MINUTES OF CONVOCATION

Thursday, 22nd May 2008
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Caskey, Chahbar, Chilcott, Crowe, Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold, Gottlieb, Halajian, Hare, Hartman, Henderson, Krishna, Lawrence, Lawrie, Legge, Lewis, McGrath, Marmur, Millar, Minor, Murphy, Murray, Pawlitza, Potter (by telephone), Pustina, Rabinovitch, Ross, Rothstein, Ruby, St. Lewis, Sandler, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes (by telephone), Tough, Wardlaw, Warkentin and Wright.

…….

Secretary: Katherine Corrick

The Reporter was sworn.

…….

IN PUBLIC

…….

TREASURER'S REMARKS

The Treasurer reported on his activities since April Convocation.

The Treasurer expressed condolences to the family and friends of Leon Paroian, Q.C., LSM of Windsor who passed away on May 10, 2008.

The Treasurer brought the motion carried at the Annual General Meeting held on May 7th to the attention of Convocation. The motion carried by a vote of 56 to 40. In accordance with the By-Laws the motion is not binding on Convocation, but must be brought to Convocation's attention at its next meeting and must be considered by Convocation within six months.

Congratulations and best wishes are extended to Sydney Robins who turns 85 on May 24th.

DRAFT MINUTES OF CONVOCATION

Amendments to the draft Minutes of Convocation of April 24, 2008 were set out under separate cover with a further amendment made by adding Raj Anand's name to the Motion on the Appointments to the Hearing Panel. The Minutes were confirmed as amended.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

To the Benchers of the Law Society of Upper Canada Assembled in Convocation

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

Licensing Process and Transfer from another Province – By-Law 4

Attached is a list of candidates who have successfully completed the Licensing Process and have met the requirements in accordance with subsection 9.

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on
Thursday, May 22, 2008.

ALL OF WHICH is respectfully submitted

DATED this 22nd day of May, 2008

CANDIDATES FOR CALL TO THE BAR
May 22nd, 2008

Lori Anne Crewe
Philip James Drummond Furniss
Anne Maureen Gregory
Julia Kristine Gurr
Karina Kessaris
Linda Catherine Krajcovic
Jonathan Charles Levy
Erin Duncan MacDonald
Karima Penman
Jennifer Angela Reid
Cauchy Richard
Sylvie Marie Thérèse Marcelle Rodrigue
Matthew Edward Daniel Sherrard
Daniel Joseph Wilgosh

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

Carried

ANNOUNCEMENT OF NOMINATION OF TREASURER

The Secretary announced that after the close of nominations on May 8, 2008 at 5:00 p.m. there was only one candidate for the position of Treasurer. Derry Millar was nominated by Heather Ross and Judith Potter.

The Secretary declared Derry Millar elected as Treasurer. Mr. Millar will take office on June 26, 2008.

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Re: Retention of Women in Private Practice Working Group

Ms. Minor introduced the Retention of Women in Private Practice Report.

Ms. Pawlitza and Ms. Warkentin presented the Report of the Retention of Women in Private Practice Working Group.

Final Report to Convocation
May 22, 2008

Retention of Women in Private Practice Working Group

Working Group Members
Laurie Pawlitza, Co-Chair
Bonnie Warkentin, Co-Chair
Nathalie Boutet
Marion Boyd
James Caskey
Soma Choudhury
Paul Copeland
Katherine Hensel
Janet Minor
Julie Ralhan
Linda Rothstein
Mark Sandler
Joanne St. Lewis
Beth Symes

Purposes of Report: Decision

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

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I - OVERVIEW

1. Women have been entering the legal profession and private practice in record numbers for at least two decades. However, they have been leaving private practice in droves largely because the legal profession has not effectively adapted to this reality. This report discusses the differences between the legal careers of women and men and outlines business and social reasons for developing strategies to retain women in private practice. It also makes a series of recommendations to promote the advancement of women in the private practice of law.

2. Women's realities, which often include childbirth and taking on a significant share of the family responsibilities, impact on the choices they make in their professional lives. While neither the Law Society nor the profession generally should, nor can, determine the roles women play in their own family relationships, the failure of the profession to adapt to what is not a neutral reality will inevitably affect the quality and competence of the legal services available to the public.

3. The departure of women from private practice means that the legal profession is losing a large component of its best and brightest in core areas of practice. Studies have shown the staggering cost of associate turnover, which is estimated at $315,000 for a four year

associate. This cost is equally applicable to associate turnover of men and women, but women are more likely than men to leave their firms before joining the partnership. A shift in thinking is required both on the part of associates and on the part of the employers/firms. This shift would recognize the biological reality of an associate's child bearing years, for which some accommodation is required, the long term nature of a career in private practice and the economic realities of operating a law firm.

4. The legal profession should not assume that change will occur without conscious efforts to create a shift in the legal culture. Law firms have a legal responsibility to provide environments that allow women to advance without barriers based on gender. It is in the public interest for the providers of private legal services to reflect the make up of the society in which we live.

5. We also note that the responsibility to provide leadership in the retention and advancement of women in private practice does not only lie with law firms. Law societies and legal associations have a responsibility to the legal profession and to the public to act as catalysts to influence change and to empower women to take responsibility for their careers and progress.

6. Self-regulation of the legal profession is a privilege and relies on the assumption that the profession is in the best position to set standards and establish ethical rules of conduct for the bar and to regulate lawyers in the best interest of the public. Meeting the public interest requires lawyers to have a sense of professionalism, which includes a sense of integrity, honour, leadership, independence, pride, civility and collegiality.[1] A profession that is representative of the public, and one that provides equal opportunities to men and women serves to enhance the sense of professionalism of our legal profession.

7. In response to the realities outlined above, the Law Society created in 2005 the Retention of Women in Private Practice Working Group (the "Working Group") with a mandate to,
   a. identify best practices in law firms and in sole practice to enhance the retention of women;
   b. determine the role of the Law Society in addressing the issue of retention of women in private practice;
   c. design and implement strategies for medium and large law firms to retain women;
   d. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
   e. take into account the needs of women from diverse communities.

8. In developing its recommendations, the Working Group considered findings of focus groups conducted with women and interviews conducted with Managing Partners. It also reviewed literature about challenges faced by women in the legal profession, more particularly private practice, and best practices in the legal profession in Ontario, in Canada and in foreign jurisdictions. The Working Group's recommendations aim at

[1] Chief Justice of Ontario Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, December 2001, *The Gazette, Professionalism: A Century of Perspectives,* 2002, at 28-38.

allowing women lawyers to make career choices related to their aspirations, may they decide to work as in-house counsel, as government lawyers, in private practice or to stay at home, without being hindered by barriers based on gender.

9. From March to May, 2008, the law Society embarked on a province-wide consultation to seek the profession's comments on the report and proposed recommendations. The Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received more than 55 written submissions.

10. The final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel, articling and law students. Participants included associates, partners and managing partners of all levels of experience and practising in a wide range of areas.

11. Responses to the final consultation were overwhelmingly positive, with some lawyers indicating that they hope this is a first step toward further initiatives. an overview of the final consultation findings is presented in sections VII and VIII of this report. A Final Consultation Report is also available on-line at www.lsuc.on.ca.

II - RESEARCH FINDINGS

12. Studies have identified the following challenges in private practice:
    a. although men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, maintaining demanding law careers often conflict with family life and is the most common reason for leaving law practice;
    b. the most immediate issues for women in private practice appear to result from childbirth and parenting responsibilities;
    c. women are particularly affected by the unavailability of support and benefits such as part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours;
    d. women in small firms or in sole practices face unique challenges in part because of the lack of income or benefits during leaves and lack of assistance to maintain the practice during absences;
    e. women from Aboriginal, Francophone and/or equality-seeking communities are often more vulnerable and their experiences and perspectives should be taken into account when developing strategies to retain and advance women in private practice.

13. The Working Group reviewed best practices in Ontario and in other jurisdictions to develop its recommendations. The following conclusions can be drawn from this review:
    a. Similar findings are noted in other jurisdictions in Canada and in foreign jurisdictions.
    b. Barriers faced by women are systemic and will require organizational and cultural change, along with a focus on the issue if meaningful change is to occur.
    c. A number of initiatives designed to assist women would also benefit male lawyers.
    d. The experiences and realities of women in larger firms are significantly different than those of women in smaller environments, and therefore recommendations to

address challenges faced by women in large and medium firms should be different than those designed to address the needs of women in small firms and sole practices.

e. The recommendations and implementation should take into account the unique challenges faced by women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities and their historic under-representation in the legal profession.

f. In the context of large and medium firms, systemic cultural change is necessary and firms will require leadership and commitment from managing partners to implement practices such as the following:
   i. the collection and analysis of law firms' demographic data to assist in the development of strategies based on the firm's needs;
   ii. the adoption, acceptance and effective implementation of maternity/parental leaves and flexible work arrangements;
   iii. programs to assist women to become leaders, both inside and outside their firms, such as effective mentoring programs, gender-based networking opportunities and leadership skills development opportunities.

g. Women in small firms and sole practices are particularly vulnerable because they do not have the financial or human resources to take leaves. The following initiatives would be beneficial:
   i. access to funding to cover some of the expenses of leaves of absences;
   ii. access to practice locums and guidelines to assist in retaining locum lawyers to maintain the practice while on leave;
   iii. access to networking opportunities.

III - THE RECOMMENDATIONS

14. The recommendations are divided into the following five categories:
   a. recommendation for large (100 lawyers or more) and medium (between 5 and 100 lawyers) firms;
   b. direct support and resources;
   c. recommendations for small firms (5 lawyers or fewer) and sole practices;
   d. recommendations to work with law schools;
   e. recommendations to create opportunities for women from Aboriginal, Francophone and/or equality-seeking communities;
   f. assessment of effectiveness of programs and identification of further strategies.

A - Recommendation for Large and Medium Size Firms

RECOMMENDATION 1 – JUSTICIA THINK TANK - LAW FIRM COMMITMENT TO WOMEN'S ADVANCEMENT

15. That the Law Society implement a three-year pilot project (the "Justicia Think Tank") for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women, as described in this report and in the Law Firm Commitment at TAB 2.

16. Through the Justicia Think Tank, the Law Society together with the participating law firms will commit to adopting programs for the advancement and retention of women, including the collection by law firms of demographic information about their lawyers, providing effective parental leaves and flexible work arrangements, developing

networking, mentoring and business development opportunities, and placing women in leadership positions.

17. As a first step, participating law firms will collect and maintain demographic information about their lawyers. Although the information will not be provided to the Law Society or be made public without the consent of the firm, participating law firms will collect and maintain demographic information as benchmarks for the development of programs for the advancement of women lawyers. Initiatives developed in other jurisdictions have shown that tracking demographic information about women within firms is key to developing initiatives tailored to the firm environment and to fully understanding gaps and needs. Participating law firms will commit to maintaining demographic information, including differences among practice groups, to identify areas where they have more or less been successful in retaining and advancing women and to develop strategies for improvement.

18. Participating law firms will also commit to developing and/or maintaining programs, based on the needs of their lawyers and the expectations of the firm, in the following main areas:
    a. maternity/parental leaves and flexible work arrangements;
    b. networking and business development; and
    c. mentoring and women in leadership roles.

19. It is anticipated that the Justicia Think Tank will also lead to the development of best practices, model policies and precedents that will be made readily available to the profession. Non-participating law firms will be encouraged to use the available resources and adopt best practices for their own firms. The Working Group is of the view that the Justicia Think Tank, a first of its kind in Canada, will lead the way for innovative systemic change in the legal profession.

20. For the full considerations underlying the Working Group's recommendation, please consult the full report .

B - Direct Support and Resources

RECOMMENDATION 2 - DIRECT SUPPORT FOR WOMEN

21. That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources, as described in this report.

22. Studies have identified a number of direct support programs that would be of great value to women. Those programs are designed to provide networking opportunities and on-line resources to women and to gather information about why women and men move from their work environments. As a first step in the implementation of recommendation 2, the Working Group proposes the following initiatives:
    a. Women's Leadership and Professional Development Institute;
    b. On-line Women’s Resource Centre;
    c. Gathering information about changes of status.

Women's Leadership and Professional Development Institute

23. Professional development programs focused on the business of law and the availability of networking opportunities designed for women have been identified as valuable initiatives for women in the profession. Such programs are also important to the career advancement of women from Aboriginal, Francophone and/or equality-seeking communities.

24. Therefore, the Working Group proposes that the Law Society create a Women's Leadership and Professional Development Institute to provide professional development opportunities specifically designed to develop women as leaders and rainmakers. The Working Group is of the view that the Law Society should partner in this endeavour with legal associations that also have expertise and experience in this area. Activities of the Institute could include an annual symposium at which professional development opportunities are designed for women, such as workshops and seminars on networking, the business of law, becoming a rainmaker, remaining on the partnership track and ramping down and ramping up a practice before and after leaves. The Institute could also provide an opportunity to recognize the contributions of women lawyers and law firms.

25. It is anticipated that the Law Society would also work with regional law associations to develop programs that meet the needs of women in regions.

On-line Women's Resource Centre

26. The Working Group proposes that the Law Society develop an on-line Women's Resource Centre. The Law Society already has an extensive website, which includes professional development resources and resources in the area of equity and diversity. The Women's Resource Centre would build on existing on-line resources by offering tools and information focused on issues related to women's advancement, which could include,
    a. practice management tips for women and building their professional profile;
    b. maintaining profitability while having a family life;
    c. model maternity and flexible arrangement policies and guidelines;
    d. information about networking opportunities for women;
    e. information about individual coaching opportunities for women;
    f. information about effective mentoring for women, including how to seek out mentors.

27. Through the consultation process, women lawyers indicate that they would benefit from coaching services on career development, including effective client management, ramping down and ramping up a practice for a maternity leave and remaining on the partnership track while assuming parenting responsibilities. Some firms have begun offering such programs, while others have not identified this as a key initiative or have indicated that they do not have the resources to implement such services. The Working Group proposes that the Law Society promote access to coaching services by working with legal associations and law firms to identify such services. It is not anticipated that the Law Society would provide coaching services directly to women.

28. The best practices developed in the Justicia Think Tank would also be included in the Women's Resource Centre and made readily available to the profession.

Gathering information about changes of status.

29. The Law Society proposes to survey lawyers, when they change their status with the Law Society. The change of status survey would provide up-to-date information about factors that lead to changes in career paths. The initiative would allow the Society to maintain ongoing information about the movement of its lawyers. The voluntary survey would keep track of reasons behind a status move and include questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influence the decision to change work environment or to leave the practice of law, level of satisfaction and questions about how to keep lawyers in the legal profession. The survey would allow the Law Society to identify trends about the demographic of the profession, former and current employment, satisfaction with aspects of practising law, reasons for leaving private practice and returning to practice and desired changes to the profession. With approximately 7000 status changes per year, it is anticipated that the survey findings will allow the Law Society to develop targeted programs to promote equality within the profession.

30. For the full considerations underlying the Working Group's recommendation, please consult the full report.

C – Recommendations for Small Firms and Sole Practitioners

RECOMMENDATION 3 - PRACTICE LOCUMS

31. That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.

32. In addition to the financial challenges faced by women in small firms and sole practices, particularly when they have family responsibilities, women face challenges in finding available and competent lawyers to maintain their practice during leaves of absence, or to assist them with some of the work on a temporary basis. Such concerns have also been raised in the report of the Law Society of Upper Canada's Sole Practitioner and Small Firm Task Force. As a result, the Working Group proposes the creation of a practice locum program.

33. The practice locum project would include the following features:
    a. an on-line registry, developed in collaboration with legal associations where appropriate, of locum lawyers, specifying information such as the lawyer's qualifications, system for remuneration and expenses, location, availability, timing and practice area and references/discipline history;
    b. guides and checklists on how to make a locum arrangement operate effectively, including how to deal with client conflicts;
    c. sample locum agreements including non-compete clauses;
    d. other resources as required.

34. The Working Group is of the view that the development and support of a practice locum project would benefit women, and men, in at least two ways:
    a. it would allow women and men to take leaves of absence or to have flexible work schedules while having the opportunity to rely on competent lawyers to maintain their practice on a temporary basis;

b. it would also allow women and men to undertake practice locum work when they wish to have flexible careers.

35. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 4 - FUNDING FOR LEAVES

36. That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective on January 1, 2009, as follows:
    a. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;
    b. provide a fixed sum of $3,000 a month for three months (maximum $9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave.

37. The purpose of a parental leave benefits program is to reduce the financial hardship when a lawyer, woman or man, in a small firm or sole practice takes a parental leave. It is not intended as income replacement, but rather to help defray some of the cost of maintaining a practice during the leave. The program would be implemented in combination with the practice locum pilot project and would therefore also assist lawyers on parental leave defray the costs associated with retaining a practice locum. The program would be available to men and women who wish to take a leave related to the birth or the adoption of a child.

38. The mandate of the Law Society of Upper Canada is to regulate the legal profession in the interest of the public. In adopting this recommendation, the Law Society would be assisting lawyers to remain in small firms and sole practices, including practices in non-urban areas, hence alleviating the shortage of legal services in some geographical areas. This program may also encourage practitioners, and perhaps a more diverse pool of lawyers, to join small firms or to set up sole practices, where they might otherwise be discouraged from doing so because of financial considerations related to taking parental leaves.

39. These types of funding programs originated in Québec in 2003 when the Barreau approved a parental assistance program for self-employed lawyers. The parental assistance program for self-employed lawyers was made available to members not covered by any other public or private parental plan, such as Employment Insurance plans or parental benefits offered by an employer through formal policy or individual agreements. The program provided that, upon the birth or adoption of a child, the Barreau would give to the member an amount equivalent to the operating expenses incurred while his or her professional activities were temporarily suspended, to a maximum of $1,500 per month. The Barreau adopted the following three types of benefits:
    a. up to three months benefits for maternity leave;
    b. up to 1 month benefit for parental leave;
    c. up to 1 month benefit for adoption leave.

40. The program came into effect on January 1, 2005 and remained in place for one year until January 1, 2006 when the Québec provincial government adopted the Québec

Parental Insurance plan, which provided benefits to self-employed workers in Québec. During the period of one year, the Barreau received 53 requests for funding.

Estimated Costs

41. The Law Society retained the services of Eckler Ltd.[2] to estimate the number of recipients of the benefits and the costs of the program. The Eckler Report, presented at TAB 4, estimates that approximately 60 lawyers per year would benefit from the program. The estimated costs are as follows:

	2009	2010	2011
Scenario 1[3]	$506,700	$523,800	$540,000
Scenario 2[4]	$243,000	$261,000	$303,300

42. The estimated costs per member are as follow:

	2009	2010	2011
Scenario 1	$15	$15	$15
Scenario 2	$5	$6	$8

43. The Working Group considered the costs for the Law Society or for LawPRO to administer the program. It is estimated that one staff member either at the Law Society or at LawPRO would be required to administer the fund. This is consistent with the experience of the Barreau du Québec, which also assigned one staff member to administer its parental leave benefit program.

44. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 5 - DIRECT RESOURCES

45. That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice, as described in this report.

---

[2] Eckler Ltd. is a Canadian-based firm offering actuarial and consulting services. It is Canada's largest independently owned actuarial consultancy, with offices across Canada and throughout the Caribbean.

[3] The assumption is at 100% of Ontario fertility rate, 5% per year increase in number of females, 0.8% per year increase in number of males, 100% take up of benefits for females and 20% take up for males.

[4] The assumption is at 80% of Ontario fertility rates as the base for females and 100% for spouses of males, 3% per year increase in number of females and 0.8% per year in number of males, a take up rate for females of 50% for 2009, 60% for 2010 and 80% for 2011 and a take up rate of 15% for males.

