of women, and women with children, in the workforce and of workplace participation of sole female parents, the issue of family responsibilities remains a gendered issue. Studies undertaken by Fiona Kay have shown that women are still more likely to assume family responsibilities than men.⁵ Also, a considerable portion of the workforce has child care or elder care obligations. These factors, along with factors noted by the OHRC, such as the trend towards increasing diversity of family structures, have led to a debate as to whether society, through employers, should assume the costs of family responsibilities, or whether family responsibilities remain a private matter where employees must assume those costs.
18. This debate is relevant to the legal profession, which is composed of employers and employees with different perspectives on this issue, and of lawyers providing services to diverse clients, including employers, employees and unions.

³ *Health Services Assn. Of British Columbia v. Campbell River and North Island Transition Society*, [2004] BCJ No. 922, 2004 BCCA 260 [hereafter *Campbell River*]. Although this case is decided under British Columbia legislation, the wording of the statute with regards to family status is substantially the same as that under the Ontario *Human Rights Code*.

⁴ *Ibid.* at para. 39.

⁵ Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession* (Toronto: Law Society of Upper Canada, 2004) and Fiona Kay, *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004).

MANDATE OF THE LAW SOCIETY

19. The Law Society exists to govern the legal profession in the public interest by ensuring that its members meet high standards of learning, competence and professional conduct and by advancing the cause of justice and the rule of law.
20. The Committee is of the view that it is not within the Law Society's mandate as regulator of the legal profession to actively participate in OHRC's consultation process. It is also not the Law Society's role to represent the legal profession as a whole in OHRC's consultations. The Committee is of the view, however, that because it regulates the conduct of lawyers as employers, employees or in the provision of legal services, the Law Society should monitor the progress made on this issue. The Law Society has an important role to play in informing and educating its members on any policy development that would relate to this issue.
21. The Committee also encourages members of the Equity Advisory Group/Groupe consultatif en matière d'équité (EAG) to raise awareness within the legal community of the OHRC's consultation and to encourage members to contribute, in their individual capacity, to the consultation process.
22. The Committee decided that it would monitor the progress of the consultation of the Ontario Human Rights Commission on the issue of Human Rights and Family Status.

INFORMATION FINAL REPORT ON THE TSUNAMI PROJECT

BACKGROUND

23. The Law Society of Upper Canada was asked to work with the South Asian Legal Clinic of Ontario (SALCO) and Pro Bono Law Ontario (PBLO) to assist members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster of December 26, 2004.
24. On January 27, 2005 Convocation approved the following recommendations:
 - a. That the Law Society, in cooperation with stakeholders, facilitate the provision of pro bono legal services to members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster;
 - b. That, if possible, the list of lawyers volunteering their services include lawyers who can provide assistance in languages spoken in the affected communities in Ontario;
 - c. That the Law Society monitor emerging legal issues in this and related areas;
 - d. That the Law Society publish relevant resources, updated information and links on its website and in other communication media related to access to justice issues in an international human rights context;

- e. That the Law Society, in cooperation with stakeholders, develop a continuing legal education program for lawyers to enhance their knowledge of legal issues relevant to members of affected communities; and
 - f. That the Law Society organize, if appropriate, legal information sessions preferably within the affected communities.
25. This is the final report on the activities of the Law Society in the Tsunami Relief Project. Citizenship and Immigration Canada's (CIC) assistance to the tsunami-affected regions ended on July 1, 2005.

COMMUNITY OUTREACH

26. The Equity Initiatives Department, with the assistance of the Communications and Public Affairs Department, worked closely with SALCO to do outreach with communities affected by the tsunami. Representatives of the Law Society and SALCO attended a number of community meetings and contacted various lawyers and organizations to identify the needs of the communities affected by the tsunami.
27. Contacts were made with stakeholders, such as the Ontario Counsel of Agencies Serving Immigrants (OCASI). OCASI was involved in a Tsunami Relief Project. The OCASI project included the development of a resource kit for sponsors of family members who were victims of the tsunami. The OCASI sponsorship kit included references to the Law Society's document on Frequently Asked Questions. The two documents were also linked on the OCASI and Settlement.org websites.
28. In order to coordinate the efforts of the Law Society and the Canadian Bar Association (CBA), members of the Equity Initiatives Department spoke to CBA representatives and immigration lawyers in Ontario involved with the CBA *pro bono* initiative for tsunami relief. The lawyers listed on the CBA website were available to review completed immigration applications.
29. Members of the Equity Initiatives Department also attended a number of informal information sessions organized by SALCO at the East Scarborough Storefront. The Storefront is a community resource centre that provides social, employment, legal, and health assistance to the community in East Scarborough. The communities most involved with their programs are the Tamil community, other South Asian communities, and the Somali community. Members of the media (OMNI, CBC) attended some of these information sessions.
30. Other contacts included:
- a. Community Legal Education Ontario (CLEO) – to discussed strategies to disseminate Frequently Asked Questions and outreach to the communities;
 - b. Inter-Clinic Immigration Working Group (ICIWG);
 - c. Tamil Eelam Society of Canada;
 - d. Horn of Africa Parents Association;

- e. Various Ontario Community Legal Aid Clinics;
 - f. People in the Thai, Tamil, Indian, Indonesian, and Somali communities in Toronto, Ottawa, Scarborough, Mississauga, and Kitchener-Waterloo;
 - g. Somali Centre for Family Services in Ottawa;
 - h. Catholic Immigration Centre in Ottawa;
 - i. Ottawa Mayor's Tsunami Relief Committee.
31. Sudabeh Mashkuri, Counsel, Equity Initiatives Department, also met with John McKay, MP for Scarborough-Guildwood, and contacted Laurel Broten, MPP for Etobicoke-Lakeshore and Parliamentary Assistant to the Premier, about the Law Society's tsunami initiative.

TELEPHONE HOTLINE

32. The Law Society established a telephone line (including a toll-free line) and an e-mail address for members and the public wishing to participate in this initiative.
33. As of August, 2005, the Law Society had received approximately fifty calls and other inquiries from the communities. Counsel has been providing information about CIC's tsunami program, and referring members of the public to immigration lawyers who have agreed to assist the Law Society in the tsunami initiative.
34. The calls were from lawyers interested in assisting in the Law Society initiative, individuals affected by the tsunami in the Somali, Sri Lankan, and Indian communities, and members of the community interested in the Law Society's tsunami relief initiative.

PRO BONO LAWYERS

35. The Law Society compiled a list of ten lawyers willing to do *pro bono* work for people affected by the tsunami. The names of the lawyers were provided to the public on a case-by-case basis. The *pro bono* lawyers assessed potential cases and assisted those whose families were affected by the tsunami.
36. SALCO organized three summary legal advice sessions, from February 2005 to May 2005, for the Somali community affected by the tsunami. Approximately 60 summary legal applications from the Somali community were forwarded to the Equity Initiatives Department. Counsel in the Equity Initiatives Department contacted all applicants and those who qualified for assistance were referred to lawyers.