46. Studies have indicated that the Law Society and legal associations have a role to play in providing direct resources to women in sole practices and in small firms. As a first step in the implementation of this recommendation, the Working Group proposes that the following resources be developed:
    a. on-line resources for women in sole practices and small firms;
    b. practice management advice;
    c. direct supports.

On-line Women's Resource Centre

47. Women in sole practices and small firms have indicated that they would benefit from having access to on-line resources. The Working Group proposes that the Women's Resource Centre include not only resources for women in large and medium firms, but also resources to address the needs of women in small firms and sole practices. The resources could include regional lists of available childcare service providers, lists of regional networks and CLE events for women and resources to assist in setting up a business and providing legal services. The Law Society would also work with regional legal associations, women's organizations and organizations that promote equality and diversity in the legal profession to determine how to develop effective on-line resources for women in sole practices and small firms.

Access to Practice Management and Career Development Advice

48. Women noted that they faced challenges because of difficulties in finding lawyers that can advise them on how to develop and manage their career effectively. This type of advice is particularly critical for women who wish to have, or have, children. This initiative could be developed in collaboration with legal associations.

49. The Law Society provides, through its Practice Management Helpline, assistance in interpreting the *Rules of Professional Conduct*. Experienced counsel is available to provide insight on the Rules, Law Society legislation and by-laws as well as ethical and practice management issues that lawyers may be facing. The Practice Management Helpline could expand its services to provide resources or refer women to resources designed for women in sole practices and small firms. The current Practice Mentorship Initiative is also available to connect lawyers with experienced practitioners in relevant areas of law to help deal with complex substantive legal issues or specific procedural issues outside of the Law Society's advisory mandate. This program could be expanded to cater to the needs of women in sole practices and small firms.

50. In order to draw on external resources, the Law Society could also work with regional legal associations to enhance the way it provides career and practice management assistance to women in sole practices and small firms.

Direct Support

51. In addition to the recommendations mentioned above, the Working Group proposes that the Law Society continue to provide direct resources to women in small firms and in sole practice, such as career, client and business development workshops and guidelines on effective marketing tips, career development options, and business development skills for women.

52. For the full considerations underlying the Working Group's recommendation, please consult the full report.

D -Working with Law Schools

RECOMMENDATION 6 – BEGINNING AT LAW SCHOOL

53. That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources.

54. Law schools have begun offering programs to inform law students, in some cases gender specific programs for women law students, about the realities of the practice of law. The Working Group proposes that the Law Society work with law schools throughout Ontario to organize programs that will prepare women law students for the practice of law. More particularly, information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources could be provided.

55. For the full considerations underlying the Working Group's recommendation, please consult the full report.

E - Women from Aboriginal, Francophone and/or Equality-Seeking Communities

RECOMMENDATION 7 – CREATION OF ADVISORY GROUP

56. That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report.

57. In 2005, the Equity and Aboriginal Issues Committee adopted an Equality Template to be applied by the Law Society, including benchers and staff, to the development of policies and programs to ensure that activities of the Law Society are guided by equality, diversity and access to justice principles. The template defines the terms “equality” and “diversity” and recognizes the uniqueness of Aboriginal and Francophone communities. It also assists benchers and staff in integrating principles of equality within its work. The Working Group proposes that the template be applied to the implementation of the recommendations in this report.

58. To ensure that the template is consistently applied and that the perspectives of women lawyers who are members of historically under-represented groups in the profession are included throughout the implementation of the project, the Working Group recommends that an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities be created. The Advisory Group would provide advice and expertise to the Law Society in the implementation of the recommendations.

59. For the full considerations underlying the Working Group's recommendation, please consult the full report.

RECOMMENDATION 8 – NETWORKING

60. That the Equity and Aboriginal Issues Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes.

61. Research findings emphasize the importance of networking opportunities when entering and advancing in the legal profession and in private practice. Activities and programs offered by legal associations such as the Canadian Association of Black Lawyers, the Association des juristes d'expression française de l'Ontario ("AJEFO"), the South Asian Bar Association, the Sexual Orientation and Gender Identity Committee ("SOGIC") of the Ontario Bar Association ("OBA"), ARCH Disability Law Centre and the Indigenous Bar Association, to name a few, have been critical to assist students and lawyers in the profession. The Working Group recommends that the Equity and Aboriginal Issues Committee facilitate, in collaboration with legal associations and the Equity Advisory Group/Groupe consultatif en matière d'équité, the development of networks and strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

62. For the full considerations underlying the Working Group's recommendation, please consult the full report.

F - Assessment

RECOMMENDATION 9 – REVIEW PROGRAMS AND NEXT STEPS

63. That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.

64. It is recommended that the effectiveness of programs implemented in the context of this project should be assessed after a period of implementation as specified in recommendation 9 to identify gaps and develop further strategies that may assist women in private practice. The Working Group recognizes that cultural and systemic change takes time. However, it believes that regular reviews of its programs will allow the Law Society to monitor their effectiveness and adapt the programs based on needs.

65. For the full considerations underlying the Working Group's recommendation, please consult the full report.

IV – RESOURCE IMPLICATIONS

66. Approximately $70,000 in funding is available for the implementation of the Retention of Women Working Group recommendations in 2008.

67. A significant portion of the existing Law Society staff member's time will be reoriented from the development of other model policies and the Equity Initiatives Department's professional development programs to this initiative. In 2008, any additional staffing requirements will be covered under the funding already approved by Convocation for the implementation of the initiative. It is anticipated that in subsequent years, 1.0 of a full-time equivalent position will be required to continue to effectively implement the initiative.

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
1 Justicia project	0.3 of a full-time staff equivalent (beginning in 2009)	$15,000 for 2008 expenses to coordinate meetings will be covered by funds already approved by Convocation (Convocation already approved $70,000 for implementation of project) $15,000 per annum in 2009 and 2010 to coordinate meetings. $20,000 in 2011 to assess effectiveness of project.	
2 Direct support	0.3 of a full-time equivalent position (beginning in 2009)	$30,000 per annum to implement the Institute. It is anticipated that this would be offset by course revenues. Design of change of status survey estimated at up to $25,000 per annum, funded from existing budget in Equity Initiatives Department.	Incremental resource requirements may accumulate
3 Practice locums	0.3 of a full-time equivalent position (beginning in 2009)	Not expected to be material	
4 Parental leave	One additional staff member included in funding (see next column).	$600,000 per annum in 2009, 2010, and 2011. Thereafter to be determined.	
5 Direct resources	0.1 of full- time equivalent position	Not expected to be material.	Incremental resource

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
	(beginning in 2009)		requirements may accumulate
6 Law school initiative	Not expected to be material.	Not expected to be material	Incremental resource requirements may accumulate
7 Advisory group	Nominal	Nominal	Teleconference three times a year.
8 Networking	Methodology to be determined.	To be determined	
9 Review	Methodology to be determined.	To be determined	
Total 2008	No additional position required	No additional funding required	
Total 2009 - 2011	1.0 of full-time equivalent per year	$600,000 per year	

THE REPORT

I - MOTIONS

68. The following are the proposed recommendations:

Large firms (100 lawyers or more) and medium firms (between 5 and 100 lawyers)

Recommendation 1 – That the Law Society implement a three-year pilot project (the “Justicia Think Tank") for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women, as described in this report and in the Law Firm Commitment at TAB 2.

Direct Support and Resources

Recommendation 2 - That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources, as described in this report.

Small firms (5 lawyers or fewer) and sole practices

Recommendation 3 – That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.

Recommendation 4 – That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective on January 1, 2009, as follows:

a. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;
b. provide a fixed sum of $3,000 a month for three months (maximum $9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave.

Recommendation 5 – That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice, as described in this report.

Work with law schools

Recommendation 6 – That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources.

Women from Aboriginal, Francophone and/or equality-seeking communities

Recommendation 7 - That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report.

Recommendation 8 – That the Equity and Aboriginal Issues Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes.

Evaluate effectiveness of programs

Recommendation 9 – That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.

II - BACKGROUND

69. The legal profession began witnessing an increase in the proportion of women lawyers in Ontario in the mid-1970s, and by the end of the 1990s, the proportion of women entering the legal profession had reached more than 50 percent.[5] However, over the

[5] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [*Bicentennial Report*]. See also Michael Ornstein,

years, research findings have identified a range of issues affecting the likelihood of women advancing and remaining in the legal profession, most particularly in private practice. Law Society data shows that, over the last ten years, women have been leaving private practice two to three times more often than men.[6]

70. In her 1993 report *Touchstones for Change: Equality, Diversity and Accountability*[7] , Justice Bertha Wilson referred to private practice as "the paradigm for the profession".[8] One that remains the central image when we think of the practice of law. At the time, she identified two trends in private practice: that a higher proportion of women enter other sectors of the legal profession at the initial entry level, and that there is a higher attrition rate for women than men from private practice. In her view, change in the private bar was essential to achieving gender equality, and women would have to attain a critical mass and be present in powerful positions to influence change. Law societies were identified as important agents of change and as organizations that could and should exhibit leadership on gender issues.

71. Justice Wilson went on to make a series of recommendations to promote gender equality within private practice. The recommendations, addressed to firms, legal associations and law societies, covered a broad range of systemic practices, such as hiring practices, allocation of work, addressing client attitudes, client development, mentoring, admission to partnership, exclusion from influential committees, accommodation of family responsibilities, billable hours, maternity, parental and family leaves, income replacement for self-employed lawyers, temporary replacements to provide legal services, alternate work arrangements, child care services, sexual harassment and workplace equity.

72. The report created momentum for change, and much has changed since its publication. Law firms, legal associations and law societies all established programs to promote gender equality in the legal profession, and the Law Society has played a role in this endeavour. It began to address gender equality issues in the legal profession in the late 1980s, well before *Touchstones for Change*. By 1996, it had created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (the "Committee")[9] , with a mandate to develop for Convocation's approval, policy options for

---

The Changing Face of the Ontario Legal Profession, 1971-2001 (Toronto: Law Society of Upper Canada, October 2004) [Ornstein report]. The following represents the percentage of women entering the legal profession: in 2000, 50% of lawyers; in 2001, 51% of lawyers; in 2002, 52% of lawyers; in 2003, 54% of lawyers; in 2004, 54% of lawyers; in 2005, 57% of lawyers; and in 2006, 53% of lawyers.

[6] Based on statistical data maintained by the Law Society.

[7] (Ottawa: Canadian Bar Association, August 1993) [*Touchstones for Change*].

[8] *Touchstones for Change, ibid.* at 81.

[9] The Equity and Aboriginal Issues Committee was not the first Law Society committee created to address gender equality issues in the legal profession. In 1988, the Law Society established a Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession. In 1990, it became a standing committee of Convocation. In 1989, the Equity in Legal Education and Practice Committee was created. In 1996, the Women in the Legal

the promotion of equity and diversity in the legal profession and for addressing all matters related to Aboriginal and French-speaking peoples, and to consult with Aboriginal, Francophone and equality-seeking communities in the development of such policy options.[10] It also created the Equity Initiatives Department and the Equity Advisory Group (the "EAG")[11] , an advisory group consisting of expert lawyers in the area of equality rights.

73. In its 1997 *Bicentennial Report*, the Law Society of Upper Canada recognized its role and responsibility in the advancement of equity and diversity and formally committed to the goals of achieving equality and diversity within the legal profession. It adopted sixteen broad recommendations to promote equity and diversity in all areas of the Law Society's activities, including policy development, governance, education, regulation and employment and contracting for legal services.

74. Notwithstanding the leadership role that law societies and legal associations have taken to promote equality in the legal profession, and the work that has been done by law firms to retain women in private practice, research findings still show that women face inequalities and barriers in the legal profession. More particularly, findings indicate that a large proportion of women do not remain in private practice, even if private practice is their preferred choice of employment.

75. In March 2004, in part to mark the ten-year anniversary of *Touchstones for Change*, the Shirley Greenberg Professorship in Women and the Legal Profession and the Human Rights Research and Education Centre co-sponsored a conference at the University of Ottawa to reassess the status of women within the profession. Professors Elizabeth Sheehy and Sheila McIntyre, in *Calling for Change: Women, Law, and the Legal Profession,* a book published as a result of the conference, note that much has stayed the same or worsened since the publication of *Touchstones for Change.* They observe "Women still face unequal pay and unequal professional credibility, recognition and opportunities within the profession […] Studies have documented the consistent rate at which women leave the practice of law, the ways in which women's care giving roles continue to conflict with professional structures, the existence of expectations that have not adjusted to women's presence in the profession, or to men and women's parenting responsibilities."[12]

76. On September 26 and 27, 2005, the Law Society held a benchers' planning session to identify core issues that would drive policy making between 2005 and 2007. Benchers identified the issue of retaining women in private practice as a priority, and decided that the Law Society should develop strategies to address this issue.

Profession Committee and the Equity in Legal Education and Practice Committee were merged into the Admissions and Equity Committee, which later became the Equity and Aboriginal Issues Committee.

[10] By-Law 3 – *Benchers and Convocation and Committees*.

[11] Formerly the Treasurer's Advisory Group.

[12] (Ottawa: University of Ottawa Press, 2006) at 4.

77. As a result, the Law Society created the Retention of Women Working Group with a mandate to,
    a. identify best practices in law firms and in sole practice to enhance the retention of women;
    b. determine the role of the Law Society in addressing the issue of retention of women in private practice;
    c. design and implement strategies for medium and large law firms to retain women;
    d. develop strategies to respond to the socio-economic needs of women in small firms and sole practices including the viability of their practices as well as their unique child-care challenges; and
    e. take into account the needs of women from diverse communities.

78. Members of the Working Group are Laurie Pawlitza and Bonnie Warkentin (Co-Chairs), Nathalie Boutet (Representative of the Association des juristes d'expression française de l'Ontario - AJEFO), Marion Boyd, James Caskey, Soma Choudhury (Representative of the Equity Advisory Group), Paul Copeland, Katherine Hensel (Representative of Rotiio> taties Aboriginal Advisory Group), Janet Minor, Julie Ralhan, Linda Rothstein, Mark Sandler, Joanne St. Lewis and Beth Symes.[13]

79. The Retention of Women Working Group met on January 25, 2006 to set out the preliminary framework for addressing the issue of retention of women in private practice. The Working Group decided to focus on identifying solutions and developing practical tools and best practices originally by undertaking a comprehensive consultation with women lawyers and law firms. The Working Group wished to avoid duplicating studies that had already been done on the issue of retention of women in private practice. It was decided that this initial consultation would also serve as a catalyst to create change in the legal profession and to enhance awareness about these issues and possible solutions.

80. The Law Society retained the services of the Gandalf Group to conduct the initial consultation with women lawyers and managing partners of law firms. The Gandalf Group presented its report to the Law Society in February 2007[14] , which included proposed best practices for the legal profession. A summary of the Gandalf Group findings is presented in this report.

81. The Retention of Women Working Group also created an Expert Advisory Group of women from large, medium and small law firms and from sole practices across the province to provide advice in developing its recommendations. The Expert Advisory Group is composed of a representative group of women lawyers, including representation based on firm size, membership in Aboriginal, Francophone and/or

[13] The membership of the Working Group has changed since its inception. The following individuals have also participated in the Working Group: Justice Kim Carpenter-Gunn, Justice Laurence Pattillo, Andrea Alexander, Ritu Bhasin (representative of the EAG), Dr. Richard Filion, Holly Harris, Thomas Heintzman and Tracey O'Donnell.

[14] Report available on request to the Equity Initiatives Department of the Law Society of Upper Canada.

equality-seeking communities, region, area of practice, age and experience in the legal profession. The Expert Advisory Group provided invaluable advice in developing the recommendations and members are to be commended for their dedication and work on this project. Members of the Expert Advisory Group[15] are,

a. Aida Abraha, Rehovos Law Chambers, Toronto;
b. Lisa Borsook, WeirFoulds LLP, Toronto;
c. Gina Brannan, Brannan Meiklejohn Barristers, Toronto;
d. Georgina Carson, Macdonald & Partners LLP, Toronto;
e. May Cheng, Fasken Martineau Dumoulin LLP, Toronto;
f. Kirby Chown, McCarthy Tetrault LLP, Toronto;
g. Neena Gupta, Gowling Lafleur Henderson LLP, Kitchener;
h. Julia Holland, Torys LLP, Toronto;
i. Alison Hurst, Counsel, Toronto;
j. Freya Kristjanson, Borden Ladner Gervais LLP, Toronto;
k. Mary-Jo Maur, Barrister and Solicitor, Kingston;
l. Noa Mendelsohn Aviv, Canadian Civil Liberties Association;
m. Lana Nakonechny, Dickson MacGregor Appell LLP, Toronto;
n. Sue-Lynn Noel, Owens, Wright LLP, Toronto;
o. Cynthia Petersen, Sack Goldblatt Mitchell LLP, Toronto;
p. Joanne Clarfield-Schaefer, Bennett Jones LLP, Toronto;
q. Jennifer Sims, Law Society of Upper Canada;
r. Victoria Starr, Barrister and Solicitor, Toronto;
s. Deborah Watkins, Daoust Vukovich LLP, Toronto;
t. Jennifer Watson, Barrister and Solicitor, Toronto;
u. Heather Williams, Cavanagh Williams, Ottawa; and
v. Ruby Wong, Cassels Brock & Blackwell LLP, Toronto.

82. The Expert Advisory Group and the Working Group met throughout 2006 and 2007 to review findings in this area and develop recommendations for the Committee's consideration.

83. On September 23 to 25, 2007, benchers attended a planning session to identify priorities for the next four years. Diversity and equality within the profession, access to justice and small firms and sole practices were all identified as priorities. The issue of retaining women in private practice is an integral part of those priorities.

84. On February 21, 2008, the Working Group outlined its recommendations to Convocation and proposed to undertake a consultation with the profession. Convocation approved a province-wide consultation to seek the profession's comments on the report and proposed recommendations. The consultation was held between March and May 2008. During that period, the Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received over 55 written submissions.

[15] Carole Curtis also participated in the work of the Expert Advisory Group prior to her appointment to the bench.

85. The consultation process proved to be overwhelmingly positive. This is largely due to the active collaboration and participation of presidents of legal associations, local librarians and benchers and the Law Society is grateful for their assistance in this project.

86. The final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel, articling and law students. Participants included associates, partners and managing partners of various levels of experiences and practising in a broad range of areas. We heard from women and men from all over the province.

87. This report is divided as follows:
    a. The role of organizations;
    b. Challenges faced by women;
    c. The Gandalf Group findings;
    d. Existing initiatives and best practices;
    e. Deloitte & Touche's initiative;
    f. Findings of the final consultation;
    g. Considerations underlying the Working Group's recommendations;
    h. Overall costs.

III - ROLE OF ORGANIZATIONS

A - Role of the Law Society of Upper Canada

88. The mandate of the Law Society is to "govern the legal profession in the public interest by […]upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law." The *Law Society Act*[16] specifies that, in carrying out its functions, duties and powers under the Act, the Law Society must have regard to the following principles:
    a. to maintain and advance the cause of justice and the rule of law;
    b. to act so as to facilitate access to justice for the people of Ontario;
    c. to protect the public interest;
    d. to act in a timely, open and efficient manner;
    e. to uphold standards of learning, professional competence and professional conduct for licensees.

89. It is the Law Society's core role and responsibility to facilitate access to justice and protect the public interest. In 2001, women represented 51.2% of the Ontario population, while women lawyers represented only 32% of the legal profession, and 24% of lawyers in private practice. Women now represent 37% of the legal profession and 28% of lawyers in private practice. While in the last 5 years, the percentage of women entering private practice averaged 50%, the percentage of women lawyers in private practice averaged 42%. On the other hand, the percentage of men entering private practice averaged 58%, while the percentage of men in private practice for the last 5 years averaged 60%.[17]

---

[16] R.S.O. 1990, c. L8, s. 4.2.

[17] Statistical information compiled from Law Society data.

90. With the critical mass of women entering the legal profession in larger numbers than men and the disproportionate number of women leaving private practice, the Law Society must play a leading role in addressing gender based systemic barriers that lead women lawyers to leave private practice when they would otherwise remain.

91. Justice Wilson cautioned in 1993[18] that if women do not remain in private practice, they will not occupy the powerful positions in the profession and will consequently be unable to influence structural change at the higher levels of the profession. She noted the importance of law societies' leadership in this area and their role as catalysts to influence change.

92. Women's realities, which often include childbirth and taking on a significant share of the family responsibilities, impact on the choices they make in their professional lives. While neither the Law Society nor the profession generally should, nor can, determine the roles women play in their own family relationships, the failure of the profession to adapt to what is not a neutral reality will inevitably affect the quality and competence of the legal services available to the public.

93. The loss of talent as a result of gender based barriers will likely have an impact on the legal profession's capacity to offer legal services to the Ontario public. It is not expected that the critical mass of women entering the profession will lead to significant systemic change without a cultural shift in the profession as a whole and without the Law Society's leadership. This has been the experience in the U.S. where firms have committed, through the influence of bar associations, to make systemic change to their leadership structure, work arrangements and business models to meet the needs of women and enhance women's chances of advancement.

94. Further, self-regulation of the legal profession is a privilege and relies on the assumption that the profession is in the best position to set standards and establish ethical rules of conduct for the bar and to regulate lawyers in the best interest of the public. Meeting the public interest requires lawyers to have a sense of professionalism, which includes a sense of integrity, honour, leadership, independence, pride, civility and collegiality.[19] A profession that is representative of the public, and one that provides equal opportunities to men and women serves to enhance the sense of professionalism of our legal profession.

95. This report recommends that the Law Society not only provide a leadership role, but also provide direct resources and support to enhance the retention of women in private practice. The report recommends that the Law Society work toward creating a culture within the legal profession that recognizes the length of a career in private practice and facilitates women's ability to continue in private practice for reasons that are related to their aspirations and not because of gender-based barriers.

---

[18] See *Touchstone for Change, supra* note 7.

[19] *Supra* note 1.

B – Role of Legal Associations

96. Women lawyers practise in all areas of law[20] , in every region of the province and in firms of every size. The importance of networking, mentoring and professional development opportunities is well recognized as key to women lawyers' success in the profession. Legal associations and organizations have played an important and significant role in providing such services to their members. Women lawyers benefit from these services, and from memberships in legal associations such as the County and District Law Associations, the Ontario Bar Association, the Canadian Bar Association, the Advocates' Society, to name a few. Women also benefit from the services offered by legal associations that focus on programs and initiatives designed specifically for women, and associations created to provide networking programs and services for lawyers from Aboriginal, Francophone and/or equality-seeking communities, such as the Women's Law Association of Ontario, the Legal Education and Action Fund, the National Association of Women, the Law and the Feminist Legal Analysis Committee of the Ontario Bar Association, the Canadian Association of Black Lawyers, SOGIC of the OBA, the South Asian Bar Association, the Arab Canadian Lawyers Association, ARCH Disability Law Centre, the Association des juristes d'expression française de l'Ontario and the Indigenous Bar Association.

97. These memberships and the connections they allow women practitioners to make with others in the legal community have proven to be significant contributors to their success in private practice. They are particularly critical for women lawyers who practise in small firms and as sole practitioners, women who practise in non-urban regions and women from historically under-represented communities in the legal profession. Isolation from other lawyers is a significant complaint of sole practitioners.[21] Further, regional legal associations and organizations have an important role to play in developing programs to support women in their practice in non-urban regions.

98. Therefore, the Working Group is of the view that the Law Society should closely collaborate with legal associations to develop strategies to retain women in private practice and to ensure that programs and services are offered to women practising in firms of all sizes and as sole practitioners and in every region of the province.

99. During its final consultation with the legal profession, the Law Society held meetings with representatives of the County and District Law Presidents' Association ("CDLPA"), the Advocates' Society, the Equity Advisory Group, the Women's Law Association of Ontario, the Feminist Legal Analysis Committee of the Ontario Bar Association ("OBA"), the Executive Committee of the OBA, the South West Region Women's Law Association

---

[20] Fiona M. Kay, C. Masuch and P. Curry, *Turning Points and Transitions: Women's Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002* (Law Society of Upper Canada, September 2004) [*Women's Careers*]. Studies indicate that the three most common fields practised by women in 2002 were "other", family law and divorce, and corporate and commercial. Men were more likely to practise in civil litigation, real estate and corporate and commercial.

[21] *Final Report of the Sole Practitioner and Small Firm Task Force* (Toronto: Law Society of Upper Canada, 2005) [*Sole and Small Report*]. See also *Retaining Women in Private Practice* (Ottawa: Gandalf Group, 2007) [*Retaining Women*].

and regional county and district law associations. Representatives of associations voiced their strong support for the project and indicated that they wish to work with the Law Society to implement the recommendations. Associations also expressed their support through written submissions, which have been summarized in sections VII and VIII of this report and in the Final Consultation Report available on-line at www.lsuc.on.ca.

C - Role of Law Firms

100. Law firms also have a significant role to play in working with the Law Society and legal associations to develop creative strategies and best practices to retain women who wish to remain in private practice.

101. The Law Society acknowledges that the practice of law is a competitive business and is market driven. Women represent half of the intellectual capital and talent entering the legal profession; hence the importance and urgency for law firms to adopt systemic changes and provide the resources to assist women lawyers who wish to remain in private practice. While only 18% of lawyers in private practice in 1990 were women, the proportion of women in private practice increased steadily in the 90s, reaching 28% of lawyers in private practice in 2007.[22]

102. In *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*[23] , Catalyst Canada calculated the staggering cost to a firm of an associate's departure, which is estimated at $315,000 for a fourth year associate.[24] The study also found that "women generally are more likely than men to report their intention to stay with their firms for five years of less. Given that women now comprise 50 percent or more of law school graduates across Canada's top law schools, law firms that are intent on recruiting and retaining the best candidates need to identify and address the core issues which may undermine a supportive work environment for women associates."[25]

103. In addition to the cost of associate turn over, law firms' ability to compete for clients and the best talent has become critical in an increasingly competitive market. Research and practical experience support the business case for law firms to create an environment where women succeed and lead. Clients today are more likely to expect that law firms actively promote diversity within the workplace and often consider that as an important factor in selecting legal counsel. Corporations such as Wal-Mart, Gap and Mercedes Benz in the U.S. increasingly hire law firms that show a commitment to equality and diversity.

---

[22] Law Society of Upper Canada data base.

[23] *Beyond a Reasonable Doubt: Building the Business Case for Flexibility* (Toronto: Catalyst Canada, 2005) [*Business Case*].

[24] Although it appears that Catalyst has not calculated the revenue generated by the associate in billable hours to compensate for the costs of losing an associate, the decrease in an associate's billable hours form the time the departure decision is announced to when he or she actually leaves the firm is taken into account.

[25] Quantifying the cost of associate turnover, as undertaken by Catalyst, varies depending on the contextual features of a law firm, along with intangible costs of turnover. Catalyst, *Business Case, supra* note 23 at 19.

104. Lawyers from historically under-represented communities in the profession are also entering the profession in greater numbers, and in proportion with the Ontario population.[26] Yet, they remain greatly under-represented in medium and large firms. The business case for diversity is recognized in U.S. law firms and Canadian law firms will have to provide an environment that is inclusive and promotes diversity in order to maintain their competitiveness with their U.S counterparts.

105. It is time that law firms recognize the long term contributions and commitments that women make to private practice, and the value of allowing women to temporarily interrupt their careers for childbirth and family responsibilities. Society has long recognized that women require the economic and social security to take maternity and parental leaves and to be able to return to the labour market and be ensured continued employability and reintegration.

106. The legal profession should not assume that change would occur without conscious efforts to create a shift in the legal culture. Law firms have a legal responsibility to provide environments that allow women to advance without barriers based on gender. Substantive equality between men and women is a constitutionally recognized right and a right recognized in the *Ontario Human Rights Code*[27] (the "Code"). The Code provides that every person has a right to equal treatment with respect to employment without discrimination because of sex, which encompasses the right to equal treatment without discrimination because a woman is or may become pregnant. Therefore, it is law firms' legal obligations as employers and service providers to ensure that men and women are treated equally and without discrimination.

107. Catalyst Canada also notes in *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance*, that the "more positive associates' perceptions of their work-life balance, the more positively they feel about their long-term prospects with their firms" and that "lawyers' perceptions of their firms' management and leadership directly influence their satisfaction with work-life balance".[28]

108. Therefore, not only does it make good business sense for law firms to implement strategies to attract, retain and promote women within their ranks, but law firms' senior partners will also have to show leadership for such initiatives to be successful. The Working Group believes that the Law Society will have to work in close collaboration with law firms to develop programs to retain women in private practice.

109. During its final consultation, the Law Society met with regional law firms and with managing partners of large and medium law firms in Toronto. Firms are overwhelmingly of the view that it is critical to address the issue of women leaving private practice, and that a cultural shift within firms will require leadership and commitment from managing

---

[26] See Ornstein report, *supra* note 5 and Fact Sheet on the changing face of the legal profession at http://www.lsuc.on.ca/latest-news/b/fact/changing/.

[27] R.S.O., 1990, c. H-19.

[28] *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance* (Toronto: Catalyst Canada, 2005) at 18 [*Creating Opportunities*].

partners. The response to the project was overwhelmingly positive and a number of law firms have indicated their commitment to work with the Law Society on this initiative. Some firms have also sent written submissions, which were taken into account in this report.

IV - THE GANDALF GROUP FINDINGS

110. Studies have identified the following challenges faced by women in private practice (summary at TAB 1), which were taken into account by the Working Group in developing its recommendations:
    a. although men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, maintaining demanding law careers often conflict with family life and is the most common reason for leaving law practice;
    b. the most immediate issues related to the practice of law that women face appear to result from childbirth and parenting responsibilities;
    c. women are particularly affected by the unavailability of support and benefits such as part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours;
    d. women in small firms or in sole practices face unique challenges in part because of the lack of income or benefits during leaves and lack of assistance to maintain the practice during absences;
    e. women from Aboriginal, Francophone and/or equality-seeking communities are often more vulnerable and their experiences and perspectives should be taken into account when developing strategies to retain and advance women in private practice;
    f. similar findings are noted in other jurisdictions in Canada and in foreign jurisdictions;
    g. barriers faced by women are systemic and will require organizational and cultural change, along with a shift in resources, policies and programs in the legal profession.

111. In 2006, the Law Society retained the Gandalf Group to conduct a qualitative research project designed to generate ideas about programs, supports and services that would meet the needs of women in a variety of private practice circumstances and that have been, or could be, undertaken by law firms, the Law Society and law associations to retain women in private practice.

112. The research proceeded in two steps. First, focus groups were held with women currently in private practice, or who had left private practice across the province. This phase was designed to explore potential programs that law firms and the Law Society could undertake to assist women to remain in, or re-enter, private practice. The second phase consisted of a series of one-on-one interviews with managing partners of large and medium firms across Ontario. Interviews were also conducted with governmental lawyers. This second phase was designed to understand how law firms approach this issue, to identify best practices that could be adopted more widely and to explore how the Law Society could assist law firms in their efforts to retain women.[29] The following is a summary of those findings.

[29] Findings of the study are available on request to the Law Society's Equity Initiatives Department.

A - Programs that Could Assist Women – Feedback from the Focus Groups

113. Because the main purpose of the Gandalf Group study was to identify programs and initiatives that could assist women in private practice in all types of work environments, the core information gathered during the focus groups centered around finding out what women believe would assist them. The results were structured based on firm size, large and medium[30] as one group and small firms and sole practitioners as a second group.

Large and Medium Firms

114. Women identified programs that could help them in the following areas:
   a. managing work and family responsibilities;
   b. remaining in the partnership track and attaining partnership;
   c. mentoring programs and networking.

115. Women indicated that written policies on flexible work arrangements, reduced hours with reduced pay, flexibility to work from home, job sharing, maternity leave and wind-down and ramp-up processes, would greatly assist women and men in balancing work and life responsibilities in large and medium firms. Women also indicated that more transparent communications about the availability of such written policies would be valuable.

116. Women are also of the view that programs to assist them to progress through the partnership track would be useful, including processes to increase fairness in the assignment of client files and career guidance tailored to their needs. The availability and acceptance of alternative career paths apart from full partnership and programs to enhance women's full participation in firm management positions and committees were also identified as key to their success.

117. Women who indicated that they were the most comfortable at their firms were those who had found a champion among the partners and this senior lawyer took an active interest in developing the woman's career, including assisting in client relations, the practice of law and career development.

118. Client networking or business development activities structured to meet women's needs were typically not available. Women thought that networking programs tailored to the needs of women, being championed by a senior partner through a mentoring program and client development training would be positive programs.

Small and Sole Practice

119. Women in small firms[31] and sole practices identified two main areas of concern related to leaves: the lack of financial support or income and the lack of support to help maintain

---

[30] For the purpose of the Gandalf Group study, large firms are defined as firms of 100 lawyers or more and medium firms are firms of between 5 and 100 lawyers.

[31] For the purpose of the Gandalf Group study, small firms are firms of five lawyers or less. This is consistent with the approach used by the Law Society of Upper Canada's Sole Practitioner and Small Firm Task Force. See *Sole and Small Report, supra* note 21.

their practice and client services. More specifically, the following programs were identified as potentially useful:

a. a bank of locum lawyers;
b. sources of funding during leaves of absence;
c. reduced fees for continuing legal education;
d. dedicated resources to help women plan for leaves; and
e. programs, such as networking opportunities, to support lawyers on leave.

120. Women in small firms and sole practices also identified the importance of client development skills. They suggested that seminars and materials on strategies and tactics that would help them carry out effective client development efforts and that would support networking either with other lawyers or with the wider community would be useful. Women also rated of equal importance programs to assist women in business planning, including billing and practice planning, accounting and management.

121. Mentoring was considered important, particularly to women with less than ten years in practice and practising in small firms and sole practices. Two types of mentoring programs were suggested: to offer guidance on practical issues related to the practice of law and to help women network with senior female members of the bar.

B - What Managing Partners Say

122. The Gandalf Group conducted twenty-five one-on-one interviews with managing partners of large and medium sized firms in several locations across Ontario. The interviews proceeded in two phases. The first phase consisted of 16 interviews with law firms that were selected based on criteria that indicated that they already have in place best practices (Pool A). Pool A firms had a representation of women partners that was higher than large Toronto law firms' average; a higher proportion of women than the proportion of women in the profession; gender or diversity programs; and/or a woman managing partner. The second group of firms (Pool B) was selected because the firms did not meet the criteria described above. The following summarizes the findings of the interviews.

123. There was a consensus that there is no problem attracting women to private practice. The majority of law school graduates are women and intake tends to reflect the proportion of women in law schools at over 50 percent.

124. The Gandalf Group notes that firms recognize the business case for retaining women. They know the considerable loss in investment in training and client development when women and men leave. It is a cost that firms want to avoid where possible by making it easier for people to stay and return after a leave. Most firms reported that a lawyer does not begin to be profitable for the firm until the fourth year. This is also the time when a significant number of women have already opted out of private practice.

125. Firms also noted increased pressure from clients to deal with firms with equal gender representation. A growing number of clients are women and many are women lawyers who left private practice and would like more diversity in the firms they hire. Some women clients are more comfortable dealing with women and request their legal services. Additionally, larger corporations and especially large multinational firms are more likely to request diversity in the law firms they hire.

126. The business case for retaining lawyers is so clear that virtually all firms try to do whatever possible to retain lawyers, male or women, although women consistently pose more of a challenge. However, virtually all firms indicated that they prefer to do it in an ad hoc way based on individual demand and in accordance with the larger business constraints of their firms. All firms see maternity leave as important and many offer flexible work arrangements, including individualized flexible work arrangements and reduced hours for reduced pay. Only a few firms are offering gender specific programs, such as gender specific business development or client networking activities.

Women from Equality-Seeking Communities

127. The Gandalf Group findings indicate that participating firms do not track the number of women students, associates or partners from equality-seeking communities. There were a few firms with racialized or Aboriginal lawyers, and some large firms in Toronto noted that racialized women were employed at the associate level.

128. A few firms sought deliberately to increase their diversity either to meet client demand or because they thought it important. Others insisted they were meritocracies without regard to gender or race. However, beyond the initial hire, none (except a large multinational) provided particular programs for women from equality-seeking communities. While law firms do not gather or monitor the number of students, associates or partners from equality-seeking communities, associations such as the Womens' Law Association of Ontario, the Canadian Association of Black Lawyers, the South Asian Bar Association, the AJEFO and the Law Society's Equity Advisory Group are monitoring progress in this area.

Progression of Women within Private Practice

129. While almost all firms reported women in equal or greater numbers than men at the articling and junior associate level, most also reported losing women disproportionately at the senior associate level. Maternity and parenting responsibilities, particularly when women have more than one child, are the most significant factors that lead to the departure of women from private practice, primarily associates who tend to leave before they join the partnership. In some firms, joining the partnership could take a decade or more, making it likely that women who want to start a family would do so before they join the partnership.

130. Most firms reported significantly fewer women than men as partners. Although the fact that historically there has been fewer women in the profession may explain this disparity, there continues to be a disproportionate loss of women at the senior associate level. Many firms assume the proportion of men and women partners will slowly change with time.

131. Women did not constitute more than one-third of members on executive committees or compensation committees at any firm interviewed. In fact, in most firms, women made up less than 25% of executive committee members. The proportion of women at decision-making levels in private practice is in sharp contrast to government where women tend to be involved in decision making levels in far higher numbers and at the most senior levels.

Suggested Programs

132. Virtually every participant was of the view that the key to retaining lawyers is for firms to be flexible in their approach. It is the degree of flexibility exercised by firms that varies widely. Some firms had begun not simply addressing gender differences such as maternity leave, but were also seeking to address the culture of the firm and its work practices. Some firms had good and effective flexible work arrangements and reduced hours for reduced pay, recognizing that family responsibilities extended beyond the first four months after the birth of a child. Other firms were still dealing with maternity leave on an ad hoc basis and had not considered major cultural changes, such as gender specific client networking styles. All firms were of the view that retaining women was important as it means retaining important talent, although they felt quite challenged by the constraints imposed by the demands of some of their practice areas and their compensation structure.

133. Most Pool A firms had written policies for maternity leave and a few had written policies on flexible or reduced hours. Only two firms indicated they had programming, such as client networking or business development, specifically aimed at developing women lawyers.

134. Most Pool B firms had begun looking at the gender equality issue fairly recently, and some had begun instituting changes. Most firms were accommodating women on an informal and individual level.

135. Due to the relatively small number of interviews conducted with law firms, differences among firms based on firm size are not conclusive. However, there appear to be differences between medium and large firms in how they approach this issue and in their flexibility to meet individual needs. The Gandalf Group notes that medium firms tend not to have the resources, specifically personnel time, to codify practices and policies. Very often the managing partner is the only person addressing administration and human resource issues. However, some medium firms are better at making accommodations to keep women lawyers, and do so on an individual and ad hoc basis. For instance, some medium firms make individualized ad hoc arrangements with women lawyers that seem to be effective, such as offering flexible work arrangements, reduced billable hour targets, and alternative partnership criteria.