LEGAL ISSUES

37. The only legal issues that were of interest to the communities affected by the tsunami related to immigration and refugee law. Ontarians who had family members or other close relatives were anxious to bring their loved ones to Canada from the tsunami affected areas.

FREQUENTLY ASKED QUESTIONS (FAQS)

38. In partnership with SALCO, the Law Society developed a booklet of frequently asked questions (FAQs) about the tsunami as it relates to immigration and refugee law.
39. The FAQs were published in English, French, Tamil and Somali and were distributed to the communities.
40. The FAQs included information about CIC's response to the tsunami, the Canadian immigration process, sponsoring a family member, and getting legal help with an immigration problem.
41. The FAQs are posted on the Law Society website in all available languages. There is also a link to the FAQs on the OCASI website.

COMMUNICATION STRATEGY

42. The Law Society sent out community notices/news releases to local media and community organizations regarding the Law Society's tsunami initiative and information sessions.
43. The community notices/news releases were published in English, Tamil, French, and Somali.
44. All communications were also available on the Law Society website.

INFORMATION SESSIONS

45. In conjunction with SALCO, the Law Society organized three legal information sessions on immigration and refugee law for Ontario communities affected by the tsunami disaster.
46. The first session was held on March 23, 2005 at Scarborough Civic Centre from 3:00 p.m. to 6:00 p.m. Approximately twenty individuals attended from the Tamil and Somali communities, including representatives from some community organizations. Members of the media in attendance were from the *Ming Pao Newspaper* (Toronto) and the *East York Observer*. Sudabeh Mashkuri, Anita Balakrishna (staff lawyer at SALCO), and Jenny Vane (representative from the Ontario Government's Citizenship and Immigration (Settlement)) made presentations. The Law Society disseminated the FAQs in English, French and Tamil, and information from Ontario and Canadian government websites relating to the tsunami.
47. The second session was held on April 23, 2005 at Wellesley Community Centre in downtown Toronto from 2:00 p.m. to 5:00 p.m. This session was held in partnership with SALCO as well as Pam McConnell, City Councillor Ward 28. Sudabeh Mashkuri and Pam McConnell made presentations. The Law Society disseminated the FAQs in four languages along with information from government websites. Approximately 40 individuals from the Tamil, Somali and Indian communities attended the information session. Members of the media in attendance were from the Toronto Star, CBC television and OMNI news.

48. The last information session was held in Ottawa on Saturday June 11, 2005 from 2:00 p.m. to 4:00 p.m. There were members of the Sri Lankan community present at the information session. Sudabeh Mashkuri made a presentation and disseminated the FAQ in various languages. The community was informed that Immigration and Citizenship Canada's waiving of fees for sponsorship for those affected by the tsunami would end on July 1, 2005.
49. The three immigration and refugee information sessions were successful in reaching the communities most affected by the tsunami. The sessions informed the communities of their options and how immigration and refugee laws in Canada may affect their families' lives.

CONTINUING LEGAL EDUCATION

50. In partnership with SALCO and in celebration of South Asian Heritage Month, the Law Society hosted a Continuing Legal Education program on May 5, 2005 entitled *Immigration and Refugee Law: The Aftermath of the Tsunami*.
51. The panel discussion was from 4:00 p.m. to 6:00 p.m. Lawyers Barbara Jackman, Guidy Mamann, Hadayt Nazami, and Amina Sherazee participated as panel members and discussed CIC's response to the tsunami disaster. The event was also presented on the Law Society website. A comprehensive set of CLE materials were provided to participating lawyers, law students and members of the community. Approximately 100 people attended the panel discussion. Members of the media were from OMNI news and India Abroad newspaper. This program was highly successful.
52. Following the seminar, a reception was held to celebrate the contributions and achievements of South Asian Canadians in law, with Senator Mobina Jaffer as the keynote speaker. Senator Jaffer delivered an inspiring speech about the greatness of Canada, and the progress of equality rights in Canada. Other speakers included the Honourable R. Roy McMurtry, Chief Justice of Ontario, Law Society benchers Paul Copeland, Shafiq Qaadri, Ontario MPP (speaking on behalf of Premier Dalton McGuinty), and Paul Schabas, Chair of the Board of Pro Bono Law Ontario. Approximately 140 people attended the reception, which was held from 6:00 p.m. to 8:00 p.m.

CONCLUSION

53. The Law Society's tsunami relief initiative began in January 2005 and ended in July 2005. The initiative assisted Ontario communities most affected by the December 2004 tsunami. All of the inquiries made to the Law Society by those affected were with respect to immigration and refugee law and the communities' efforts to bring family members to Canada. Although CIC did not amend regulations and policies with regards to bringing family class members to Canada, it waived processing fees for those directly and continuously affected by the tsunami until July 1, 2005. Approximately, 350 people were permitted to enter Canada from the affected regions.
54. Convocation authorized a budget of \$44,000 to this project. By August 2005, approximately \$10,000 had been spent.

INFORMATION

REPORT OF THE ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL, JANUARY 1, 2005
TO JUNE 30, 2005

BACKGROUND

55. Subsection 5(1) (b) of By-law 36 – *Discrimination and Harassment Counsel* provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the Committee) directs otherwise, the DHC shall make a report to the Committee not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.
56. Subsection 5(2) of By-law 36 provides that:
 - a. The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting.
57. The DHC Program presents to the Committee, pursuant to Subsection 5(1)(b) of By-law 36, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada – January 1, 2005 to June 30, 2005* (Appendix 1).

SUMMARY OF REPORT

58. During the reporting period, 99 individuals contacted the DHC with new matters, for an average of 16.5 new contacts per month.
59. During the reporting period, 5 individuals out of 99 communicated with the DHC in French. This is consistent with the percentage of Francophones in Ontario, which stands at 5% of the population of Ontario.
60. Thirty one individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department of legal clinic in Ontario. Of the 31 new complaints, 15 were from the public and 16 were from members of the legal profession.
61. Of the 16 complaints made by the legal profession, 4 were made by summer or articling law students. Of the 16 complaints, women made 87% of the complaints. Eighty seven percent of the complaints from within the profession arose in the context of the complainant's employment or in the context of a job interview. The complaints were based on the following prohibited grounds of discrimination: sex (11 complaints), race (2 complaints), disability (2 complaints), sexual orientation (1 complaint), family status (1 complaint) ancestry (1 complaint), age (1 complaint) and place of origin (1 complaint).
62. Of the 15 lay individuals who contacted the DHC, 13 (87%) were women. Fifty three percent of the complaints arose in the context of the complainant's employment and 40% involved clients or prospective clients. The number of public complaints can be summarized under the following grounds: sex (11 complaints), disability (4 complaints), sexual orientation (1 complaint), religion (1 complaint) and race (1 complaint).