Maternity and Parental Leaves

136. With only a few exceptions, participating firms offer maternity leaves, but not paid parental leaves. Most firms have written maternity leave policies with a minimum of 17 weeks leave with top-up to full salary. Some firms often top-up for a full year, although some of those want the money returned over time. These policies are primarily for associates and staff. Partners tend to negotiate their own arrangements and it appears that they meet less resistance to longer and more generous leaves.

137. While maternity leave appears to be uniformly accessed, paid parental leave tends either not to exist at all, or to be shorter and more ad hoc. Few firms have written policies allowing for parental leave. Further, few men fully access parental leave. In short, this creates a stigma that temporary leaves are meant for women.

138. Most firms reported that taking a leave sets women back on the partnership track. Almost all firms consider that the time spent on leave should not count when a woman is considered for partnership. In some instances women have stayed on the partnership

track timetable by maintaining client contact during leave, taking shorter leaves (4 months), and not taking consecutive leaves.

139. Maternity leave arrangements for partners tend to be ad hoc and more flexible. On average, partners tend to take shorter leaves (4 to 6 months) and to maintain client contact while on leave. In one instance a firm reported a partner taking alternative work arrangements after maternity leave. The firm had fewer than 25 lawyers and the partners operate essentially as sole practitioners sharing costs. Reduced hours worked in that instance largely because the partners were not responsible for 'rainmaking' for the rest of the firm.

140. Firms report that women at the senior associate and partner level who maintain client contact are less likely to have their careers set back. Virtually every firm provides remote secure electronic access to facilitate working from home. For all firms, maternity leaves are seen as a cost of doing business as more women enter these firms. However, the traditional business model means that minimizing the time or impact of the leave is advantageous to the woman's career and the firm.

Partnership Track

141. Best practices were identified to assist women in remaining in the partnership track, such as transparent and accountable processes to promote fairness in client file assignments, individualized career guidance and alternative partnership models. Enhancing women's full participation in firm management positions and committees were also seen as important.

Preparing and Returning from Leaves

142. Most firms have a formal winding-down process where the department or practice head (if the firm is large enough) manages the hand-over, which usually begins 3 to 4 months before maternity leave. To maintain contact during a leave, most firms invite lawyers on leave to participate in all firm or client events. Firms report little interest among women in maintaining files or client relationships. The winding-down process appears easier in firms in which there is a service team approach, with multiple lawyers interacting with clients, than in firms in which client interaction generally revolves around a single lawyer. One firm has materials available to help women navigate the leave process.

143. Most firms do not have a formal ramp-up process upon return, but tend to make allowances in the first few months to allow for a gradual reintegration. In two firms, women systematically return from a maternity leave on reduced hours scheduling and are allowed to work from home. Only one of these firms is predominantly composed of women. The other firm puts a premium on supporting women in this way so as not to lose valuable talent and investments. In both cases, the firms report that the flexibility in approach has helped to retain women who would otherwise have left the firm.

144. One firm offers coaching sessions for men and women expecting a baby. The sessions are designed to help with family adjustments and to help with career planning with new family responsibilities. This program has been identified as very successful and a best practice.

145. Only a few firms indicated that they guaranteed a good flow of work when a woman lawyer returns from a leave. In cases where firms hold the work during the leave, the firms tend to use a service team approach and report that re-entry is relatively easy.

Other firms that guarantee a good work flow for returning women were firms involved in long-term client relationships or that had litigation that stretched on for long periods of time. Clients were told that firm policy was to return files to the lawyers.

146. Using a service team approach and a winding down period allows easy reintegration of women into the firm. When possible, women found it positive that the firm would guarantee the return of files and clients when returning from a leave.

Flexible and Alternative Work Schedules

147. Continuing flexible and alternative work schedules may be one of the most essential programs for retaining women. Firms with flexible hours and/or reduced hours with reduced pay report the best retention rates.

148. Very few firms have written flexible or reduced hours with reduced pay policies or a formal policy detailing alternative work arrangements. Firms seemed to prefer individualized arrangements because individual needs vary considerably and firms want the ability to offer additional incentives for those lawyers they thought were critical to keep.

149. Of the firms that did have formal written policies and routine uptake on the policies, most found they were very helpful in retaining women in the firm, especially women with children. For a few firms, women regularly returned from maternity leave on a reduced hour with reduced pay basis. Some maintained a reduced hour with reduced pay schedule until parenting responsibilities were reduced. These arrangements appear to hold women back from the timetable for partnership track, but they also retain women in private practice. Firms tend to see this as a vital accommodation and a positive one for the firm.

150. Some firms have moved with varying degrees of success towards flexibility and alternative work arrangements to respond to retention concerns. A couple of firms have moved to unique alternative arrangements or have created categories of work that are more predictable. However, firms expressed reluctance about part-time arrangements, stating that part-time arrangements tend to be too difficult to manage. Firms were sometime willing to allow shorter days or one day less a week.

151. A couple of firms with very high retention rates subsidized lower revenue generation for a substantial period of time, believing it to be an investment that would pay off over time as women were able to achieve partnership, devote themselves full-time to the firm and generate significant revenue.

152. While firms face challenges in finding ways to implement effective flexible work arrangements to accommodate women with parental responsibilities, their legal responsibility to provide environments that allow women to advance without barriers based on gender remains. As mentioned, substantive equality between men and women is a right recognized in the Ontario Code.[32] The Code provides that every person has a right to equal treatment with respect to employment without discrimination because of sex, which encompasses the right to equal treatment without discrimination because a woman is or may become pregnant. Therefore, it is law firms' legal obligations as

[32] *Supra* note 27.

employers and service providers to ensure that men and women are treated equally and without discrimination.

Business and Client Supports

153. Only four firms thought there was a need to create particular programs for women in the firm to teach business development, networking or career planning. Most firms thought those needs were common to recent calls of both gender and that training programs or mentoring systems would address any gaps. In essence, they see their current programs as 'gender neutral' and assume they are as appropriate for women as for men.

154. In one firm, several programs are tailored to the needs of women lawyers. The firm has initiated a women's group to propose programs and policies that would assist them in career development. The firm has also begun a quarterly newsletter that profiles women in the firm, discusses women's issues and serves as a forum for women lawyers. The firm also instituted client networking programs that are likely to interest women, such as purchasing tickets to cultural events in addition to sports events.

155. Managing partners say they are turning to the women in the firm to set up informal groups to identify the demand for changes and to lay out potential initiatives, as well as to set up informal mentoring systems. One firm has initiated a formal women's network within the firm. In a number of firms, any existing women's networks were informal and no interviewee said those informal groups had brought forward suggestions for major change.

156. The following best practices were identified: client networking/business development practices focused for women lawyers and women clients, such as client development activities and lawyer networking activities around cultural events, cinema, museum openings, and theatre rather than hockey games and golf. Other networking activities such as speakers who address gender differences in client development, a women's network within the firm to identify issues and propose policies, a newsletter that profiles women lawyers or that discusses women's issues and resources within the profession were also identified as positive initiatives.

Mentoring

157. Most firms interviewed have formal mentoring programs where mentoring is focused on career development, client networking and the practice of law. In only one firm was there a concerted effort to match junior women associates with a senior woman role model. All other mentoring programs adopted a gender neutral system of matching.

158. Most firms said there were not enough women partners to adequately mentor the high proportion of women among junior lawyers. Mentoring within the firm was seen as successful when a senior lawyer, male or female, champions a woman. Networking programs tailored to the needs of women such as programs available at the lunch hour and those in which women can network with one another to provide support and advice were viewed as best practices.

V - EXISTING INITIATIVES AND BEST PRACTICES

A - Law Society of Upper Canada

159. As mentioned earlier, the Law Society of Upper Canada has been promoting equality rights for women in the legal profession by adopting a number of programs and initiatives to influence systemic and cultural change. Within the last decade, the Law Society has built its internal capacity to promote equality in the legal profession by creating a permanent department, the Equity Initiatives Department, to provide leadership, research skills and resources in the area of equity and diversity.

160. In addition, the Law Society increased its capacity to promote equality and diversity by creating the following:
    a. the Equity and Aboriginal Issues Committee, a standing committee of Convocation;
    b. the Equity Advisory Group, a group of lawyers who are experts in the area of equality rights;
    c. the Retention of Women in Private Practice Working Group and its Expert Advisory Group, to develop strategies to promote the retention of women in private practice;
    d. the Discrimination and Harassment Counsel Program, to provide confidential advice to those who believe that they have been the subject of harassment or discrimination by a lawyer;[33]
    e. model policies and guidelines for the legal profession;[34]
    f. continuing legal education programs in the area of equity and diversity;
    g. customized professional development programs for external lawyers and staff at organizations in various regions of Ontario;[35]
    h. the Equity and Diversity Mentoring Program to match law students and recent calls to the bar with experienced lawyers;
    i. the Equity Public Education Series, which provides networking and education opportunities for lawyers by celebrating days and months of significance, such as the International Women's Day. The events are organized in collaboration with legal associations such as the Feminist Legal Analysis Committee of the Ontario Bar Association, Women's Future Fund and Women's Law Association of Ontario.

B - Best Practices – Other Canadian Jurisdictions

161. Most provincial law societies have adopted initiatives and programs to promote equality and diversity in the legal profession. For example, the law societies of British Columbia,

---

[33] The Discrimination and Harassment Counsel has provided assistance to more than 2000 individuals since its inception in 1999.

[34] Model policies and guidelines in the area of equity and diversity for the legal profession are available on line at http://mrc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp.

[35] In 2006, the Law Society designed and delivered equity and diversity professional development programs to more than 400 lawyers in legal associations, the government and law firms.

Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia have designated staff members who develop programs that promote equality and diversity. Individuals who act as ombudspersons to provide advice on issues of harassment and discrimination have also been appointed in British Columbia, Alberta, Saskatchewan and Manitoba. Most law societies have also developed model policies and guidelines to promote equality in the legal profession, including maternity and parental leave model policies and respectful workplace model policies.[36]

162. The Barreau du Québec has adopted a proactive approach to support women in the legal profession by creating a committee to promote women's equality, intervening before governmental committees for women's rights, recognizing the contribution of women lawyers to the profession, hosting lunch and learn sessions on leadership and women, and publishing demographic information about women in the legal profession.

163. The following programs adopted by law societies are of particular interest because they are unique and have been proven useful.[37]

Employment Equity Programs

164. The Nova Scotia Barristers' Society is the only law society in Canada to have adopted a commitment for employment equity for law firms. In 2001, the Nova Scotia Government adopted the *Policy on Employment Equity for Crown Law Agents* and put forward a plan to help ensure employment equity in law firms and address the historical under-representation of women, persons with disabilities, visible minorities and Aboriginal people, including Black and Mi'kmaq lawyers in Nova Scotia. Under the policy, law firms in Nova Scotia are eligible to perform legal work for the government[38] if they,
    a. sign a Commitment for Employment Equity;
    b. display the signed Commitment in a prominent place in the law firm;
    c. communicate their commitment to employment equity to current and prospective staff; and
    d. comply with the *Nova Scotia Human Rights Act.*

165. Law firms of up to 11 lawyers are also required to report on the representation of women, persons with disabilities, visible minorities and Aboriginal people, including Indigenous Black and Mi'kmaq, within the firm.

---

[36] You may consult law society model policies at the following websites: Law Society of British Columbia http://www.lawsociety.bc.ca/practice_support/articles/practice_intro.html#practice; Law Society of Alberta http://www.lawsocietyalberta.com/resources/modelEquityPolicies/equityPolicies.cfm; Law Society of Saskatchewan**:** http://www.lawsociety.sk.ca/Equity/intro.htm; Law Society of Manitoba http://www.lawsociety.mb.ca/equity.html ; Nova Scotia Barristers' Society http://www.nsbs.ns.ca/equity.html.

[37] For an overview of initiatives adopted by law societies and legal associations, see *Promoting Dialogue Creating Change: Equity and Diversity in the Legal Profession* (Toronto: Law Society of Upper Canada, 2003).

[38] Where fees are $5,000 per matter or $5,000 per year, whichever is less.

166. In addition, law firms of 12 or more lawyers are required to,
    a. designate a senior partner as the firm's coordinator, responsible for ensuring the firm's compliance;
    b. collect and record information on the representation and employment status of women, persons with disabilities, visible minorities and Aboriginal, including Indigenous Black and Mi'kamaq, within the firm and to collect and record information on measures taken by the firm to achieve employment equity goals; and
    c. report such information annually.

Data Collection

167. The Nova Scotia Barristers' Society also compiles information about the demography of the profession through its Annual Member Report. Members can self-identify as a member of a visible minority, Aboriginal, disability and/or gay, lesbian, bisexual or transgender community, as applicable. In an attempt to gather information about lawyers' family responsibilities, the Nova Scotia Barrister's Society has added the following question to its Annual Member Report: "Do you have primary responsibility for the care of a child or adult dependent? What is the number of children or adult dependents?" The responses provide valuable information for the development of initiatives and programs that promote equality and diversity.

168. The Barreau du Québec is the only other law society that collects information about personal characteristics in addition to gender, such as race, Aboriginal heritage and disability. The Barreau du Québec has only recently begun implementing this program.

Exit Surveys

169. In 2004, the Law Society of Alberta began surveying lawyers moving to inactive[39] or retired status to initiate an ongoing, systematic method of monitoring the transition of lawyers to the inactive list and to identify and track the broad range of factors motivating their decisions. The survey keeps track of reasons behind a move to retired or inactive status and includes questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influenced the decision not to practise law, level of satisfaction, discrimination and questions about how to keep lawyers in the legal profession.

170. The Law Society of Alberta publishes the results of the survey, which include information and trends about the demographics of the profession, former and current employment, satisfaction with aspects of practicing law, reasons for moving to inactive status and returning to practise, the experience of discrimination, desired changes to the profession and suggestions for the Law Society. This information has identified barriers and assisted in the development of programs to promote equality within the profession.

[39] Inactive members of the Law Society of Alberta are those lawyers who have not paid the annual practice fees or insurance dues required to practise law in Alberta, but who pay an inactive fee ($130) each year to continue to receive information from the Law Society.

Funding Programs for Self-Employed Lawyers on Maternity/Parental Leaves

171. The Barreau du Québec, followed by the Law Society of British Columbia, have responded to the lack of financial compensation for self-employed lawyers who take maternity/parental leave by adopting programs to provide access to funds or loans during their leaves.

Barreau du Québec

172. This funding program originated in Québec in 2003 when the Barreau approved a parental assistance program for self-employed lawyers. The program was adopted because of the lack of governmental financial support for self-employed workers. It was designed as a temporary program, until the government decided to provide financial assistance to self-employed individuals, including lawyers. The program was adopted in addition to the already existing Bébé-Bonus program, which applies to all members of the Barreau, men and women and covers half of the annual membership fee paid by the member, upon the birth or adoption of a child.

173. The parental assistance program for self-employed lawyers was made available to members not covered by any other public or private parental plan, such as Employment Insurance plans or parental benefits offered by an employer through formal policy or individual agreements. The program provided that, upon the birth or adoption of a child, the Barreau would give to the member an amount equivalent to the operating expenses incurred while his or her professional activities were temporarily suspended. The Barreau adopted the following three types of benefits:
    a. up to three months benefits for maternity leave;
    b. up to 1 month benefit for parental leave;
    c. up to 1 month benefit for adoption leave.

174. Qualifying lawyers were entitled to the lesser of the actual monthly operating expenses incurred, such as rent, telephone and staff, or $1,500 per month. Maternity and parental/adoption benefits were cumulative and a woman lawyer taking both maternity and parental leave could receive up to $6,000 for a period of four months. The program came into effect on January 1, 2005 and was funded by members' special mandatory contributions of $30 per year.

175. Starting on January 1, 2006, the Québec provincial government adopted the Québec Parental Insurance plan, which replaced maternity and parental benefits paid under the federal Employment Insurance program.[40] All employers and salaried and self-employed workers in Québec contribute to the Québec Parental Insurance Plan. Self-employed workers pay their contribution when they file their income tax return, and it is calculated based on their company's net income.[41]

[40] In 2004, the government of Canada and the government of Quebec signed a final agreement by which the government of Quebec would take over maternity, parental and adoption benefits programs previously available through the federal employment insurance program.

[41] The following premium rates applied for 2007: $0.737 for every $100 in business income for self-employed. The maximum insurable income for 2007 is $59,000.

176. Since the adoption of the Québec Parental Insurance Plan, sole practitioners are eligible to receive benefits under a government plan and the Barreau du Québec's plan is now almost obsolete, as any benefits received under the governmental plan are deducted from benefits received from the Barreau.

Law Society of British Columbia

177. In 2007, the Law Society of British Columbia adopted a maternity leave benefit loan program for sole practitioners who have to take time away from practice in order to give birth. The program is a two-year pilot project, and will,
    a. be available to practising self-employed lawyers who are birth mothers and who have no access to other parental or maternity financial benefits;
    b. provide a fixed sum of $2,000 a month for four months (maximum $8,000) to cover the overhead associated with operating a sole practice during the maternity leave period;
    c. be funded by the Law Society.

178. The objective of the program is to make it easier for sole practitioners to take maternity leave and to return to practice afterwards by covering some of the overhead costs of maintaining an office during the period of leave. It is not intended as income replacement, but as benefits to cover fixed office expenses for an amount of time linked directly to the expected absence from work due to maternity. It does not cover the parental leave of a father or an adoptive parent.

Federal Government

179. On September 18, 2006, the federal government considered a recommendation from the Standing Committee on the Status of Women concerning the development of policy approaches and program models for providing maternity and parental benefits to self-employed workers. Unlike in Quebec, where in 2004 the federal government and the Quebec government signed a final agreement by which the Quebec government would take over maternity, parental and adoption benefits programs previously available through the federal employment insurance program, employment insurance benefits for maternity and parental leaves in other provinces remain federally legislated.

180. The Standing Committee on the Status of Women concluded that, recognizing the diversity of needs among the self-employed as well as the broad spectrum of views on how and whether governments should introduce new programs in this area, the government would not extend Employment Insurance maternity and parental benefit coverage to the self-employed.[42]

181. In light of the report indicating that the federal government is unlikely to approve maternity and parental benefits for self-employed workers in the near future, the Working Group recommends that the Law Society adopt a program to provide such benefits to self-employed lawyers and lawyers in small firms, as described in this report under recommendation 4 – Funding for Leaves.

---

[42] Government Response to the Fifth Report of the Standing Committee on the Status of Women, *Interim Report on the Maternity and Parental Benefits Under Employment Insurance: the Exclusion of Self-Employed Workers*, presented to the House of Commons on September 18, 2006.

Practice Locums

182. Although not a gender specific project, the Law Society of British Columbia has been working on measures to help sole practitioners and small firm lawyers. It recognized that this type of practitioner is critical to the legal profession in British Columbia and that lawyers in small firms and in sole practices face unique challenges. In that province, nearly 35% of the private bar (In Ontario 32% of the private bar) works as sole practitioners and 23% (in Ontario 20% of the private bar) of the private bar work in firms of two to five lawyers. Outside of major urban centres, sole practitioners and small firm lawyers provide the majority of the legal services in the province.

183. The Law Society of British Columbia created a Small Firm Task Force that looked at several initiatives to assist sole practitioners and B.C.'s small firm lawyers in alleviating many of the pressures they face. The most relevant recommendation for women sole practitioners is the Practice Locum initiative. Many lawyers working on their own reported difficulties taking time off, even for brief vacations, because there is no one to provide essential services to their clients. This initiative is meant to provide effective backup for small firm practitioners as well as opportunities for lawyers who want to work on a part-time or occasional basis. The Task Force anticipates that the proposed program will include a mechanism for avoiding conflicts and an on-line registry of lawyers in need of locums and those wanting to provide the service.