63. No formal mediation was conducted during this reporting period.

INFORMATION

EQUITY PUBLIC EDUCATION EVENTS SCHEDULE - 2005-2006

64. Equality: The Heart of a Just Society Looking Back, Looking Forward
- a. Event organized by: Department of Justice (Toronto Regional Office), University of Toronto and Ministry of Attorney General, with the collaboration of the Law Society
(Agenda available on line at: www.law.utoronto.ca/conferences/equality.html)
 - b. Event date: October 27 and 28, 2005
 - c. Location:
 - i. October 27, 2005 from 5:30 p.m. to 8:00 p.m.: Law Society of Upper Canada
 - ii. October 28, 2005 from 9:00 a.m. – 4:30 p.m.: University of Toronto
65. Louis Riel Day event
- a. Event date: November 16, 2005
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Law Society Convocation Hall
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
66. Black History Month
- a. Event date: February, 22, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
67. International Women's Day Event
- a. Event date: March 8, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
68. International Day for the Elimination of Racial Discrimination
- a. Event date: March 21, 2006
 - b. Topic: TBD
 - c. Location: Ottawa (TBD)
69. National Holocaust Memorial Day
- a. Event date: April 26, 2006
 - b. Topic: TBD
 - c. Topic: TBD
 - d. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - e. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall

70. South Asian Heritage Month
 - a. Event date: May 3, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
71. National Access Awareness Week
 - a. Event date: TBD
 - b. Topic: TBD
 - c. Location: Ottawa
72. National Aboriginal Day
 - a. Event date: June 8, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
73. Pride Week Event
 - a. Event date: June 15, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall
74. AJEFO Conference
 - a. Event date: TBD (end of June 2006)
 - b. Topic: TBD
 - c. Location: TBD
75. Louis Riel Day
 - a. Event date: November 16, 2006
 - b. Topic: TBD
 - c. 4:00 p.m. – 6 p.m.: Panel discussion, Donald Lamont Learning Centre
 - d. 6:00 p.m. – 8 p.m.: Reception, Law Society Convocation Hall

Appendix 1

REPORT OF ACTIVITIES OF THE
DISCRIMINATION AND HARASSMENT COUNSEL

JANUARY 1, 2005 TO JUNE 30, 2005

Prepared By Cynthia Petersen
Discrimination and Harassment Counsel
for the Law Society of Upper Canada

Overview of New Contacts with the DHC Program

Number of New Contacts

1. During this reporting period (January 1 to June 30, 2005), 99 individuals contacted the DHC Program with a new matter.⁶ The new contacts were distributed as follows:

(see graph in Convocation report)

2. On average, there were 16.5 new contacts per month during the first six months of 2005. In 2003, there were on average 15 new contacts per month. In 2004, there were on average 19.5 new contacts per month.

Method of Communication

3. The DHC toll-free telephone line remains the most common way in which individuals initiate contact with the Program, but the use of email has increased over time.
4. In 2003 and the first half of 2004, approximately 80% of new contacts were made by telephone, with the remainder (20%) by email. In the latter half of 2004, email communications increased to 29%, with only 68% of new contacts being made by phone (and 3% by fax). In this reporting period, 30 people (30%) used email to initiate contact with the Program, 68 people (69%) used the telephone and 1 person (1%) used fax.

Language of Communication

5. The DHC Program offers services in English and French. During this reporting period, 5 individuals (out of 99) communicated with the DHC in French.
6. In 2003, a total of 10 individuals (out of 180) communicated with the Program in French. In 2004, a total of 6 individuals (out of 234) communicated with the Program in French.

Summary of Discrimination and Harassment Complaints

7. During this reporting period, of the 99 new contacts with the Program, 31 individuals raised specific complaints of discrimination or harassment by a lawyer, law firm, legal department or legal clinic in Ontario.
8. This represents a slight decrease in the number of discrimination and harassment complaints received over the past two years. In 2003, there were a total of 66 complaints and in 2004 there were a total of 78 complaints (averaging 36 complaints per 6 month period).

Public / Profession Ratio

9. Of the 31 new discrimination and harassment complaints received during this reporting period, 15 were from the public and 16 were from members of the legal profession.⁷

⁶ Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to an ongoing matter are not counted in this number.

10. In the last reporting period (July to December 2004), the public/profession ratio was similar (19:20). In previous reporting periods, however, there was a marginally higher proportion of public complaints (54%-62%). Thus there has been a slight increase over time in the proportion of complaints from the profession (now constituting approximately 51%):

(see graph in Convocation report)

Complaints from Within the Profession

Law Student Complaints

11. Of the 16 complaints from within the legal profession during this reporting period, 4 were made by law students (either summer students or articling students).
12. A total of 6 complaints were made by students in 2004 (out of 37 complaints from within the profession) and a total of 8 complaints were made by students in 2003 (out of 27 complaints from within the profession).

Male / Female Ratio

13. Of the 16 complaints from within the legal profession during this reporting period, the overwhelming majority (14 or 87%) were made by women.
14. In 2004, 30 (81%) of the 37 complaints from within the profession were made by women. In 2003, 18 (67%) of the 27 complaints from within the profession were made by women.
15. Thus, of the 80 lawyers and law students who reported discrimination and harassment complaints to the DHC over the past 2 1/2 years, 62 (77%) were women:

(see graph in Convocation report)

16. Three out of the four students who made complaints during this reporting period were women. In 2004, 5 of the 6 student complainants who contacted the DHC Program were women. In 2003, 5 of the 8 student complainants were women. Thus over the past 2 1/2 years, 72% of discrimination and harassment complaints from law students have been made by women.

Context of Complaints

17. Of the 16 complaints from within the legal profession:
- a. 10 lawyers and 4 law students complained about their employer or about a colleague in their workplace;

⁷ One of the complainants was a lawyer, but she was complaining about sexual harassment that she experienced in the past, while she was working as a legal assistant in a law firm. Given the context of the complaint, it is identified as a "public" complaint in the data in this report (since she was not a lawyer when the harassment is alleged to have occurred), notwithstanding that the complainant is now a member of the bar.

- b. 1 lawyer complained about a lawyer who was sharing space with her; and
 - c. 1 lawyer complained about a lawyer to whom she had made client referrals.
18. Thus 87% of the complaints from within the profession arose in the context of the complainant's employment.
19. In 2004, 76% of complaints from lawyers and law students arose in the context of the complainant's employment. In 2003, 85% of complaints from within the profession arose in the context of the complainant's employment (or in the context of a job interview).

Nature of Complaints

20. The 16 complaints made by members and student members of the bar were based on one or more of the following prohibited grounds of discrimination: sex, disability, race, sexual orientation, family status, age, ancestry and place of origin.
21. A number of the complaints involved multiple (and sometimes intersecting) grounds of discrimination (eg. a complaint of mixed race/sex discrimination by a Black female who raised concerns about barriers to advancement for women and lawyers of colour in her firm). Such complaints are recorded in the DHC data with respect to each of the multiple grounds raised. (As a result, the percentages outlined below do not add up to 100%.)
22. Eleven (11) complaints from within the profession were based (at least in part) on sex as a ground of discrimination. Of these:
- a. 5 involved complaints of sexual harassment:
 - i. 3 women lawyers complained about unwelcome sexual advances by male lawyers in their workplace (2 of these women also complained about sexist and/or threatening remarks made by male lawyers in their office);
 - ii. 1 gay male associate complained about unwelcome sexual advances by a female partner in his law firm; and
 - iii. 1 woman lawyer reported that she was being stalked by a male lawyer to whom she had previously referred clients.
 - b. 3 women lawyers complained about discrimination in their employment arising from the fact that they were pregnant and/or had taken a maternity leave;
 - c. 1 young female lawyer complained about gender-based (and age-based) threatening and abusive behaviour by a senior male counsel with whom she shared office space;
 - d. 1 Black female articling student complained about mixed sex/race discrimination in the hire-back process at her firm; and
 - e. 1 female lawyer complained about sex discrimination in her employer's practices.