184. David Freeman, writer of *The Locum Lawyer*[43] , appears to be the only full-time locum lawyer working in British Columbia and Alberta and he has been practising as a locum lawyer for over six years. He is a member of the Small Firm Task Force and has provided insight on how to develop the initiative. He believes there is an urgent need to establish practice locums particularly for women sole practitioners who have little support when taking on parenting responsibilities. His services are in such high demand that he must often decline work.

Initiatives at Law Firms in Ontario

185. Results of consultations indicate that Ontario firms recognize the importance of retaining women and are trying to find best practices within their current business model to retain women. In addition to the *Retaining Women* research findings, our research has identified the following noteworthy initiatives implemented by Ontario law firms.

186. Large firms[44] were lead sponsors or participating sponsors[45] of the Catalyst series on flexibility in Canadian law firms, *Beyond a Reasonable Doubt*[46] , a series about job flexibility and work-life balance. This shows that large firms are committed to change and

---

[43] http://www.cba.org/bc/cba_publications/bartalk_10_02/guest_freeman.aspx

[44] Fasken Martineau DuMoulin LLP, Gowling Lafleur Henderson LLP, McCarthy Tétrault LLP, Ogilvy Renault LLP, Osler, Hoskin & Harcourt LLP.

[45] Blake, Cassels & Graydon LLP, Borden Ladner Gervais LLP, Goodmans LLP, McMillan Binch LLP and Torys LLP.

[46] Catalyst, *Business Case, supra* note 23; Catalyst, *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility* (Toronto: Catalyst Canada, 2006) [*Job Flexibility*] and Catalyst, *Creating Opportunities, supra* note 28.

have begun considering strategies to retain and advance women within their ranks. The series not only outlines the costs of losing associates, but also makes the case for flexibility and presents potential practices to increase such flexibility in law firms.

187. The newly established partnership initiative between the Joseph L. Rotman School of Management and the Faculty of Law at the University of Toronto, The Business Leadership for Women Lawyers, which is sponsored by Blakes, Cassels & Graydon LLP, McCarthy Tetrault LLP and Osler, Hoskin & Harcourt LLP is also an important initiative. The program is a three-day intensive program designed to help women lawyers build professional confidence and acquire relevant business skills in order to advance within their firms. The partnership builds upon a combined understanding of the legal profession and the business world, and offers women in law an exciting opportunity to develop and advance in their careers. The development of the program drew upon the considerable expertise of senior women in law firms.

188. In addition, Canadian law firms are adopting practices to retain women in private practice, include the following:
    a. emergency childcare for lawyer parents who need childcare on short notice;[47]
    b. equity and diversity committees;[48]
    c. a "Parents at Work" program, which supports lawyers who are parents through education and support in areas such as child development, family fitness, nutrition, work-life balance, stress management, education planning, family financial management, and assessing nannies and daycares;[49]
    d. mentoring programs;[50]
    e. flexible work arrangements;
    f. events with family members;[51]
    g. network focused on women's needs;[52]

---

[47] A number of large firms have adopted the Kids + Company program. The Kids and Company is a progressive childcare provider that wants to be part of the parent's world. It provides corporate employees with reliable, flexible and unique, quality child care solutions to suit the needs of each individual child, parent and employer, creating a healthy work-life balance.

[48] A number of law firms now have equity and diversity committees in place.

[49] Borden Ladner & Gervais was the instigator and first corporate sponsor of this program.

[50] A number of law firms have adopted formal mentoring initiatives. The *2006 LEXPERT Law Student and Associate Recruitment Guide* ranked the law firm Boughton Peterson Yang Anderson Law Corporation first in Canada for its mentoring initiatives. The category's criteria included whether the firm has a formal mentoring program, whether associates receive useful feedback and mentoring from partners, whether promotion and recognition are based on merit, and whether partners are open with associates about the firm's overall business.

[51] Some firms hold family events during the year including picnics, kids Halloween party as well as seasonal parties. Some have programs whereby lawyers are encouraged to bring their children to the office on school professional development days and allow them to participate in children's activities at the firm.

h. sponsors and participants in leadership projects for women;[53]
i. equity and diversity bulletins.

Initiatives in the Public Sector

189. The Gandalf Group report identified best practices in the public sector. Findings indicated that the government offers more flexibility in hours, work pattern and the ability to work from home. Hours are more predictable and benefits, including pensions benefits, are provided. A number of interview participants noted that the government actively seeks diversity in its employees and hires to ensure the maximum diversity.

190. The government also appears to impose fewer pressures to reach targets in work hours. A number of lawyers who choose to work for the government indicate that they often do so because of the quality and nature of the work. Flexibility and the willingness to accommodate employees is also seen as possible when working for the government.

190. Further, job performance is assessed primarily on the basis of the quality of the work performed, not on the revenue generated or clients attracted. It means that business development skills are different than those required in private practice.

191. Perhaps most important is the fact that there is a critical mass of women at decision-making levels in government legal departments and agencies. Women are both fully represented and heard at the most senior levels. It also means that accommodations are highly valued as part of the culture – not as a strategy for retention.

192. During its final consultation, the Law Society received submissions from women in government who wrote in their individual capacity, and not in their capacity as representatives of the government. They present a different perspective than the Gandalf Group findings. Those women say that "while the government offers flexible work hours and offers the ability to work from home, the work loads and expectations of women lawyers with children are the same as for women without children and men. As such, a woman lawyer with children in government who wants to advance her career puts in the extra hours before the children wake up (ie. at 5 am) or after they are in bed (after 9 pm). While she might have the option of a flexible day off every third Friday, the reality is she is unable to take it nine times out of ten because of work commitments. If she does take a flex day or takes her child to the dentist, she spends the night catching up on emails or work demands that have fallen behind as a result […] The answer to both [the

---

[52] A number of firms have begun implementing women's networks to provide support to women. The goals of the network are to create a better sense of community amongst women; to provide career path information and programs; to provide business development opportunities for women and their clients; to provide education programs for women and to provide opportunities for social interactions.

[53] Some firms participate in the The Judy Project, An Enlightened Leadership Forum for Executive Women, hosted by the University of Toronto's Joseph L. Rotman School of Management. Each year, it supports 25 women in leadership positions through a five-day program providing skills and tools needed to move on to strategic roles in Canadian businesses and organizations.

private and the public sector] appears to be the same - a true acknowledgement by management, partners and employers that women lawyers with children are worth retaining and promoting irrespective of the fact that they may not always be able to meet the same work demands as women and men without children."

C - Foreign Jurisdictions – U.S.

193. The Working Group also considered women lawyers' experiences in U.S. law firms, in part because Canadian law firms are competing with the U.S. legal market and lose a significant proportion of their talent to U.S. firms. Canadian firms also compete with U.S. firms for clients, which increasingly do business with law firms committed to diversity.[54]

194. U.S. firms are gradually recognizing the professional and economic need for increased diversity and the retention and advancement of women. Client demands for diversity within law firms, the increase in diversity of lawyers entering the profession and the cost of losing talent are all factors that have contributed to this recognition. Organizations such as the National Association of Law Placement ("NALP") and Vault publish annual directories of legal employers. These directories include information about the diversity of law firms' lawyers based on race, disability, sexual orientation and gender, along with information about the firms' recruitment efforts to increase diversity, policies to promote equality within the workplace, pro bono activities, public interest awards and initiatives, committees that promote diversity and other programs that may have a positive impact on diversity within the firm.[55] These programs and initiatives are used as marketing tools to attract students, lawyers and clients and play a significant role in influencing change within law firms.

195. In 1995, two Harvard law students designed a project aimed at discovering what it is like to be a woman at the top law firms in the U.S. They surveyed women at 57 law firms across the country and, based on the responses of 600 women lawyers, they published the book Presumed Equal, which sold over 1,000 copies. The *Presumed Equal* project identified general trends in the experiences of women at their law firms. Many law firms used the book as a source to learn about their own deficiencies and responded by implementing women's initiatives and diversity committees focused on recruitment, retention and promotion of women lawyers. The book created a dialogue within the legal profession and became a good resource for law students and lawyers seeking information about firms' culture. In 2006, the third edition of the book *Presumed Equal – What America's Top Women Lawyers Really Think About Their Firms*[56] presented the

---

[54] For U.S. studies see: *Ending the Gauntlet – Removing Barriers to Women's Success in the Law* (New York: Thomson West, 2006) [*Ending the Gauntlet*]; *Women Lawyers and Obstacles to Leadership* (Boston: Equality Commission, 2007) [*Obstacles to Leadership*]; *Creating Pathways to Success – Advancing and Retaining Women in Today's Law Firms* (Washington: Women's Bar Association of the District of Columbia Initiative on Advancement and Retention of Women, 2006) [*Pathways to Success*]; *Balanced Lives – Changing the Culture of Legal Practice* (Washington: Commission on Women in the Legal Profession – American Bar Association, 2001) [*Balanced Lives*].

[55] See *NALP Directory of Legal Employers* (Washington: NALP, published annually) and *Vault Guide to the Top 100 Law Firms* (New York; Vault, published annually).

[56] (Bloomington; AuthorHouse, 2006) [*Presumed Equal*].

findings of 4000 responses by women lawyers. The book outlines women's perceptions of their firms in areas such as training and advancement, attitudes and atmosphere, flexible work arrangements, the impact of billable hours on work and family, diversity, business development, networking, mentoring and firm leadership. This book, like the NALP and Vault directories, serves as a marketing tool to attract students, lawyers and clients, and as a resource of best practices to create positive work environments for women.

196. For a number of years, law associations and law firms in the United States have been developing strategies and programs to retain women in private practice. Some of these programs are at the leading edge and are worthy of mention, as they have positively influenced the advancement and retention of women and may serve as models for the Law Society of Upper Canada.

Systemic Changes in Firms

197. A number of U.S. studies have provided a range of models for firms to assist them in creating environments in which women can be successful. The studies focus on changing the culture of the firm through firm leadership, creating rainmakers, assessing the law firm's needs, reinforcing a consistent message and increasing flexibility. Most studies are based on the premise that modern law firm's success is measured by the rainmaking ability of lawyers, and to become rainmakers, women lawyers need access and control of the key business areas of the firm, including business development opportunities, high-quality client files, and meaningful mentoring relationships.[57]

198. It is believed that positive systemic change within firms will empower women to take responsibility for their career choices and their professional development and advancement. The following provides an overview of models of best practices to create firm environments in which women can succeed and in which women feel empowered.

- *Firm Leadership*

199. Studies have shown that cultural change must start at the highest levels of the organization[58] and firm leaders must take an active role in improving opportunities for the retention and advancement of women.[59] In order to achieve active participation and

---

[57] The Women's Bar Association of the District of Columbia Initiative on the Advancement and Retention of Women studied the issue of advancement and retention of women by focusing on three questions: what are the barriers, what are firms doing to keep and promote women and what are new ideas and better ways to stem the departure of women from law practices. In consultation with leaders in law firms, the Women's Bar Association developed a roadmap to law firm's success in advancing and retaining women. The roadmap is centered around the following core principles, essential to the advancement of women: creating rainmakers, assessing the needs, reinforcing a consistent message and flexibility. See *Pathways to Success,* note 54.

[58] *Ending the Gauntlet,* note 54 at chapter 16.

[59] *Ending the Gauntlet, supra* note 54 at Chapter 16. See also *Walking the Talk Creating a Law Firm Culture Where Women Succeed* (Washington: American Bar Association, 2004) [*Walking the Talk*] in which the American Bar Association notes that there should be a commitment from management. Firms should develop a mission statement and communicate it, and develop a

buy-in, all partners should be educated on the business case for retaining women and increasing the diversity of the firm's pool of lawyers.

200. The business case for retaining women relies on the following factors:
   a. large corporate clients increasingly seek law firms that have equal gender balance and a diverse pool of lawyers at the partnership and associate levels;
   b. firms that successfully increase the number of women in leadership positions have a competitive advantage in recruiting top talent;
   c. the cost of attrition is high and includes not only the costs to recruit and train lawyers, but also the costs to recruit and train their replacements.[60]

201. For newly hired women, women's voices and perspectives are important in decision-making and it is critical to have women who are role models in management positions.[61] Some firms reward leadership roles through the compensation and bonus process.

202. Some firms also try to increase partner accountability when they use supervision skills and best practices to retain and advance women. For example, practice groups are sometimes asked to develop and report on goals relating to the success of women lawyers. Other firms use questionnaires to measure and review individual partners' efforts to advance the careers of women and lawyers from equality-seeking communities.[62]

➢ *Creating Rainmakers*

203. Access to business development opportunities, high-quality client files, fair compensation, meaningful networking opportunities and mentoring relationships with both women and male mentors are critical to the success of lawyers.[63]

204. It is important for firms to analyze billing trends by individual lawyers and to identify which lawyers are handling the top clients. This allows firms to introduce women partners to important clients. By developing better client relationships with women lawyers, firms can increase the skills and enthusiasm of women to generate significant business. External relationship building through comprehensive women's networks is important to a woman's success in developing her business.

205. The American Bar Association, for example, established a Women's Rainmaking Committee, which offers programs on business development skills, as well as an

---

strategic plan with regard to gender exclusivity at the firm, including time frames, goals, objectives and measurements. Budgets should be allocated for implementation and accountability for executing the plan should be established. Law firms are encouraged to create diversity committees, which would include senior partners. Law firms could also create positions in this area, such as a diversity director or chief diversity officer.

[60] *Pathways to Success, supra* note 54 at 27.

[61] *Pathways to Success, supra* note 54.

[62] *Pathways to Success, supra* note 54.

[63] *Pathways to Success, supra* note 54.

opportunity for women to develop national networks.[64] National and state bar associations are also developing the same types of programs.[65]

206. A process to effectively assign files to provide associates with opportunities to work for a variety of partners and to practise leadership and managements skills, is also key. A structured files assignment system reduces randomness, permits less well-known associates to secure challenging work from significant partners and decreases the chances that women will be disadvantaged. It is also critical for law firms to monitor file assignments to ensure that women participate in teams responsible for high profile, interesting and complex cases.

207. Compensation gaps between men and women lawyers remain and to address this issue firms should collect data, commit to instituting measurable change if required and continually monitor results. Firms should devise systems that appropriately compensate the entire range of skills and talents that lawyers have, including excellence in lawyering, contribution to firm management, and participation in programs such as mentoring. The data collected should include comparisons of earnings, as well as an underlying analysis of performance records, evaluations, and the variety of criteria that may be used in a firm's compensation system.[66]

208. Firms are creating women's initiatives designed to provide women with the tools they need to succeed. These initiatives focus on skill building, training opportunities and the development of business networks, and provide a safe environment for women to discuss issues of concern. Models range from panel discussions, retreats or even spa days for key clients.[67] A number of firms have created women's groups that promote the interests of women and provide mentoring to women associates.

209. Women lawyers also need career guidance tailored to their needs but would also benefit from self assessments so that they can seek out their own opportunities. One firm demonstrates the importance of career development to associates and partners, by including within written job responsibilities the responsibility for career development of junior lawyers. By distributing these job descriptions to the junior lawyers, the firm created some partner accountability for promoting the growth through guidance. The American Bar Association also recognizes the value of outside coaches to help women with specific professional development issues and create professional development programs to help women prepare for partnership and leadership positions. Firms could establish programs that focus on the integration of new lawyers into the firm.[68]

---

[64] *Supra* note 54.

[65] *Ending the Gauntlet*, supra note 54 at 320.

[66] *Ending the Gauntlet*, supra note 54 at Chapter 20.

[67] *Ending the Gauntlet*, *supra* note 54 at Chapter 24. See also *Walking the Talk, supra* note 59, which indicates that firms should ensure that budgets are available to plan client-networking activities, produce and maintain media focused on women's activities, and undertake other initiatives that support women.

[68] *Walking the Talk, supra* note 59 at 18.

210. Studies note the importance of a meaningful mentoring relationship. Mentoring does not necessarily require intensive, one-on-one relationships and can be based on a team model. However, informal programs should not be encouraged, as they tend to result in the exclusion of women. A strong mentoring program should ensure that participants have access to resources to learn the mentoring skills. Ideally, a formal mentoring program would assign both a partner mentor and a senior associate mentor to each new lawyer.[69]

211. Formal mentoring programs that have been effective include,
    a. mentoring groups where 8 to 10 women associates and 4 to 5 partners meet regularly and plan activities, allowing mentoring pairs to evolve;
    b. making lists of available mentors;
    c. encouraging partners to ask associates to shadow them;
    d. creating formal mentoring programs that cover substantive skills and professional development, with clear expectations, thoughtful matches, accountability and specific goals and measurements;
    e. providing training for mentors on creating a healthy mentoring relationship;
    f. allowing associates to change mentors without repercussion.[70]

- *Assess Needs*

212. To be successful, initiatives should be tailored to the particular firm environment. Therefore, firms should begin by analyzing demographical information, paying particular attention to differences among practice groups, and determining where the various practice groups stand in relation to their peers. In addition to demographic measures such as gender, race and national origin, attention should be paid to other criteria such as recorded time in billable and non-billable hours, matters worked on, supervisors and, for lawyers who are leaving, the reason for leaving, the point in their careers at which they leave and where they go.[71] Through surveys, focus groups, exit interviews and other methods, firms should assess the overall experience of women at the firm.

- *Flexibility*

213. Firms should recognize that flexibility is not an accommodation for a few lawyers with small children. To enable firms to recruit and retain good talent, workplace flexibility should be available to anyone who can make the business case that the firm would benefit from the lawyer's work on the proposed schedule and from the proposed location.

---

[69] *Ending the Gauntlet*, supra note 54 at Chapter 21.

[70] *Pathways to Success, supra* note 54 at 13.

[71] The importance of compiling statistical information about the firm has been recognized by a number of studies. See also *Ending the Gauntlet, supra* note 54; *Walking the Talk, supra* note 59; Bar of San Francisco *No Glass Ceiling* initiative; Chicago Bar Association's Alliance for Women call for action initiative; the Dallas Diversity Task force commitment program and the Association of the Bar of the City of New York Statement of Diversity Goals.

214. Although a failure to confront family responsibility issues disproportionately affects women lawyers, the issues are also important to men. Studies recommend that firms adopt balanced hours programs to allow them to work individually tailored full or reduced hours that are designed to meet the business needs of the firm while maintaining the lawyers' ability to work and develop professionally. Because the issue of balance is and will remain a matter of managing client and family expectations, it is important that the firm and the lawyer be able to maximize productivity through efficient work and team building.

215. It is important, to successfully implement flexible work arrangements, to train lawyers to effectively manage flexible work arrangements and promote these programs within the firm. Management and lawyers who have entered into flexible work arrangements should know how to effectively implement such programs and assess their success. Management should learn that face time at the office is not necessarily indicative of good quality of work, skills and judgment. Firms should also provide programs tailored to help lawyers meet multiple commitments, such as emergency childcare.

216. Flexible arrangements should be based on individual needs, provide or compensate lawyers for equipment required to work from home, and strongly encourage men and women to use these policies. Reduced-hours policy should allow associates to be eligible for partnership and for firm management positions, and provide lawyers with similar professional development opportunities as other lawyers, clear management support and fair compensation. The true hallmark of a successful flexible schedule policy will be the willingness of men to utilize these opportunities.

217. A number of firms have part-time or alternative hours options. To be successful, these programs should,
    a. be available to both associates and partners;
    b. be available to anyone who demonstrates that working a different schedule would be beneficial to the firm;
    c. be offered with proportional pay, benefits and bonuses;
    d. ensure that lawyer's eligibility for partnership is assessed, negotiated and maintained (such as delayed schedule).[72]

218. Studies have shown the economic value of part-time work or reduced hours in a law firm. In 2001, a survey of law firms showed that the average occupancy cost per lawyer in large U.S. firms was $41,000 and the average malpractice premium per lawyer was $4,000. If a part-time lawyer works 75% of the hours of a full-time lawyer, he is likely to continue paying full occupancy costs and malpractice insurance expenses. Therefore, he is paying $10,000 in occupancy cost and $1,000 in malpractice insurance expense more than he would if he had the opportunity to reduce his costs pro rata. The survey showed that if his average revenue is $533,000 and he is working a 75% schedule, he is generating $400,000 in revenue. The $11,000 in so-called additional cost appears immaterial.[73]

---

[72] *Pathways to Success, supra* note 54 at 12.

[73] *Pathways to Success, ibid.* at 12. The source of the survey is Sandman, (2003) 88 Women Lawyers' Journal 16. However, one should also take into account secretarial costs, benefits, costs for technology, library, phone systems and others.

219. Flexible work arrangements may also be used as a marketing tool to attract talent. The *Working Mother* magazine, an authoritative source for career mothers, and Flex-Time Lawyers LLC[74] , an American national consulting firm advising attorneys and legal employers on work-life balance and the retention and advancement of women, recently announced the list of the 2007 Working Mother and Flex-Time Lawyers Best Law firms for Women. The winning firms have successfully established work/life policies, including flexible time, childcare and women-focused mentoring, leadership and networking programs. By being placed on the list of notable firms for promoting work/life balance, the firms can use this as a marketing tool to attract good talent and clients committed to equality and diversity.

Commitment Pledges

220. Perhaps the most effective programs implemented in the United States to retain women and diverse pools of lawyers have been undertaken as collaborative programs between law associations and law firms. The programs vary in structure and content, but they generally encourage law firms to commit to change, by signing a commitment pledge with goals and targets regarding the implementation of programs in areas such as hiring, retention, promotion, leadership and diversity. Programs have focused on the promotion, advancement and retention of women, racialized lawyers and lawyers with disabilities in law firms.

221. The Bar Association of San Francisco began a *No Glass Ceiling* initiative in 2001 with the goal of increasing women's opportunities within the legal profession in the San Francisco Bay Area. In May 2002, a substantial number of firms were signatories and committed to having 25% women partners by the end of 2004, and to retaining equal numbers of men and women associates by the end of 2004, as well as to having at least one woman chair or managing partner by the end of 2005.[75]

---

[74] Flex-Time Lawyers LLC® is a national consulting firm advising law firms, corporations and lawyers on work/life balance and the retention and promotion of women attorneys. Flex-Time Lawyers LLC functions in the following principal capacities:

- Providing consulting services on flexible and reduced schedules, work/life balance, business development, women's initiatives, re-entry and women's issues generally.
- Providing speakers at national conferences, events, law schools, corporations, law firms and retreats.
- Hosting a membership organization with chapters in New York and Philadelphia, offering networking opportunities, support, career guidance, education and information sharing to effect change.
- Serving as an ongoing resource, publishing articles and fielding inquiries from the press, lawyers and employers about work/life balance and women's issues in the law.

For more information, please see http://www.flextimelawyers.com/

[75] See "66 Firms Commit to No Glass Ceiling for Women," the Bar Association of San Francisco at http://www.sfbar.org/about/noglassceiling/sixtysixnoglass.htm. For further information about the No Glass Ceiling initiative, see: http://www.sfbar.org/diversity/no_glass_ceiling.aspx

222. In July 2005 the initial results of the initiative's signatories were announced. They showed that 63% of responding firms reported having at least 25% women partners, (compared with only 22% two years prior) and 69% reported that women comprised at least 25% of management positions.[76]

223. The next step in the initiative involved a modest upward adjustment in commitment for the San Francisco Bay area firms but also commitments to implement programs for women. In addition to committing to increasing the representation of women at the partnership level, signatory firms committed to the following goals:
    a. To develop and implement objective and unbiased criteria and procedures for evaluation and promotion to management positions, as illustrated in *Fair Measure: Toward Effective Attorney Evaluations*.[77]
    b. To commit to having at least a woman chairperson or managing partner, either firm wide or in a branch office, by January 1, 2010.
    c. To achieve approximately equal retention rates for both men and women attorneys for 2007 and beyond.
    d. To obtain feedback from employees on their assessment of gender issues in the workplace and to make senior management responsible for addressing unconscious stereotypes and perceptions of gender bias.
    e. To broadcast the message that senior management of the organization embraces these commitments and to provide information to National Association for Law Placement and The Bar Association of San Francisco regarding the number of women lawyers serving in management positions, and the number and gender of part-time partners.
    f. To offer formal or informal networking opportunities, client development activities and mentoring programs that include women lawyers at all levels, to help women establish their professional profiles and to develop client bases.
    g. To identify and promote opportunities to participate in challenging projects, organizational committees, practice groups and management training that include women at all levels to help enable women to assume significant management roles within their law firms or law departments.
    h. To embrace the concept of part-time partners and flexible work schedules, including making efforts to ensure that alternative schedules are an equitable and viable option.
    i. To establish billing procedures that do not have a negative impact based on gender.

224. The Chicago Bar Association's Alliance for Women announced in January of 2005 a Call to Action[78] for law firms and organizations to enhance leadership opportunities for women lawyers from the committee level through to partnership. With a target date of

---

[76] See "BASF's No Glass Ceiling Initiative Results in Huge Strides for Bay Area Women Attorneys," the Bar Association of San Francisco (July 12, 2005) at http://www.sfbar.org/about/releases/no-glass_ceiling_results.htm.

[77] *Fair Measure: Toward Effective Attorney Evaluations* (Washington: American Bar Association Commission on Women in the Profession, 1997).

[78] See http://www.chicagobar.org/calltoaction/.

December 2007, the Call to Action created goals for the increase in representation of women at the partnership level, along with the following:

a. to have women represented on every firm committee in numbers proportionate to the number of women partners;
b. to increase the number of women practice group leaders;
c. to revisit alternative work schedules to ensure they are equitable; and
d. to improve any disparity in the rates in which men and women are retained, promoted, and laterally recruited.

225. In order to assist law firms in implementing programs to meet their commitments under the Call to Action program, the Alliance for Women developed a guide, *Best Practices for Ensuring Compliance with Commitment*, that includes tips on what law firms should do to effectively implement the Call to Action.

226. The Chicago Bar Association Alliance for Women also developed a Women's Leadership Institute. The Chicago Bar Association Alliance for Women hosts a complimentary four-part seminar series focusing on the skills and tools needed for women lawyers to take on leadership roles in their law firms and organizations. Topics include communications, networking, self-promotion and creating positive visibility.

227. The Dallas Diversity Task Force followed the example of other organizations and adopted its own commitment program designed to promote hiring of racialized lawyers in Austin's 25 largest law firms. The Task Force published a report card that grades Austin law firms on their percentage of racialized lawyers. The Task Force goes beyond the analysis of raw numbers and examines initiatives undertaken by law firms to create a more diverse pool of lawyers. Initiatives such as diverse recruiting staff, written plan for diversity and diversity councils or committees are noted. The Task Force has not only produced a *Statement of Goals of Dallas Law Firms but also a Firm Efforts Checklist,* which lists efforts such as written strategic plan on diversity, monitoring and reviewing equal access for racialized lawyers to quality client work, marketing efforts, organizing formal and informal events, diversity councils or committees, broad outreach in recruitment processes, diversity in a firm's marketing and recruiting staff, retaining a diversity consultant to assess in the recruitment, retention, development and advancement of racialized lawyers.

228. The Association of the Bar of the City of New York has also implemented a Statement of Diversity Goals of New York Law Departments. Law firm signatories adopt goals in the areas of,

a. hiring and retention;
b. promotion;
c. leadership; and
d. diversity in outside counsel.

229. The signatories to the New York Statement of Diversity Goals pledge to create a diversity committee, undertake bi-annual diversity training programs, implement and maintain programs to promote the success of racialized lawyers, implement effective work life programs and programs for expanding diversity in recruitment, organize networks of affinity groups, and measure success by reporting aggregate diversity statistics.

230. In the context of its Statement of Diversity Principles and Signatories program, the New York City Bar has also created a series of Diversity Working Group sessions, addressing topics such as creating formal networks, workplace flexibility, diversity recruiting strategies, advancing and retaining racial and ethnic minorities, attorneys with disabilities, religious diversity in the workplace and finding a voice for racialized women at law firms.

231. Pledge or commitment programs have also been used to increase the participation of lawyers with disabilities in the profession. One example of such programs is the California State Bar Pledge Program, instituted in 1998. Through the Pledge Program a senior member of a firm or other segment of the legal community agrees on behalf of his or her organization to conform to the principles of the *American with Disabilities Act*[79] and endeavour to increase the participation of legal professionals with disabilities. The program is voluntary but incentives are provided through recognition by the state bar and positive publicity for the participating organizations.

U.S. Firms Best Practices

232. In addition to the best practices outlined above, the following practices have been adopted by law firms and reported in *Presumed Equal: What America's Top Women Lawyers Really Think About Their Firms*.[80]

- *Affinity Groups*

233. Some law firms have created affinity groups to provide a setting in which diverse lawyers come together to discuss matters of common concern and to form professional and mentoring relationships. Affinity groups range from African-American affinity groups to women's forums.[81]

- *Newsletters*

234. Some firms provide information about diversity initiatives through newsletters and bulletins.[82]

- *Creative Mentoring Initiatives*

235. The firm Sidley Austin Brown & Wood LLP received the 2005 Catalyst Award, which honours innovative approaches with proven results taken by companies to address the recruitment, development, and advancement of all managerial women, including women

[79] 42 U.S.C.S. 12101 (1990).

[80] *Presumed Equal, supra* note 56.

[81] Jenner & Block LLP: The firm's attorneys have formed five Affinity Groups, including the African-American Affinity Group, the Women's Forum, the Jenner & Block Asian Forum, the Jenner & Block Lesbian, Gay, Bisexual and Transgendar ("LGBT") Forum and Hispanic Lawyers.

[82] Jenner & Block LLP: The firm communicates diversity initiatives through its bulletin *Equal Time*. The firm's diversity newsletter, includes stories about accomplishments of its diverse lawyers; legal view points from diverse lawyers and/or clients; the *pro bono* community service the firm may be providing on matters relating to women, minorities or LGBT communities; and other issues of interest.

of colour. The firm's initiatives include Mentoring Circles, which allow women lawyers to share experiences across levels, practice areas, and office locations. In addition to being assigned a firm wide mentor, each incoming woman associate is assigned to a Mentoring Circle comprised of three to five women partners and eight to twelve women associates. Each Circle includes women from a cross-section of practice areas and levels at the firm.

- *Leadership Initiatives*

236. The firm Sidley Austin Brown & Wood LLP created a Women and Leadership Series, which provides women associates access to clients. Programs in the series are tailored to the needs and interests of women in each particular region or office site, and presentations are conducted by one or more prominent woman speaker.

- *Networking*

237. Sidley Austin Brown & Wood LLP established a series of women's networking opportunities, such as women only cocktail parties and receptions are held several times a year, as are "Maternity Lunches", which provide an opportunity for women lawyers to discuss maternity policy, ask questions and share experiences.

238. The efforts of the firm Bingham McCutchen LLP are also noteworthy. Retreats are organized for lawyers of equality-seeking communities. The San Francisco office hosted a retreat for lesbian, gay, bisexual and transgender lawyers. For example, its New York office hosted over 100 lawyers from across the firm at its first Attorneys of Color Retreat.

- *Internships*

239. In 1986, Bingham McCutchen LLP and the Connecticut Asian Pacific American Bar Association co-founded the Boston Lawyers Group, a consortium of Boston law firms and other area legal employers, which supports the recruitment, retention and advancement of lawyers of colour, particularly within large law firms. In collaboration with the Boston Lawyers Group, the firm sponsors an annual summer internship program for urban college students from diverse backgrounds who are interested in attending law school. The program includes attorney-student mentoring, interaction with summer associates, and seminars about legal work done at major law firms

D - Best Practices for Soles and Smalls

240. Practice locums have become quite common in the legal profession in foreign common law jurisdictions, as they provide flexibility both for the firm and the locum and it is believed that many lawyers move to locum assignments as a way of achieving better work/life balance.[83] It is also believed that lawyers choose to work as practice locums because they enjoy the constant challenge and change, the exposure to different firms and work practices, the freedom from office politics, the opportunity to add value, the constant high work levels, the ability to set their own salary level, and the control over their working life.

241. For example, the Law Society of New South Wales in Australia has established a practice locum service, which provides the best available match for a firm's needs,

[83] *Locums are go!* September 1, 2005 Law Gazette.

taking into consideration a locum's experience and areas of expertise. The services are available to firms and locum solicitors from Sydney and rural New South Wales at a minimal administration fee of $22 per day for the first five days and $11 per day thereafter. The locum's hourly rate is negotiated directly by the firm with the locum.

242. The *Solicitor Sole Practitioners Group*[84] is a group that operates as part of the Law Society of England and Wales. The Group has a National Executive Committee of representatives from regional areas in England and Wales. Its main goal is to encourage the formation of local groups to provide sole practitioners with mutual support and opportunities to network amongst their own. The Group has published a *Risk Management for Sole Practitioners – Protecting your Practice in Emergencies*,[85] which provides information about employing a locum.

243. The Group has been in existence since 1993 and currently has 4500 members. The membership ranges from sole practitioners working from home or in offices without staff, to those who work in more than one office and with several assistants. The range of work covers specialist niche practices and general practices. Members include those whose main source of income comes from practice locum work and those who have very small practices earning fees lower than £15,000 (approximately $35,000 Canadian) per year.

244. In January 2002, as a reaction to private legal recruitment firms, which offered expensive services through placement fees, the Birmingham Law Society of England created a legal recruitment business, Recruitment Solutions. Based in the heart of the region's legal community, Recruitment Solutions is focused on placing qualified lawyers, legal executives, and paralegals within exceptional legal jobs with members of Birmingham Law Society.

245. A significant portion of Recruitment Solutions' business is sourcing locum candidates for firms. According to Recruitment Solutions, the high demand for locum lawyers reflects a growing trend in practice to use locum resources to cover holidays or maternity leave, but also to cover other short/medium term projects or where firms have been unable to identify suitable permanent recruits.

246. The U.S. have also seen a growth in contract lawyering, as indicated by Deborah Arron and Deborah Guyol in *The Complete Guide to Contract Lawyering*[86] . They note the influence of women on law practice management and the fact that the collective of women entering the profession has had to develop a practice model that allows time for the family, parental leaves, part-time and flexible schedules. Arron and Guyol note that in the United States, women are well represented in the ranks of contract lawyers, in part because contract work allows many lawyers to practice their profession in a way that is more compatible with their personalities, preferences and lifestyle concerns. The book provides insights, tips and checklists about topics such as marketing the services and

---

[84] www.spg.uk.com

[85] (London: Law Society of England and Wales, 2001).

[86] (Seattle: Decision Books, 2004).

finding work, staying in business, setting the rates, striking a deal, concluding a contract, ending the relationship, ethical considerations.

E – Conclusion

247. A review of best practices in Ontario and in other jurisdictions has assisted the Working Group in developing its recommendations. The following conclusions can be drawn from this review:
   a. the experiences and realities of women in larger firms is significantly different than those of women in smaller firms and sole practices, therefore, recommendations to address challenges faced by women in large and medium firms are different than those designed to address the needs of women in small firms and sole practices respectively;
   b. law societies, legal associations and law firms all have a role to play in adopting strategies for the advancement and retention of women in private practice;
   c. because of the unique challenges faced by women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities and their historic under-representation in the legal profession, systemic mechanisms, such as an advisory group, should be created to provide advice to the Law Society and monitor and assist in the implementation of recommendations;
   d. in the context of large and medium size firms, systemic cultural change is necessary and firms will require leadership and commitment from managing partners to implement practices such as the following;
      i. the collection and analysis of law firms' demographics to allow law firms to develop strategies based on the firm's needs;
      ii. the adoption and acceptance of flexible work arrangements;
      iii. programs to assist women in becoming rainmakers and to provide gender-based networking, leadership skills development opportunities and strong mentoring programs;
   e. women in small firms and sole practices are particularly vulnerable because they do not have the financial or human resources to take extended leaves. Therefore, they require the following programs:
      i. access to funding to cover some of the expenses of leaves of absences;
      ii. access to practice locums and guidelines to assist them in retaining locum lawyers to maintain their practice while on leave;
      iii. access to networking opportunities.
   f. a number of initiatives designed to assist women would also benefit male lawyers.

VI – DELOITTE & TOUCHE'S INITIATIVE

248. This report does not present an extensive review of programs and initiatives in other professions. However, the U.S. Deloitte & Touche initiative[87] deserves mention. The structure and culture of the accounting profession, like the legal profession, includes large firms and the expectation of high billable hours and long work hours. Also, the success of the "Initiative for the Retention and Advancement of Women", launched in

[87] Deloitte & Touche's Women's Initiative is described in detail in Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (B): Changing the Workplace" (2003) Harvard Business School.

1992, was considered by the Working Group when developing strategies for the legal profession. Deloitte was the first major accounting and consulting firm to focus on this issue, admitting it had a problem, addressing it openly, and pledging to share results. Going public placed a tremendous amount of pressure on Deloitte, and on its senior partners, to remedy the problem it had in retaining women.

249. A Task Force on the Retention and Advancement of Women was created in 1992 to coordinate Deloitte's Women's Initiative. The Women's Initiative was lead by a well-respected and outspoken member of the firm, Ellen Gabriel, a leading audit partner. The Task Force began its work by studying why women were leaving the firm. First, it examined Deloitte's personnel records for the previous three years to find out how many men and women had been hired at each level, how many women had been promoted and the turnover rate for men and women. The data showed that although men and women left the firm in almost equal numbers at the entry level, at higher levels, women were leaving at an increasing rate. The firm retained Catalyst to conduct confidential interviews with about 40 high-potential women who had left Deloitte in the previous year. Catalyst found that over 70% of the women who had left were still employed full-time the next year, 20% were working part-time at other firms and fewer than 10% were at home with small children. Catalyst also held focus groups with about 500 people throughout Deloitte, both men and women.[88]

250. Deloitte's initiative also included the appointment of an external advisory group, the "Council on the Advancement of Women", to meet quarterly and monitor the firm's performance and goals with respect to the advancement and retention of women. The Council included extremely influential individuals in the business community.

251. Following the initial needs analysis, three areas were identified as significant barriers to retaining and advancing women at Deloitte: a male-dominated work environment, a perception of fewer opportunities for career advancement for women, and the difficulties faced by employees to manage their professional and family lives.

252. In order to address the first issue, Deloitte held a two-day "Men and Women as Colleagues" workshop focusing on behavioural change. The objective of the workshop was to raise awareness of gender dynamics in the firm. Deloitte's CEO showed his leadership and support for the initiative by attending the first workshop. The board of directors, the Management Committee and the managing partners all attended the workshop before the employees were asked to sign up. This was followed by all of Deloitte's partners, directors, senior managers and managers. All 5000 management professionals attended the workshop within one year. The workshop included difficult discussions, videos and case studies, on the differences in perception between men and women in the workplace.

253. The lessons of the workshop were gradually integrated into the day-to-day practice of the firm as Deloitte moved on to make operational changes, which consisted of three strategies. The first was to ensure that any operational changes were driven from the

[88] See Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (A): A Hole in the Pipeline" (2003) Harvard Business School.

management. Secondly, the firm decided to declare its commitment internally and externally. The third principle was to build an accountability structure.