23. Two complaints were made by female articling students about discrimination and harassment based on disability.
24. Two complaints were based (at least in part) on race as a ground of discrimination. One was the aforementioned Black female articling student who complained about mixed race/gender discrimination in the hire-back process at her firm. The other was a Black female lawyer who complained about systemic barriers to advancement for lawyers of colour in her workplace.
25. A woman lawyer complained that her employer had no equitable policies regarding flexible work arrangements and was failing to accommodate her child care obligations (i.e., discrimination based on family status).
26. Sexual orientation was raised as a ground of discrimination (in conjunction with sex) in one complaint, namely the aforementioned gay male associate who reported unwelcome sexual advances by a female partner in his firm.
27. Age was raised as a ground of discrimination (in conjunction with sex) in one complaint, namely the aforementioned young female lawyer who complained about harassment by a senior male lawyer who shared office space with her.
28. Place of origin / ancestry were raised by a male articling student who complained about discrimination by his employer based on the fact that he was a francophone from Quebec.
29. In summary, the number of complaints⁸ in which each of the following prohibited grounds of discrimination was raised are as follows:

a.	sex	11
b.	race	2
c.	disability	2
d.	sexual orientation	1
e.	family status	1
f.	ancestry	1
g.	age	1
h.	place of origin	1

Public Complaints

Male / Female Ratio

30. Of the 15 lay individuals who contacted the DHC Program with a complaint of discrimination or harassment during this reporting period, 13 (87%) were women and 2 were men. (One of the men who contacted the Program was calling on behalf of a female colleague to complain about a male lawyer's sexist behaviour.)

⁸ The sum of the numbers in this paragraph exceeds 16 because some complaints involved multiple grounds of discrimination.

31. In 2003, 25 (64%) of the 39 public complaints were made by women. In 2004, 26 (63%) of the 41 public complaints were made by women.
32. Thus of the 95 members of the public who have made discrimination and harassment complaints to the DHC over the past 2 1/2 years, 64 (67%) were women:

(see graph in Convocation report)

Context of Public Complaints

33. Of the 15 complaints from members of the public:
 - a. 8 were individuals complaining about their employer or about a lawyer with whom they work;
 - b. 6 were clients complaining about their own lawyer or about a lawyer they had attempted to retain; and
 - c. 1 was an individual who shared office space with the lawyer about whom he was complaining.
34. Thus 53% of public complaints in this reporting period arose in the context of the complainant's employment. This represents a significant increase in the proportion of employee complaints. In 2003, only 15% of public complaints related to the complainant's employment. In 2004, 32% of public complaints related to the complainant's employment.
35. In this reporting period, 40% of public complaints involved clients or prospective clients of lawyers. This represents a decrease in client complaints. In 2004, 46% of public complaints involved clients and in 2003, 66% of public complaints involved clients.
36. In 2003, 15% of public complaints involved litigants complaining about opposing counsel (or criminal defendants complaining about Crown counsel). In 2004, 17% of public complaints involved litigants. There were no complaints by litigants in this reporting period.

Nature of Public Complaints

37. The 15 public complaints were based on one or more of the following prohibited grounds of discrimination: sex, disability, religion, race and sexual orientation.
38. Eleven (11) of the public complaints involved discrimination based on sex. Of these,
 - a. 8 legal secretaries / administrative assistants / law clerks complained about sexual harassment by a male lawyer in their workplace;
 - b. 1 male police officer complained that a male defence counsel had made sexist remarks about a female police officer and female Crown counsel;
 - c. 1 female client reported that her lawyer sexually assaulted her; and

- d. 1 female client complained that her lawyer treated her in a sexist manner.
- 39. Four (4) public complaints were based on disability as the ground of discrimination. Of these,
 - a. 3 women complained that their own lawyer was failing to accommodate their disability (all three had psychological disabilities); and
 - b. 1 women with a speech impediment complained that her boss (a male lawyer) mocked her disability.
- 40. One lesbian woman complained that she was denied legal representation because of her sexual orientation.
- 41. One public complaint was based on religion and race. A Pakistani man complained that a male lawyer who shared office space with him harassed him verbally and made constant hateful anti-Muslim and racist remarks.
- 42. In summary, the number of public complaints⁹ in which each of the following grounds of discrimination were raised are as follows:

a.	sex	11
b.	disability	4
c.	sexual orientation	1
d.	religion	1
e.	race	1

Summary of Total Complaints since January 2003

- 43. There was a total of 174 discrimination and harassment complaints against lawyers between January 1, 2003 and June 30, 2005. Of these,
 - a. sex was raised as a ground of discrimination in 95 complaints (55%);
 - i. pregnancy was specifically raised in 16 complaints;
 - ii. gender identity was raised in 1 complaint; and
 - iii. sexual harassment was reported in 50 complaints.
 - b. disability was raised as a ground of discrimination in 34 complaints (19%);
 - c. race was raised as a ground of discrimination in 34 complaints (19%);

⁹ The sum of the numbers in this paragraphs exceeds 15 because some complaints involved multiple grounds of discrimination. For example, the law clerk who complained about harassment based on her speech impediment also complained about sexual harassment. Her complaint is counted only once in the overall number of complaints, but appears as both a sex-based and a disability-based complaint in the breakdown of grounds of discrimination.

- d. sexual orientation was raised as a ground of discrimination in 9 complaints (5%);
- e. age was raised as a ground of discrimination in 6 complaints (3%);
- f. religion was raised as a ground of discrimination in 5 complaints (3%)
- g. family status was raised as a ground of discrimination in 5 complaints (3%);
- h. national / ethnic origin was raised as a ground of discrimination in 4 complaints (2%); and
- i. ancestry / place of origin was raised as a ground of discrimination in 1 complaint (1%).¹⁰

Examples of Discrimination and Harassment Complaints

44. The following are examples of some of the discrimination and harassment complaints received by the DHC during this reporting period:
- a. A female law clerk asked her boss (a male lawyer) for an increase in her salary and he responded, "if you want a raise, bend over". This same male lawyer also threatened to fire her if she did not persuade another female law clerk in their office to have sex with him.
 - b. A Black lawyer working within government complained about systemic barriers to advancement for lawyers of colour in her department. She was given less responsibility than other (white) lawyers, less trial work, more routine and mundane cases, etc. She was also demeaned by being assigned to work at a secretarial station rather than in a lawyer's office.
 - c. A female associate in a large law firm complained that one of the male partners referred to her as "sweetie" and "darling" and called other women in the office "babe".
 - d. A woman client with a brain injury reported that her male lawyer arranged for them to meet privately on the pretext of preparing for a discovery, then sexually assaulted her.
 - e. A law clerk with a speech impediment complained that her boss (a male lawyer) would get drunk and then mock her publicly by imitating her stutter.
 - f. A Black female articling student complained that, although she received excellent performance appraisals throughout her articling year, she was not hired back to work at her firm. All of the students who were hired back were white males. There were no female associates and no associates of colour in her firm. The

¹⁰ The percentages do not add up to 100% because many of the complaints involved multiple grounds of discrimination.

only reason provided for the hire-back decision was that she was not a “good fit” with the firm.