254. The Task Force required each office to complete an annual plan for the Women's Initiative, based on benchmarks such as number of women, gender gap, promotion of women, promotion of women partners, and flexible work arrangements. Offices had to complete assessments about their achievements, and set goals for the coming year, including actions it planned to take to achieve each of the goals.

255. At Deloitte, getting good assignments is key to career advancement, although there was no clearly defined assignment process. The Task Force decided to audit assignments and, as a result, made operational changes. Deloitte required annual assignments reviews and office managing partners were asked to analyze all of the service lines in their office, list the top assignments, who worked on each one and the number of men and women in the office.

256. Flexible work arrangements had been available on paper for years. However, employees did not take advantage of these policies, largely because they perceived flexible work arrangements as career limiting. Two principles were adopted to ensure that the culture at Deloitte accepted such arrangements as important: they were temporary and opting for flexible work would not hinder a person's advancement.

257. All firm policies were reviewed for gender bias. Some policies, such as the "no nepotism" policy, were found to have a negative impact on women. When co-employees entered into significant relationships, one employee was asked to leave, more often the woman. The policy was modified to a "no supervision" rule where professionals could not supervise someone with whom they had a significant relationship.

258. As a result of the Women's Initiative, the firm also established an accountability process, where the Task Force would compare results of change in offices to one another, compare them to benchmarks established by the firm, and provide reports to management that were used in evaluations and tied to compensation.

259. By 1995, 23% of senior managers were women, the percentage of women admitted to partnership rose from 8% in 1991 to 21% in 1995, the turnover rate for female senior managers dropped from 26% in 1992 to 15% in 1995.

260. Six years after the initiative was launched, flexible work arrangements were perceived as good programs. In 1998, more than 700 people out of 28,000 were on formal flexible work arrangements, including some male partners.

261. By 1998, people at Deloitte were of the view that the culture had completely changed. The clients saw the results of the Women's Initiative as an added value. Because of it, the turnover rate was lower and the employees were more experienced. Deloitte uses the Women's Initiative to market the firm to clients, and has developed networking opportunities for women, such as the women's Executive Lunch.

262. As a result of this initiative, Deloitte has been recognized publicly as a leading firm, by prestigious organizations such as Fortune magazine. The success of Deloitte's Women's Initiative is largely based on the following factors:
    a. the initiative was driven by the senior management;

b. the task force had prepared the firm for change by laying a foundation of data and making the business case;
c. the commitment was made internally and announced publicly;
d. the key to creating cultural change was to create a dialogue throughout the firm, in this case through mandatory interactive workshops;
e. a flexible system of accountability was established throughout the organization;
f. work/life balance was promoted not only for women, but for men and women.[89]

VII – FINAL CONSULTATION

263. On February 21, 2008, Convocation approved a province-wide consultation to seek comments from the profession on the report and proposed recommendations.

264. The following provides an outline of the communication strategy and general findings of the final consultation. A more detailed Final Consultation Report is available on the Law Society website at www.lsuc.on.ca or by contacting the Equity Initiatives Department at the Law Society. Specific findings about the recommendations are presented under each recommendation. Written submissions received are also available on request.

A - Communication Strategy

265. The Law Society developed a communication strategy and promoted the final consultation through the following methods:
a. the report, executive summary (in French and English) and consultation questions were posted on the public website, inviting comments;
b. advertisements in French and English about the final consultation were placed in the Ontario Reports;
c. an overview of the project appeared in the Ontario Lawyers' Gazette;
d. a press release was issues on February 22, 2008 highlighting details of the initiative;
e. discussion groups and face-to-face meetings were organized in collaboration with the presidents and librarians of regional law associations and regional benchers;
f. an email account for electronic comments was created;
g. the responses were collected and compiled for a report to Convocation in May.

266. The project was featured and/or articles are expected to appear in the following:
a. Ontario Lawyers Gazette;
b. The Globe & Mail;
c. CBC Radio;
d. Lawyers Weekly;
e. Law Times;
f. Macleans; and
g. Precedent.

[89] See Douglas M. McCracken, “Winning the Talent War for Women: Sometimes It Takes a Revolution” (2000) Harvard Business Review 3.

B - The Consultation Methodology

267. The province-wide consultation was held between March and May 2008. During that period, the Law Society held meetings in Toronto, Ottawa, Sudbury, Oakville, Kingston, Windsor, Thunder Bay, Orillia, Ajax and London with lawyers, including law firm managing partners and presidents of legal associations. Approximately 900 lawyers and students attended the meetings and the Law Society received more than 55 written submissions from individuals and organizations, including the following:
    a. Ontario Bar Association ("OBA");
    b. the County and District Law President's Association ("CDLPA");
    c. the County of Carleton Law Association ("CCLA");
    d. the Thunder Bay Law Association;
    e. the Advisory Committee on Women at Justice;
    f. the Ontario Crown Attorney's Association; and
    g. the Advocates' Society.

268. The Law Society is grateful to the legal profession for engaging in this process by taking the time to attend meetings and/or by sending written submissions. The consultation process proved to be overwhelmingly positive.

269. The following provides an outline of the meetings, their location and date, the number of attendees and which benchers were in attendance. While the Law Society met on request with some law firms, it is also arranging additional meetings with firms that have expressed an interest in discussing the project further.

Location	Date	Number of participants (approximate)	Benchers and support staff in attendance
CDLPA Executive Committee – At the Law Society	March 6, 2008	9	Bonnie Warkentin (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Advocates' Society Executive Committee	March 19, 2008	27	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Equity Advisory Group	March 26, 2008	13	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Women's Law Association of Ontario – Board of Directors	April 3, 2008	10	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-

			Chair) Josée Bouchard (Equity Advisor)
Feminist Legal Analysis Committee of the OBA	April 9, 2008	7	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Kingston	April 14, 2008	13	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Ottawa	April 15, 2008	60	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Thomas Conway Bradley Wright Josée Bouchard (Equity Advisor)
OBA Executive Committee	April 17, 2008	18	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
London	April 18, 2008	17	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) James Caskey Heather Ross Judith Potter Josée Bouchard (Equity Advisor)
Ajax Central East Region Advocacy Conference	April 19, 2008	20	Laurie Pawlitza (Co-Chair) Janet Minor Douglas Lewis Josée Bouchard (Equity Advisor)
Sudbury	April 21, 2008	9	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair)

			Susan Hare Carol Hartman Josée Bouchard (Equity Advisor)
Oakville	April 22, 2008	8	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Paul Henderson Alan Silverstein Josée Bouchard (Equity Advisor)
Toronto Town Hall April 23, 2008	April 23, 2008	165	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Derry Millar Josée Bouchard (Equity Advisor)
Meeting with GTA Managing Partners	April 23, 2008	23	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Toronto Town Hall	April 24, 2008	200	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Derry Millar Mary Louise Dickson Paul Schabas Josée Bouchard (Equity Advisor)
Orillia	April 25, 2008	8	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Douglas Lewis Josée Bouchard (Equity Advisor)
South West Region Women's Law Association	April 25 – 26, 2008	20	Heather Ross Judith Potter

McCarthy Tetrault LLP National Board of Managing Partners	April 28, 2008	10	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
McCarthy Tetrault, town hall	April 28, 2008	40	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Meeting with GTA Managing Partners	April 29, 2008	19	Treasurer MacKenzie Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Janet Minor Josée Bouchard (Equity Advisor)
Blake Cassels & Graydon LLP	April 29, 2008	90	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Fraser Milner Casgrain LLP Diversity Committee	April 29, 2008	8 lawyers and 1 baby	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Josée Bouchard (Equity Advisor)
Ontario government and crown attorneys	April 30, 2008	6	Janet Minor Josée Bouchard (Equity Advisor)
Thunder Bay	May 1, 2008	18	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair) Ross Murray Josée Bouchard (Equity Advisor)
Ontario government and crown attorneys	May 6, 2008	7	Janet Minor
Windsor Essex Law Association	May 8, 2008	15	Bonnie Warkentin (Co-Chair) Laurie Pawlitza (Co-Chair)
CDLPA plenary	May 8, 2008	60	Bonnie Warkentin

			(Co-Chair) Laurie Pawlitza (Co-Chair)

C – General Consultation Findings

270. As mentioned above, the final consultation attracted a broad spectrum of lawyers, men and women, from all types of practice settings and firm sizes, the government, in-house counsel and articling and law students. Participants included both men and women who are associates, partners and managing partners of various levels of experience and practising in a wide range of areas.

271. The experiences and views of lawyers varied by region. The interest of the legal profession in talking about this issue and developing effective strategies is extremely high and it is clear that the project is timely. This section of the report provides a general overview of the views of lawyers about the project. Comments that are specific to each recommendation are presented in the next section of the report.

272. Comments and submissions were very positive and supportive of the proposed recommendations, and a number of women lawyers noted that they felt inspired by the project. Some said that they would have likely made different career choices had the recommendations been in place when they were making these choices. However, some participants noted that the recommendations do not go far enough. Those lawyers generally agreed that the recommendations are an excellent first step and that the Law Society should identify further initiatives once the recommendations have been implemented.

273. There was general agreement that the Law Society should be a leader in working to enhance the retention of women in private practice. Numerous law firms, legal organizations and lawyers commended the Law Society for studying the issue of retaining women in private practice and, in particular, for proposing practical solutions. Associations such as CDLPA, the Advisory Committee on Women at Justice and EAG wrote to indicate their general support for the findings and endorsement of the recommendations. The Ontario Crown Attorney's Association generally agreed with the recommendations and concluded that they are a first step in the right direction.

274. The acceptance by the profession of part-time and flexible work arrangements are seen as important to achieve the reality of balance between professional and personal lives, and to provide flexibility for women who wish to reintegrate private practice after extended leaves of absences.

275. The EAG noted the importance of creating awareness and programs to address the unique situation of racialized women in private practice. It is anticipated that the Women's Equity Advisory Group, created as a result of the recommendations, will assist to identify the unique needs of racialized women and to develop initiatives to address those needs.

276. EAG also indicated that it would like to be involved in the implementation stage of the project. The EAG is an advisory group consisting of expert lawyers and organizations in the area of equality rights. It includes representation from the Advocates' Society, the Arab Canadian Lawyers' Association, ARCH – Disability Law Centre, the Association

des juristes d'expression française de l'Ontario, the Canadian Association of Black Lawyers, the Hispanic Ontario Lawyers Association, the Nishnawbe-Aski Legal Services, the South Asian Bar Association and the Women's Law Association of Ontario. The expertise of EAG will be a great asset to the implementation of the recommendations and to assist in developing networking opportunities for women.

277. Other associations also suggested that the Law Society meet on a regular basis with representatives of organizations such as the Advocates' Society, the OBA and the CBA to ensure a coordinated and efficient effort to establishing and carrying out programs designed to educate and provide mentoring to women in the practice of law. Such collaboration would also be an asset to the effective implementation of the recommendations.

278. The increasing influence of technology in lawyers' professional and personal lives was noted in written submissions and at consultation meetings. Although some lawyers noted that technology increases the expectation that lawyers should be available 24/7, most lawyers emphasized the positive impact that technology has on their work. For example, a number of lawyers indicated that technology has provided greater flexibility to work from home through remote access, and through access to emails and phone messages. This has allowed women lawyers to work flexible hours, sharing their time at work between the office and home. Some noted that colleagues had initial negative reactions to this change, but soon found that such arrangements can increase productivity and be conducive to high performance.

279. Some lawyers noted that the cost of technology can be prohibitive and most often disproportionately affects those in sole practice and small firms. In some areas of law, technology has become a necessary component of the practice and has resulted in high financial costs. For example, a real estate practice requires access to on-line registry systems that can be expensive and require extensive training. This issue could be discussed in the implementation stage of the project.

280. In a number of regions, criminal defence lawyers noted the uniqueness of their challenges. The difficulties they face to sustain viable practices along with the nature of their practices, which often requires them to be available on short notice or at times when institutions have visiting hours, would make it difficult for women in criminal defence sole practices to take advantage of the parental funding program and locum arrangements. Representatives of the Criminal Lawyers' Association suggested that the Law Society consult more fully with them to try and address their challenges. This is an area that, we suggest, the Law Society study further.

281. In-house counsel also noted that the recommendations do not address their needs. Although it was not within the mandate of the Working Group to develop recommendations to address the needs of in-house counsel, this is an area that the Law Society may wish to study further.

282. Meetings with lawyers in small and medium size firms provided interesting information about alternate law firm models. For example, law firms that have adopted a team approach seem to be more conducive to the type of work environment in which women wish to work. It is anticipated that the Justicia Think Tank will provide an opportunity to exchange information about successful alternate firm models and identify best-practices in this area.

283. Lawyers in firms of 6 to 25 lawyers noted that the recommendations should also address their needs. This point was also noted in written submissions by associations such as the CCLA, which stated that "the recommendation may assist in alleviating some of the challenges faced by those in smaller and large firms, they leave out those who are facing many of the same challenges in their firms of 6 to 25." The Justicia Think Tank was designed for firms of 25 or more, and the two larger firms in each region while the parental leave program is available for lawyers in firms of 5 lawyers or less. The Working Group notes, however, that other recommendations are meant to address the needs of women in private practice in general and would include women lawyers in firms of 6 to 25 lawyers. The on-line Women's Resource Centre and the Women's Leadership and Professional Development Institute are examples of such initiatives. Also, firms of 6 to 25 that wish to participate in the Think Tank be welcome to do so.

284. It became apparent that firms of over 100 lawyers, firms between 25 and 100 lawyers and firms of 6 to 25 lawyers have quite different needs given the varying stages of development they have on the issues raised by women. It is anticipated that the Think Tank may well break into working groups depending upon the focus of each group's needs.

285. Some lawyers and associations were of the view that there are proposed programs that do not have to be gender specific, and that the Law Society and law firms should take into account the generational differences in the way lawyers manage their work and life experiences. The Advocates' Society noted, for example, that even though the report focuses on the parental leave period, it might be helpful to address current and future trends and to recognize that many of the law school graduates who have recently entered or will continue to enter the profession have anticipated that they will have two income families. The need to address child bearing and child rearing should increasingly apply to men and women.

286. The Law Society also met with the Managing Partners of firms of over 25 lawyers in the GTA region. The Managing Partners were overwhelmingly aware that they are losing women in disproportionate numbers, and are committed to trying to find solutions to retain them in their firms. They are generally very supportive of the recommendations and a number of firms have specifically indicated their intention to commit to the Justicia Think Tank. A number of firms have initiated processes and programs to support the recruitment, retention and career advancement of women. The Law Society commends those firms and hopes that they will participate in this project and share best practices.

287. In conclusion, the final consultation confirmed that the legal profession is supportive of the proposed recommendations and the recommendations have remained substantially unchanged since they were first introduced to Convocation in February 2008. Comments on each specific recommendation are presented below.

VIII - CONSIDERATIONS UNDERLYING THE WORKING GROUP'S RECOMMENDATIONS

A - Nature of the Recommendations

288. The Working Group considered the Gandalf Group's findings, reviewed literature about challenges faced by women in the legal profession, more particularly private practice, and identified best practices in the legal profession in Ontario, in Canada and in foreign

jurisdictions. It also considered Deloitte & Touche's Women's Initiative, which is a practical example of a successful initiative for the advancement of women in a professional firm. Finally, the Working Group reviewed the findings of the final consultation. Lawyers participated in large numbers in the final consultation and showed its strong support for the proposed recommendations. Therefore, the recommendations have not been substantially modified.

289. The recommendations are divided into the following five categories:
    a. Recommendations for large (100 lawyers or more) and medium (between 5 and 100 lawyers) firms;
    b. Direct support and resources;
    c. Recommendations for small firms (5 lawyers or fewer) and sole practices;
    d. Recommendation to work with law schools;
    e. Recommendations to create opportunities for women from Aboriginal, Francophone and/or equality seeking communities;
    f. Recommendation to assess the effectiveness of programs and identify further strategies.

B – Recommendations for Large and Medium Size Firms

Recommendation 1 – Justicia Think Tank - Law Firm Commitment To Women's Advancement

290. That the Law Society implement a three-year pilot project (the "Justicia Think Tank") for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women, as described in this report and in the Law Firm Commitment at TAB 2.

Rationale

291. The Justicia Think Tank proposes a collaborative effort between large and medium law firms, which employ a significant proportion of women lawyers currently practising in private practice, and the Law Society. The proposed pilot project focuses on four main areas that have been identified in other jurisdictions as key to assisting women in their advancement:
    a. tracking demographic information within firms;
    b. providing and effectively implementing maternity/parental leave, including ramp down and ramp up processes, and flexible work arrangements;
    c. encouraging networking and business development; and
    d. mentoring and the presence of women in leadership roles.

292. The success of initiatives in other jurisdictions has demonstrated that tracking demographic information about women within firms is key to the development and successful implementation of initiatives to retain women. To be successful, initiatives need to be tailored to the particular firm environment. Therefore, to identify areas where firms have been more or less successful in retaining and advancing women, firms should begin by analyzing demographic information, paying attention to differences among practice groups and determining where the groups stand in relation to their peers.[90] This approach was successfully used by the accounting firm of Deloitte & Touche, which

[90] See *Pathways to Success, supra* note 54 and *Ending the Gauntlet, supra* note 54.

began its women's initiative by studying the firm's demographics and reasons for movement and exits.

293. Gathering demographic information about the firm is also a good business practice, as clients turn more and more to diverse firms where there is gender balance at all levels.[91] The U.S. legal market attaches high importance to diversity, and a representative pool of associates and partners is often used as marketing tools for clients and as recruitment tools for lawyers. A commitment to diversity has become critical for Canadian law firms that wish to maintain their competitiveness with their U.S. counterparts.[92]

294. The second step in the Justicia Think Tank is to work with law firms to identify best practices in maternity/parental leave programs and flexible work arrangements, and to effectively implement such programs. Firms and associates should understand and work together to create maternity/parental leave programs and flexible work arrangements that make good business sense, are flexible and are reviewed on a regular basis. The recognition of the value of flexible work arrangements and the increased perception that entering into those types of arrangements will not negatively impact on one's career but will allow for increased work satisfaction and productivity while maintaining a lawyers' profitability are critical to retaining talent.[93]

295. Networking and business development activities that take into account the differing approaches between men and women and the experiences of women from Aboriginal, Francophone and/or equality seeking communities, have been identified as key to career development.[94] Some firms in Canada and the U.S. have begun adapting their programs to focus on the needs of women, and some best practices have emerged. Examples include the creation of affinity groups to provide a setting in which diverse lawyers come together to discuss matters of common concern and form professional relationships.

---

[91] As noted in Lexpert magazine's "Diversity: The Future of Bay Street?", (March 2005), "given the *de facto* integration of the Canadian and U.S. economies, and the importance of U.S./Canada work to major Canadian firms, what increasingly matters is what U.S. in-house counsel think. It is likely that the expectation of U.S. clients will assume greater importance in the Canadian legal market."

[92] One article, published in 2006 in The Globe and Mail, noted students' reliance on law firms' diversity commitment when choosing their positions at law firms, stating that a firm's culture that is open to their religious practices, their race, gender and other experiences is attractive to them. Beppi Crosariol, "Summer jobs: Superapplicants only, please" *The Globe and Mail* (22 November, 2006).

[93] See Catalyst, *Job Flexibility, supra* note 46; *Retaining Women, supra* note 21; Kay, *Women's Careers*, *supra* note 20; *Ending the Gauntlet, supra* note 54; *Pathways to Success, supra* note 54.

[94] *Retaining Women, supra* note 21; Kay, *Women's Careers, supra* note 20; *Ending the Gauntlet, supra* note 54; *Pathways to Success, supra* note 54.