- g. A female associate hired to work in a small law office with two male partners complained that one of the partners called her “blondie” and frequently made “dumb blond” jokes.
- h. A male police officer reported a male defence counsel’s remark that his (male) client’s conviction was based on fabricated allegations and that “that’s what happens when you have a female officer and female prosecutor on the same case.”
- i. A single mother working as a lawyer in a firm requested reduced work hours to allow her to spend more time with her son, who was hospitalized with a serious illness. The firm refused to accommodate her request and suggested instead that she take an unpaid leave of absence.
- j. A female associate in a large law firm complained to the partnership about unwelcome sexual advances and unwanted touching by a male partner. The firm cautioned the partner about his inappropriate behaviour, but refused to assign the complainant to a different practice group or separate her from the harasser. The offending partner stopping giving her work, she became ostracized in the office, and eventually took a stress-related sick leave. Soon after she returned to work, she was terminated from her employment for failing to meet the firm’s productivity / billing targets.
- k. A female associate complained that, after an office social function, one of the male associates in her office “joked” about going back to a hotel with other male lawyers to “gangbang” her. When she confronted him about the inappropriate comment the next day, he attributed it to the fact that he was drunk.
- l. A female articling student with a chronic pain condition became very ill during her articling year and took a month off work. She initially returned to work on reduced hours. She complained that lawyers in her office were hostile toward her after her sick leave. She was advised by a partner that her prospects of hire-back at the firm were adversely affected by the time she took off work. She was also advised to pursue a different career (other than law) because of her chronic illness, which interfered with her ability to work long hours.
- m. A female associate in a small firm was advised by a male partner that the firm was reluctant to train her because she had recently become engaged (to marry a man) and the firm assumed that she would soon have children and quit the practice of law.
- n. A senior associate who had met all of her law firm’s partnership criteria was told that she would not be made an offer of partnership this year because she was pregnant.
- o. A Pakistani man complained that he was being verbally abused by a white lawyer whose office was on the same floor in his building. The lawyer was often aggressive and rude, regularly used profane language, and made offensive

comments like “you fucking Muslims”. The lawyer once referred to the man as a “mother fucking Paki” in front of a client.

- p. A female law clerk who was in a co-op placement complained that a male lawyer in her office commented on her breasts and asked her to join him in a hotel room.
- q. A gay male associate in a lawyer firm complained that one of the female partners asked him intrusive questions about his sexual experiences and then tried to kiss him, saying that she would “turn him straight”.
- r. A female criminal defendant complained that her (male) defence counsel was condescending and patronizing, called her “silly” and “stupid”, and frequently cut her off when she was speaking. In contrast, the lawyer spoke to her male partner in a respectful manner.
- s. An administrative assistant in a law firm complained that she was transferred and demoted after the termination of a brief consensual affair with her boss (a male partner).
- t. A female client with a cognitive impairment complained that her lawyer refused to accommodate her (eg. he spoke quickly despite her requests for him to slow down, he became impatient and shouted at her when she asked him to repeat things, he refused to communicate his advice in writing).
- u. A lesbian woman reported that a female lawyer refused to represent her because of her sexual orientation.
- v. A legal secretary complained that a male lawyer regularly made sexual advances toward her. Before leaving the office one night he asked, “how about a quick blowjob before you go?” He displayed a violent temper when she rejected his advances. Later he would apologize for his behaviour and say he was “just kidding”.

Demographic Survey of Complainants

45. Individuals who contacted the DHC by telephone with complaints of discrimination or harassment were asked whether they would be willing to participate in a short demographic survey to enable the DHC to record anonymous statistical data about them. During this reporting period, 16 surveys were conducted. Eight (8) public complainants and 8 members of the Law Society (including students members) were surveyed, with the following results:

a.	Gender/Sex	14	female
		2	male
b.	Age	6	were 25-34 years old
		9	were 35-49 years old
		1	was 50-64 years old
c.	Race / Ethnicity	1	Black
		1	Japanese

		1	South Asian
		10	White / Caucasian
		2	Other (one specified Armenian)
d.	Sexual Orientation	1	lesbian / gay
		15	heterosexual
e.	First Language	16	English
f.	Disability	3	identified as disabled
g.	Region of Residence	7	Greater Toronto Area
		5	Southwestern Ontario
		1	Central Ontario
		1	National Capital Region
		1	Northern Ontario
		1	Undisclosed

Services Provided to Complainants

46. Complainants who contacted the DHC were advised of the various avenues of redress open to them, including:
 - a. reporting to the police (where criminal conduct is involved);
 - b. filing an internal complaint or a grievance within the workplace (including, where appropriate, contacting their union or employee association for assistance);
 - c. filing a complaint with a human rights commission (usually the Ontario Human Rights Commission, but sometimes the Canadian Human Rights Commission);
 - d. making a complaint to the Law Society; and
 - e. contacting a lawyer for advice regarding other possible legal actions (eg. wrongful dismissal, defamation).
47. Complainants were also provided with information regarding each of these options, including:
 - a. what (if any) costs might be involved in pursuing an option;
 - b. whether legal representation is required to pursue an option;
 - c. how to file a complaint or make a report (eg. whether it can be done electronically, by telephone, or in writing; whether particular forms are required, etc.);
 - d. the process involved in each option (eg. investigation, conciliation, hearing, etc.).

- e. what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
 - f. the time limits for each avenue of redress (or, in some instances, complainants were advised to immediately seek legal advice regarding the applicable statutory time limits in their circumstances).
48. Complainants were not only advised of the options available to them, but also that the options were not mutually exclusive.
49. Complainants were given information about who to contact in the event that they decided to pursue any of their options.
50. In some cases, upon request, strategic tips were provided on how to handle a situation without resort to a formal complaints process (eg. confronting the offender, speaking to a mentor, writing a letter of complaint to the managing partner of the law firm in question).
51. In some cases, complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights Commission, or other sources.
52. In some cases, complainants were referred to support services, such as OBAP (the Ontario Bar Assistance Program) or LINK (short term professional counselling for lawyers).

Mediation Services

53. In addition to being advised of the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program.
54. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties to reach a mutually satisfactory resolution of the complaint.
55. No formal mediation was conducted during this reporting period. Most complainants who rejected the offer of mediation expressed a desire to have their complaint investigated and/or a preference for an adjudicative approach to the resolution of their complaint. Some also expressed a belief that the respondent would not be willing to participate in mediation, though they did not authorize me to contact the respondent to inquire about their willingness.
56. In two cases, at the request of the complainant, I intervened informally and communicated with the respondent in an attempt to resolve the complaint. In one case, my intervention was successful in resolving the matter. In the other case, my intervention created a temporary resolution, but problems resurfaced later and the complainant eventually decided to pursue more formal avenues of redress.

Summary of General Inquiries

57. Of the 99 new contacts with the DHC during this reporting period, 29 (29%) involved general inquiries relating to equity issues within the Program's mandate.
58. These general inquiries were almost equally divided between calls from members of the public (14) and members of the profession (15). The inquiries included:
 - a. a call from a transsexual lawyer who had been working in a private law firm as a man and was contemplating gender transition; she was anticipating discrimination and harassment at work and sought advice on how best to deal with her law firm regarding her intended transition;
 - b. questions from employees in legal workplaces (both lawyers and non-lawyers) regarding their confidentiality rights and disclosure obligations relating to disabilities and pregnancy;
 - c. calls from lawyers and law students who raised equity issues with respect to the Law Society (eg. the issue of accommodating disabilities in the bar admission course, the issue of access to French language services from LSUC, etc.);
 - d. calls from lawyers who had suffered discrimination and harassment and who were seeking a referral to support services (eg. addiction counselling, depression counselling, suicide prevention, stress management counselling, etc.);
 - e. questions about the scope of the DHC Program's mandate;
 - f. questions about the mediation service offered by the DHC;
 - g. inquiries about educational workshops and/or promotional materials provided by the DHC;
 - h. law students and other researchers seeking access to data collected by the DHC; and
 - i. inquiries about the LSUC Rules of Professional Conduct and equity issues.

Promotional Activities / Expansion

Promotion of the DHC Program

59. During this reporting period, the Alternate DHC made a presentation about the Program to law students at the University of Windsor, and I made presentations to prosecutors within the Department of Justice in Toronto, a law clinic in the Toronto area, and at a public interest careers day for law students across Ontario. I also gave a lecture to the bar admissions class.
60. Throughout this reporting period, regular bi-weekly English and French advertisements for the DHC Program appeared in the Ontario Reports.

61. French, English, Chinese and braille brochures for the Program continue to be circulated to legal clinics, community centres, law firms, government legal departments, and faculties of law.
62. We continue to maintain a website for the DHC Program.

Appointment of New Alternates

63. In 2005, the Alternate Discrimination and Harassment Counsel (Sylvia Davis) resigned from her position. Two new Alternates were appointed by convocation: David Bennett and Lynn Bevin. Both are experienced mediators with considerable human rights experience.
64. During this reporting period, I met with the new Alternates to conduct some orientation training. We have arranged for coordination of our efforts in order to ensure seamless and consistent provision of services to complainants, as well as a uniform method of data collection. We also met with representatives from Investigations and Resolutions within the Law Society to exchange information about our respective roles.

Matters Outside the DHC Mandate

65. Of the 99 new contacts with the DHC during this reporting period, 39 related to matters outside the scope of the Program's mandate.
66. The majority of contacts that related to matters outside the Program's mandate involved either complaints of discrimination or harassment against non-lawyers (eg. landlords, the police, judges) or complaints against lawyers that do not involve any equity or human rights issues (eg. client billing disputes, conflicts of interest). In addition, several individuals called the DHC to seek a referral to a lawyer for a human rights case.
67. Individuals who contacted the DHC with matters outside the scope of the Program's mandate were, whenever possible, referred to another organization for information or assistance, such as the Law Society, a human rights commission, a judicial council, or the Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to these individuals.
68. These "outside mandate" contacts typically do not consume much of the DHC's time, but they nevertheless constitute a drain on Program resources. I have therefore been making ongoing efforts to reduce the volume of these misdirected contacts. The promotional brochures for the Program were revised in 2003 to clarify that the DHC only provides assistance in respect of human rights complaints against lawyers. The DHC website was similarly revised in 2004. During the most recent reporting period, I attempted to ascertain the source of misdirected referrals to the DHC and I called some individuals and organizations who had referred complainants to the Program in error and clarified our mandate with them, in an effort to reduce future misdirected contacts.

Lawyers Fund for Client Compensation Committee Report

- Appointments to Review Sub-Committee
- Budget and Fund Levy Discussions

- Grants Paid – Referee Reports and Staff Memoranda
- Impact of Mobility

Report to Convocation
September 22, 2005

Lawyers Fund for Client Compensation Committee

Committee Members
Peter N. Bourque, Chair
Andrew F. Coffey, Vice-Chair
Bob Aaron
Marshall Crowe
Richard Filion
Allan Gotlib
Alan G. Silverstein
Gerald A. Swaye
Bradley H. Wright

Purpose of Report: Information

Prepared by the Lawyers Fund for
Client Compensation Department

THE REPORT

I. COMMITTEE PROCESS AND ORIENTATION

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on September 7, 2005. Committee members in attendance were Peter Bourque (Chair), Andrew Coffey (Vice-Chair), Marshall Crowe, Dr. Richard Filion, Allan Gotlib, Alan Silverstein and Gerald Swaye.

Staff and others in attendance were Zeynep Onen (Director of Professional Regulation), Dan Abrahams (Professional Regulation Counsel), Maria Loukidelis (Manager, Lawyers Fund), Fred Grady (Manager of Finance) and Craig Allen (LawPRO VP & Actuary).

The Committee was provided with a general orientation to the Fund. The Committee also reviewed a preliminary list of issues for the Fund that will be placed before it for discussion as the year progresses.

2. The Committee is reporting to Convocation on the following matters:

For Information:

- Appointments to the Review Sub-Committee
- Budget and Fund levy discussions
- Grants Paid-Referee Reports and Staff Memoranda
- Impact of Mobility

II. REVIEW SUB-COMMITTEE APPOINTMENTS

Background

3. The Review Sub-Committee of the Lawyers Fund for Client Compensation Committee receives the recommendations of staff for all grants in excess of \$5,000 as well as all reports of Referees following a hearing and makes the determination as to whether the recommendation will be followed.
4. With the change in composition of the committee following the election of the new Treasurer, it was necessary to make new appointments to the Review Sub-Committee.

Decision of the Committee

5. The Committee approved the appointment of Andrew Coffey and Dr. Richard Filion to the Review Sub-Committee, to sit along with the Chair Peter Bourque.

III. BUDGET AND LEVY ISSUES FOR 2006

Report to the Committee

6. Craig Allen, LawPRO's Vice-President and Actuary, reported that the Fund balance is \$17.1 million, down from \$19.5 million as at December 31, 2004. This reduction in the balance is a result of a larger than anticipated number of claims reported to the Fund in the first two quarters of 2005 (roughly \$3.5 million versus the \$1.35 million budgeted for the period). This is characterized as a "high normal" experience for the Fund.
7. The Committee discussed the Fund's preliminary draft budget for 2006. Discussion included a brief review of the breakdown of the budget between the administration of the Fund and the payments allocated to other areas of the Law Society, as well as the funding of the Spot Audit Program.
8. The Committee considered materials prepared by the Finance Department and an actuarial analysis prepared by Craig Allen, LawPRO's Vice-President and Actuary, setting out projections for the Fund Balance as at December 2006 under a number of 2006 claims scenarios. In particular, the Committee reviewed issues surrounding the member levy, the optimum Fund surplus and the impact of a catastrophic claim or series of claims.
9. Materials considered by the Committee are attached as Appendix "A".

Member Levy-Decision of the Committee

10. The Committee endorsed the draft budget for the Fund for 2006 in principle and approved a motion to recommend that the levy for 2006 not be increased.

IV. REFEREE REPORTS AND STAFF MEMORANDA

11. The Committee wishes to report that the following grants were approved and paid from the Fund between February 25, 2005 and August 23, 2005, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid (\$)
Filipovich, Ronald C. (Disbarred Oct. 24, 2002)	1	70.70
Adler, Edwin W. (Disbarred July 27, 2005)	5	94,010.42
Frishette, Kareyn Lynn (Disbarred June 15, 2005)	2	950.00
Hicks, Thomas M. (Disbarment/Under Appeal Jan. 31, 2005)	1	2,100.00
Dyer, William T. (Disbarred October 29, 2004)	3	6,491.16
Howard, Graham I. (Disbarred May 1, 2003)	2	141.40
Lewis, Donald C. (Disbarred October 26, 2004)	10	272,800.00
Sinclair, James W. (Disbarred April 24, 2003)	30	484,645.08
Steinberg, Sheldon H. (Disbarred November 5, 2003)	3	97,101.32
Mavis, Larry M. (Disbarred August 12, 2003)	1	10,479.78
Tokar, George O. (Permitted to Resign May 16, 2001)	1	5,637.00
Tran, Eric Gregory (Disbarred April 23, 2003)	1	70.70
Solicitor #139 (Suspended June 17, 2003)	3	24,384.64
Solicitor #144 (Suspended June 17, 2005)	2	7,965.00
Solicitor #113 (Suspended May 31, 2005)	1	60.00
Solicitor #80 (Suspended September 25, 2001)	1	2,000.00
Solicitor #138 (Suspended June 17, 2005)	2	2,350.00
Solicitor #140 (Suspended February 24, 2003)	1	1,000.00
Solicitor #135 (Suspended February 18, 2005)		10,010.39
Solicitor #133 (Suspended October 1, 2004)	2	570.70
Solicitor #128 (Suspended October 2, 2003)	1	15,206.67
Solicitor #136 (Suspended October 1, 2004)	8	36,301.38
Solicitor #120 (Retired/Not Working Jan. 1, 2004)	1	611.40
Solicitor #134 (Suspended October 8, 2004)	11	166,542.01
Solicitor #145 (Suspended June 17, 2005)	2	105,969.42
Solicitor #137 (Sole Practitioner February 10, 2005)	2	2,750.00
TOTAL	97	\$1,350,219.17

V. IMPACT OF MOBILITY

12. The Committee received a report from the Director of Professional Regulation, Zeynep Onen, on the status of discussions related to the impact of lawyer mobility on compensation funds in Canada. The report is attached as Appendix "B".

Lawyers Fund for Client Compensation Committee
September 22, 2005

A P P E N D I X " A "

Materials Related to the 2006 Budget and Levy

LAWPRO

TO: Lawyers' Fund for Client Compensation Committee

FROM: Craig Allen
Vice President & Actuary

DATE: August 26, 2005

RE: Considerations Re Compensation Fund Levy 2006

Beginning in 2001, the Compensation Fund undertook a sustained program to increase its Fund Balance (the net worth of the Fund net of amounts earmarked for claims in progress). In each year from 2001 through 2003, the Compensation Fund levy provided roughly \$2.7 million for smaller incidents and an additional amount for large-scale defalcations. As there was no major defalcation during this period, the Fund Balance grew from \$9.3 million at December 2000 to \$19.5 million at December 2004.

The growth of the Fund Balance over that period created an opportunity to reduce the member levy from \$230 for 2004 to \$200 for 2005. With the lower levy, the amount provided for large-scale defalcations was eliminated. Thus, the levy would roughly cover the Fund's costs for a year without a large-scale defalcation. However, if there were such a large-scale incident, its claims would reduce the Fund Balance. In the absence of a large-scale incident, the Fund Balance would remain at the same level.

Protection for worse-than-expected results is provided by the Fund Balance. (From 2001 through 2004, further protection was provided by insurance of the Fund underwritten by LAWPRO. The favorable results over the 2001 – 2004 period, along with the substantial growth

in the buffer provided by the Fund Balance enabled the Fund to discontinue the insurance program).

The value of claims reported to the Fund in the first two quarters of 2005 is roughly \$3.5 million (including a number of potential claims which came to light in late 2004, but which were not received by the Fund until early 2005). This is well above the \$1.35 million budgeted for the period. This unfavourable variance has reduced the Fund Balance to \$17.1 million.

This reversal in 2005 of the upward trajectory of the Fund Balance raises the question of whether a provision should be reinstated for large-scale defalcations, and whether the levy should be increased to fund this provision. The remainder of this report will present the Fund Balance, projected to December 2006, under a number of 2006 claims scenarios, under each of the following courses of action:

- maintaining the levy at \$200, or
- restoring the levy to its 2004 level of \$230.

The projection of the Fund Balance assumes that the remainder of 2005 proceeds according to the 2005 budget, and that the levy option and claims scenario take effect in 2006. It further assumes that there will be no change in the operational expenses of the Fund for 2006, over 2005 budget levels.

The following table presents the annual claims experience since 1991 for small-scale and large-scale defalcations. These claims are re-stated to the current limit of \$100,000 per claimant. For 2004, it is assumed that claims for the remainder of the year will equal the amount budgeted for those two quarters.

(\$000s)

Year	Small-Scale	Large-Scale	Total
1991	4,000	4,800	8,800
1992	4,400	0	4,400
1993	2,800	900	3,700
1994	2,400	1,700	4,100
1995	2,500	500	3,000
1996	2,600	3,800	6,400
1997	2,000	600	2,600
1998	1,400	2,200	3,600
1999	2,300	0	2,300
2000	1,900	4,000	5,900
2001	2,400	0	2,400
2002	2,400	0	2,400
2003	2,700	0	2,700
2004	2,000	700	2,700
2005 (est.)	3,400	0	3,400

Please note that the greater-than-expected claims activity in 2005 has not arisen from Large-Scale defalcations (defined as greater than 35 claims arising from the incident). Rather, the 2005 claims have arisen from a number of smaller incidents.

The table below presents the Fund Balance at year end for the years 1999 through 2004, along with the June 2005 Fund Balance. This table provides a context for the current Fund Balance of \$17.1 million.

Date	Fund Balance
Dec. 1999	\$12.4 million
March 2000	\$8.0 million
Dec. 2000	\$9.3 million
Dec. 2001	\$13.6 million
Dec. 2002	\$14.9 million
Dec. 2003	\$17.4 million
Dec. 2004	\$19.5 million
June 2005	\$17.1 million

Scenario 1:

Under this scenario, claims for the year are valued at \$2.7 million. This is the level of claims experienced in both 2003 and 2004, and is roughly equal to an average year of claims (in the absence of a large-scale defalcation).

The current Fund Balance of \$17.1 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2006
\$200 Levy	\$17.1 million
\$230 Levy	\$18.0 million

We see that, under these options, the Fund Balance is steady, or increases slightly. This claims scenario is the most likely: results similar to this have appeared in six of the last nine years.

Scenario 2:

This scenario assumes claims for the year are valued at \$5.9 million. This is the level of claims experienced in 2000, which is representative of a year in which a large-scale defalcation comes to light.

The current Fund Balance of \$17.1 million changes under each of the funding options, as follows:

Option	Fund Balance, Dec 2006
\$200 Levy	\$13.9 million
\$230 Levy	\$14.8 million

Under Scenario 2, the Fund Balance returns roughly to its average level in 2002.

Scenario 3:

Under this scenario, claims for the year are valued at \$11.7 million. This scenario is constructed by beginning with the value of claims experienced in 1991, \$7.5 million. This is the year where the Fund's claims reached their peak value.

While some of the claims reported in 1991 were limited by \$100,000 per-claimant limit now in place, many were limited to \$60,000. It is projected that the 1991 claims would have been valued at \$8.8 million had the \$100,000 limit been in place uniformly.

In addition, there were only 15,200 lawyers in private practice in Ontario in 1991, compared to the 20,200 currently in practice. If the count of 1991 claims were adjusted in line with the increased number of lawyers, the \$8.8 million of limits-adjusted claims would rise to \$11.7 million.

The current Fund Balance of \$17.1 million changes under each of the funding options as follows:

Option	Fund Balance, Dec 2006
\$200 Levy	\$8.1 million
\$230 Levy	\$9.0 million

Under this scenario, the Fund Balance reaches a level slightly above its recent low of \$8.0 million in March 2000. It is notable that such an extreme scenario (a level of claims experienced only once in fifteen years) only returns the Fund to a level experienced within the last six years.

Scenario 4:

In this scenario, we determine the maximum level of claims that the Fund has the capacity to absorb in 2006, under each of the levy options, given its current Fund Balance.

Under this scenario, the resources available to fund the payment of newly reported claims are limited to the Fund Balance plus the funds from a levy of either \$200 or \$230.

(Where the levy is \$200, the amount within the levy available to fund claims is \$2.7 million, while a levy of \$230 provides \$3.6 million.)

Option	Maximum Allowable Claim Value for 2006
\$200 Levy	\$19.8 million
\$230 Levy	\$20.7 million

Inferences:

The impact on the Fund Balance of increasing the levy is minor, in comparison to the impact of various claims scenarios. In addition, in the recent historical context, the current level of the Fund Balance is very strong.

The attached chart shows the historical claims experience of the Fund since 1990, stated in probability format. This experience is shown in the context of a probability curve. It can be seen that in no year has the actual claims level exceeded \$7.5 million – this is well short of the \$19.8 million or \$20.7 million maximum allowable claim value determined above. Furthermore, claims exceeded \$3.5 million only twice in the last nine years. That said, the absence of a large-scale defalcation approaching the maximum allowable claim value does not mitigate the potential for another such defalcation arising in the next year - the experience of other Canadian jurisdictions and a general increase in fraudulent activity points to the continued threat.

Probabilities of Claims Outcomes
Lawyers' Fund for Client Compensation
(see graph in Convocation report)

MEMORANDUM

To: The Lawyers Fund for Client Compensation Committee
From: Fred Grady
Date: August 30, 2005
Re: 2006 Budget

The Committee is receiving information relating to the 2006 budget. The draft budget materials represent the first draft of staff input into the budget process. The materials will be further refined after senior management review with a recommendation to the Finance and Audit Committee in October.

The budget materials currently reflect no change in the 2006 levy for the fund.

Fred Grady

Lawyers Fund for Client Compensation Committee
September 22, 2005

A P P E N D I X “ B ”

Status Report on Impact of Mobility

PROFESSIONAL
REGULATION

TO: Lawyers Fund For Compensation Committee

FROM: Zeynep Onen

DATE: September 6, 2005

SUBJECT: Federation Task Force on Compensation Funds – Status Report

National Mobility was implemented for participating provinces in 2002. The National Mobility Agreement states that the compensation of losses resulting from mobile lawyers' dishonest actions is to take place according to the procedures laid out in the pre-existing Inter Jurisdictional Practice Protocol (IJPP). There was general agreement at the time of implementation for Mobility, that the compensation provision had to be revisited. This was because the IJPP provision for compensation was cumbersome and inadequate, and required revisions.

The Task Force on Compensation Funds started its work in the fall of 2003 to address this concern. Ken Nielsen (Alberta) is Chair. Ontario's representation was by our current Treasurer, George Hunter. I also sit on the Task Force. The most recent report of the Task Force to the Federation Council, prepared by Ken Nielsen, provides an overview of the work of the Task Force to date, and its future plans. What follows is a summary list of the current compensation context in the other provinces, together with the issues and ideas currently under consideration by the Task Force:

1. The objective of the Task Force is to recommend an accessible, easy to administer, uniform and fair plan for the compensation of losses suffered as a result of dishonesty on the part of mobile lawyers. To date, the Task Force has gathered a significant amount of information about the individual compensation funds, including the nature of their operations, their scope, funding, and claim limits.
2. The Task Force has also considered different approaches to develop a mobility compensation plan which would accommodate the differences presented by the current provincial plans. These include a funding model (much like the current

IJPP which would be administered nationally), as well as an insurance model, which could be either national, or administered by each province individually.

3. British Columbia currently has an insurance plan in place to compensate victims of dishonesty.
4. The Western provinces are in discussions with CLIA to develop a model for an insurance administration for their compensation funds. The Eastern CLIA provinces have expressed an interest in this as well.
5. CLIA expects to provide a report to these provinces in September 2005 to provide the factual basis for ongoing discussions as to how an insurance model could provide coverage for the compensation fund for these provinces.
6. Ontario currently has its Compensation Fund, as well as innocent party coverage which is included coverage for all lawyers practicing in partnership. It is also available to members in sole practice should they opt to purchase it. This coverage has a \$250,000 per claim limit and in the aggregate, and it provides coverage for dishonest acts of the lawyer.
7. An option under consideration by the Task Force for the coverage of mobile lawyers is to ask each province to provide insurance to cover their own lawyers at a defined level and scope. One option for Ontario would be to require innocent party coverage for all lawyers who are mobile. Based on initial discussions with LawPRO, it would appear that the coverage limits in this coverage would approximate the coverage planned by the other provinces. This approach has been discussed with LawPRO and it would appear that this is feasible at little or no additional cost to the membership.
8. The last meeting of the Task Force was in May 2005. At this point, it is still considering different options to present to the Federation. I will continue to keep the Committee advised of its progress, and ask for direction as issues become more defined.

CONVOCATION ROSE AT 12:45 P.M.

Confirmed in Convocation this 20th day of October, 2005.

Treasurer