296. Effective mentoring programs and the presence of women in leadership positions have also been identified as key to women's advancement in private practice and as effective ways of empowering women associates. Studies have shown that strong mentoring relationships enable women to succeed on the partnership track. Placing women in firm leadership positions not only has a positive impact on those women, but also assists in developing role models and influencing the culture shift within a firm. Law firms should also take into account the heightened vulnerability that some women may face because of their under-representation within firms. Programs should be tailored to allow them to fully participate in meaningful mentoring relationships and in leadership positions.

Description of Justicia Think Tank

297. The Justicia Think Tank is a three-year project, which will proceed as follows:
    a. firms of more than 25 lawyers, and the two largest firms in each region[95] , will be invited to participate;
    b. firms of 6 to 25 lawyers that wish to participate will be welcome to join;
    c. Participating Law Firms will be asked to be signatories of the "Law Firm Commitment" presented at TAB 2;
    d. the Law Society will create a "Managing Partners Network Group" of Participating Law Firms to meet as described in the Law Firm Commitment;
    e. the Law Society will create a "Gender Diversity Officer Working Group" of Participating Law Firms to liaise with the Law Society;
    f. the Law Society will coordinate at least two summit meetings of the Managing Partners Network Group in each calendar year;
    g. the Law Society will coordinate regular meetings of the Gender Diversity Officers Working Group;
    h. the Participating Law Firms will adopt programs as presented in the Law Firm Commitment;
    i. the Law Society and the Participating Law Firms will assess the success of the three-year project upon completion, determine how to communicate best practices to the legal profession, and identify next steps.

298. The advisory group of women lawyers from Aboriginal, Francophone and equality seeking communities created under recommendation 7 will provide advice to the Law Society throughout the development and implementation phases.

Objectives of the Justicia Think Tank

299. The objectives of the Justicia Think Tank are to,
    a. create a group of large and medium firms that commit to principles (hereafter "Participating Law Firms") which promote the retention and advancement of women;
    b. design, in collaboration with Participating Law Firms, programs they will adopt within their firms;
    c. identify best practices, by relying on the Participating Law Firms' own experiences and initiatives;
    d. develop a strategy to communicate best practices to the profession as a whole and engage a broader group of law firms to implement these best practices.

---

[95] The Law Society regions are: City of Toronto, Northwest Region, Northeast Region, East Region, Central East Region, Central West Region, Central South Region, Southwest Region.

Firm Selection

300. The breakdown of firms in Ontario is as follows:

Firm Size (per number of lawyers)	Number of Firms
1-5	7,895
6-10	254
11-25	143
26-50	29
51-100	10
101-200	13
201+	7

301. There are about 60 firms in Ontario with more than 25 lawyers. The Law Society will encourage those firms, along with the two largest firms in each region of Ontario, to participate in the three-year pilot project. As mentioned above, firms of 6 to 25 will be welcome to participate. Upon completion of the pilot project, best practices will be rolled out to the legal profession and to firms that have not participated in the project. They will be encouraged to adopt the successful programs developed during the pilot project.

Role of the Law Society

302. The Law Society's role in the Justicia Think Tank is as follows:
   a. to coordinate the Justicia Think Tank and provide expertise and advice;
   b. to invite and encourage firms to become signatories;
   c. to coordinate and encourage Participating Law Firms to share information about the effectiveness of the programs, with a goal of developing best practices and sharing the information with the legal profession;
   d. to assess the effectiveness of the Justicia Think Tank and identify next steps with Participating Law Firms.

Findings of Final Consultation on the Justicia Think Tank

303. Most law firms and associations that participated in the consultation indicated that they are supportive of the Justicia Think Tank for medium and large firms. Some firms sent written submissions indicating that they commend the Law Society for taking an active role in trying to address the issue of the retention of women in private practice and that they will participate in the Justicia Think Tank. A number of medium and large firms have also expressed their interest in participating directly either to the Treasurer, the Co-Chairs or to the Equity Advisor.

304. A number of representatives from firms of 6 to 25 lawyers, in Toronto and in regions, indicated that they wish to participate in the Justicia Think Tank. Lawyers in regions noted the unique and distinct business reality of regional firms. As a result, the Law Society will welcome the participation in the Justicia Think Tank of firms of 6 to 25 lawyers.

305. Some, including the OBA and the Advocates' Society, noted that the issues for lawyers in firms of 100 or more in the GTA are likely to be different than the issues for lawyers in the largest firms in regions that often have between 10 and 15 lawyers. The resources available are different and the Justicia Think Tank will have to take that into account. It is anticipated that firms in the Justicia Think Tank will develop programs based on their own culture and workforce.

306. Although it is critical that private practice address the issue of parental leaves, participants noted that law firms should address the billable hour business model along with the way partnership and compensation decisions are made before real change will happen. Although it is easy to look at tangible elements, such as maternity leave, the Law Society should take on a more holistic approach and consider whether there are alternative ways of doing business. Some, including the Advocates' Society, noted that lawyers in private practice provide client-driven services. In the age of computers and globalization, the provision of services in some areas of the law requires around the clock attention to clients, and business models would have to change to fully address the issue of retention. It is anticipated that partnership and compensation decision making processes, and alternative business models will be included in the discussions of the Justicia Think Tank, or in the next step of the project.

307. Most firms were supportive of the proposal to gather gender based demographic information, but were resistant to the proposal of gathering demographic information based on other grounds such as race, disability, creed and sexual orientation. They generally voiced privacy concerns and they worried that asking such questions would be disrespectful to lawyers. As a result, the Justicia commitment pledge was modified so that participating law firms agree to maintain demographic information about gender, and use the Think Tank to discuss whether they wish to also gather other demographic data.

308. Many firms already have strategies and programs in place to enhance the retention of women, and they are continuously building on those programs. The initiatives encompass leadership and business development programs for women as well as policies and programs to support family obligations and work-life balance. We hope that these firms will share information about their best practices by participating in the Justicia Think Tank. We expect that, through their participation in the Justicia Think Tank, they will also build on initiatives in place and develop further programs based on the needs of their lawyers and the culture of their firm.

309. Some firms also indicated that they would like to have some control, when joining the Justicia Think Tank, over the timing of the implementation of their programs. This would ensure that their programs meet the needs of their lawyers and that they have the full support of associates and partners. It is anticipated that the pledge could be slightly adapted based on consultations with interested firms.

Resource Implications

310. It is anticipated that the Justicia Think Tank will require the following resources:
    a. 0.3 of a full-time equivalent staff position per year will be required to implement the project, beginning in 2009. The mandate of the Equity Initiatives Department is to develop the resources to promote equality and diversity in the profession. Therefore, staff members are already working with law firms and the profession and have the expertise to develop resources, such as model policies and guidelines for law firms. Should this recommendation be adopted, the Justicia

Think Tank would be a priority for the Equity Initiatives Department, and necessary staff members would be allocated to coordinate the project.

b. Between $10,000 and $15,000 per year to coordinate Justicia's Managing Partner Network Group and Justicia's Gender Diversity Working Group. Convocation has allocated $70,000 in 2008 to implement the Retention of Women in Private Practice recommendations, which will cover the expenses to coordinate the groups' activities in 2008. A budget of $15,000 will be required for this purpose in 2009 and 2010.

c. It is estimated that $20,000 will be required in 2011 to assess the effectiveness of the project.

C – Direct Support and Resources

Recommendation 2 – Direct Support for Women

311. That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources, as described in this report.

312. Studies have identified a number of direct support programs that would be of great value to women. Those programs are designed to provide networking opportunities and on-line resources to women and to gather information about why women and men move from their work environments. As a first step in the implementation of recommendation 2, the Working Group proposes the following initiatives:

a. Women's Leadership and Professional Development Institute;
b. On-line women's resource centre;
c. Gathering information about changes of status.

Women's Leadership and Professional Development Institute

313. Professional and business programs designed for women lawyers, opportunities to allow women lawyers to network with each other, the recognition of women role models in the profession and access to programs tailored to the experiences of women have all been identified as important opportunities to assist in the advancement and retention of women in private practice.[96] Such programming should be designed to also address the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

314. In response to their members, legal associations have held professional development and networking programs focused on the promotion of women in the legal profession. For example, the Advocates' Society held a Networking Conference for Women in Litigation in 2005 entitled "Skirting the Issues", which led to the Advocates' Society's commitment to creating additional support, mentoring and networking opportunities for women advocates. The Feminist Legal Analysis Committee of the Ontario Bar Association regularly holds networking events for women and publishes a newsletter about women and the law. The Women's Law Association of Ontario holds "lunch and learn" clinics, cocktail and dinner events, golf social events and breakfast networking meetings to provide networking opportunities for women. The Association also

[96] See *Retaining Women, supra* note 21; Kay, *Women's Careers, supra* note 20; *Ending the Gauntlet*, *supra* note 54 and *Pathways to Success, supra* note 54.

recognizes the contributions of women lawyers by awarding students and giving out the president's award to role models and student's awards. The County and District Law Associations also actively promote networking opportunities for lawyers in regions. Associations such as the Canadian Association of Black Lawyers, the AJEFO and the Indigenous Bar Association regularly deliver professional and business development and networking programs for their members catering to the unique needs of lawyers from diverse communities.

315. The Business Leadership for Women Lawyers, developed by the Rotman School of Management and the Faculty of Law of the University of Toronto is a model that could be followed.

316. The Working Group proposes that the Law Society partner with community organizations and associations, where appropriate, to create a Women Leadership and Professional Development Institute. The Law Society will coordinate workshops and seminars on leadership and business development skills, and recognize the contributions of women, and their diversity, in the legal profession for participants in a cost effective manner. The Institute would provide training in the skills and tools needed for women in private practice to take on leadership roles in their firms. This initiative could provide an opportunity to celebrate women and to recognize the contributions of firms that have adopted successful programs and initiatives to retain women.

317. Participants in the final consultation also indicated that they hope that the Law Society will work with regional associations to develop programs based on the needs of regional bars. They also hope that programs will be delivered in regions.

On-line Women's Resource Centre

318. The Working Group also proposes that the Law Society develop an on-line Women's Resource Centre. The Law Society already has an extensive website, including professional development resources and resources in the area of equity and diversity. The Women's Resource Centre could include practice management tips for women, model policies and guidelines, information about networking opportunities, coaching, mentoring and other resources helpful to women lawyers. The Working Group also proposes that the on-line resource centre include tools and resources to assist women who are sole practitioners and in small firms (see recommendation 5).

319. Once established, the Law Society may wish to consider the feasibility of including more interactive on-line opportunities, such as regularly timed e-mails to women lawyers and list serves of women lawyers to connect them with one another. This would allow women to form relationships for mentoring, provide advice and exchange information about such things as relocating to a new city, lateral transfers, going on and returning from leave.

320. Examples of such initiatives for women are found in the U.S. Concerned by the rates at which women opt out of the legal profession, the lack of representation of women in the highest courts and echelons of the legal community, and the role of gender in the progression of many women's legal careers, a group of female law students from Boalt Hall (UC Berkeley), Cornell, Georgetown, Harvard, NYU, Stanford, UCLA, UT Austin, the University of Chicago, the University of Michigan, the University of Virginia, and Yale came together and created Ms. JD in March 2006. Serving women in law school and the legal profession, Ms. JD is an on-line community that provides a forum for dialogue and

networking among women lawyers and aspiring lawyers.[97] The website offers networking opportunities, forums for discussions and on-line resources for women.[98]

321. Studies revealed that women in firms often do not know where to go to learn how to prepare for a temporary leave such as maternity leave.[99] In Retaining Women, Ontario women lawyers indicated that they would benefit from coaching services on career development, including coaching on ramping down and ramping up their practice, and ensuring that they remain on the partnership track while also taking parental leaves. Some firms have begun offering such programs, while others have not identified this as a key initiative or have indicated that they do not have the resources to implement such services. The Working Group proposes that the Law Society promote coaching opportunities by working with legal associations and law firms to identify, coordinate and promote the resources available for those in need. The Law Society would play a coordinating and catalyst role in this initiative. It is not suggested that the Law Society would offer direct coaching services to women. As the success of other initiatives demonstrates, law firms should create coaching programs based on the needs and culture of their firms, taking into account the diversity of the pool of lawyers, women and men, and resource implications.

Change of Status Survey

322. It is recommended that the Law Society of Upper Canada develop and conduct a voluntary survey of members when they inform the Law Society that they are changing their status. The voluntary survey would keep track of reasons behind a status move and include questions about gender, age, disability, sexual orientation, membership in a racialized community, year of call, type of work environment and area of law, factors that influence the decision to change work environment or to leave the practice of law, level of satisfaction and questions about how to keep lawyers in the legal profession. The survey would allow the Law Society to identify information and trends about the demographic of the profession, former and current employment, satisfaction with aspects of practising law, reasons for leaving private practice and returning to practice and desired changes to the profession.

323. The Working Group also notes the vulnerability and unique challenges of women lawyers who are members of Aboriginal, Francophone and/or equality-seeking communities. Those women may not wish to complete a change of status survey conducted by the Law Society, because of fear of identification or discrimination. Therefore, the Working Group proposes that the Law Society work with the Discrimination and Harassment Counsel to also post the survey on the Counsel's website with an invitation for those who participate to speak with the DHC if they so wish. The DHC would report findings to the Equity and Aboriginal Issues Committee on a regular basis.

---

[97] For further information about the Ms JD website: http://ms-jd.org/home.

[98] Also see websites in New Zealand and the ABA. See http://www.lawyers.org.nz/wcg/ and http://www.abanet.org/women/.

[99] *Retaining Women, supra* note 21.

324. The Law Society annually processes approximately 7,000 adjusted billing requests related to changes of status. Therefore, not only would staff in membership services have an additional responsibility to inform lawyers about the survey when they request a status change, but resources would have to be allocated to the analysis of responses to the survey. It is anticipated that reports of findings would be done on an annual basis and presented to the Equity and Aboriginal Issues Committee.

Final Consultation Findings

325. Written submissions and comments made by participants in the final consultation meetings showed overwhelming support for this recommendation and indicated that this is a recommendation that would benefit women in firms of all sizes and in sole practice, women returning to practice and women in other practice settings.

326. Most participants noted the value of mentoring. Association such as the CCLA and the OBA noted that mentoring and professional development programs directed to women are "critical to allow the development of professional confidence in women […] While informal support networks may be in place in smaller centers, more formal support networks and associations that foster contact and learning would be of benefit to women practitioners. At the same time, it is important to facilitate women's access to traditional networking opportunities from which, at present, they are excluded." The Thunder Bay Law Association recognized that although there are informal support networks in place in the region, there is a need for a more formal support network. It was generally felt that associations in small centers that fostered contact and learning environments would be of benefit to women practitioners.

327. Regional and GTA legal association were in favour of working with the Law Society to develop structured mentoring programs. For example, the Feminist Legal Analysis Committee of the OBA and the CCLA noted the success of its mentoring program as being the most powerful tool for helping young lawyers while the Advocates' Society suggests that the Law Society meet regularly with associations to ensure a coordinated approach with education and mentoring. Some was suggested that associations create mentoring committees and that structured mentoring programs be established. Mentoring circles were noted as a successful model of mentoring. Some associations such as the CCLA have begun offering such programs, for example by hosting breakfast or dinner meetings with experienced and newly called lawyers, which have proven very successful. On-line mentoring relationships were also suggested. Mentoring programs were seen as valuable to connect women lawyers with women role models, but also to provide them with access to experienced men and women lawyers. The Advocates' Society also suggested that education and mentoring to women be provided based on practice areas, noting that the requirements to carry on a litigation practice differs from the requirement to carry on a solicitor's practice.

328. Resources to welcome women back into the profession and to assist in ramping up a practice were also mentioned as important and could be included in the on-line Women's Resource Centre and as a component of the Women's Leadership and Professional Development Institute. Some lawyers suggested that the Law Society could include as part of the in its on-line Women's Resource Centre information to assist lawyers who return from an extended leave.

329. A number of lawyers, including members of the EAG, noted the value of including as part of the on-line resources, resources to assist with family responsibilities. Examples of

such resources could include availability of childcare services in various regions of the province. Also important is the idea of providing resources that could be effectively implemented in regions, for example regional continuing legal education programs and networking opportunities. The idea of developing networking opportunities was also seen as critical, particularly in regions where isolation can be an important factor in the departure of women from private practice.

330. The proposal to develop a Women's Leadership and Professional Development Institute was well received. CDLPA, the Advisory Committee of the Department of Justice, the OBA and the CCLA support this recommendation. The OBA supports the recommendations but notes that programs must be affordable and practical. Lawyers also encouraged the Law Society to provide its programming in regions. Some lawyers suggested that the Law Society fund the Institute through sponsors in order to make attendance fees more affordable and others proposed that fees be waived entirely. It was noted that practice management workshops and workshops on the business of law should be designed to meet the needs of the audience and, as noted by the OBA, be accessible to women from all types of law firms across the province. For example, women lawyers in Toronto face unique and different challenges than women lawyers in regions. Challenges also differ from one region to another. Participants also encouraged the Law Society to develop joint programs with law schools and often noted the lack of training about the business of law at the law school level.

331. A number of women lawyers also noted the importance of workshops on the business of law. Women indicated that they practice differently than men and gender based professional development programs would be beneficial to them. Managing partners were generally of the view that the newly established partnership initiative between the Joseph L. Rotman School of Management and the Faculty of Law at the University of Toronto is a strong model that could be adopted by the Law Society.[100]

332. There appeared to be widespread support for the development of on-line resources and for a change of status survey.

Resource Implications

333. It is estimated that the implementation of recommendation 2 would have the following resource implications:
    a. The implementation of this recommendation would require 0.3 of a full-time equivalent position in 2009, 2010 and 2011.
    b. An operating budget of between $20,000 and $35,000 to coordinate the activities of the Institute. The Institute would be revenue generating and expenses would be recovered through external funding or attendance fees. Contributions from law firms and associations may also be considered.
    c. The resources posted on the Women's Resource Centre will largely be developed through the Justicia Think Tank. It is anticipated that the Women's Resource Centre will be implemented in incremental phases so that no additional staff positions will be required.

[100] In particular, the law firms Blakes, Cassels & Graydon LLP, McCarthy Tétrault LLP, and Osler, Hoskin & Harcourt LLP are program sponsors who have provided financial support and industry expertise for the development of the program.

d. An estimated $10,000, already covered by the Equity Initiatives Department's research budget, will be required to design the change of status survey. It is anticipated that the survey will be developed using the Survey Monkey software, which is already used by the Law Society. In 2009, $15,000 will be required for data analysis, which would be covered in the 2009 Equity Initiatives Department's research budget. Once a reporting template has been developed, the annual analysis of data will be assumed by the Equity Initiatives Department. Conducting the change of status survey will have minimal impact on membership services, as staff in that area will have to alert licensees to fill out the on-line survey when they request a status change.

D – Recommendations for Small Firms and Sole Practitioners

Recommendation 3– Practice Locums

334. That the Law Society develop a five-year pilot project to promote and support practice locums, as described in this report.

335. The *Retaining Women* consultation concluded that, in addition to the financial challenges faced by women in small firms and sole practices, particularly when they have family responsibilities, women face challenges in finding lawyers who are available and can competently maintain their practice during leaves of absence, or assist them with some of the work on a temporary basis. Such concerns have also been raised in the report of the Law Society of Upper Canada's *Sole and Small Report.*[101]

336. The Law Society of British Columbia has recently approved the development of a program to promote and support practice locums. The recommendation was presented in response to the comments of its members, specifically sole and small firm lawyers, indicating that they encountered difficulties when they attempted to take time off from the practise of law because there is no one available to provide essential services to their clients in the interim. An effective system of practice locums would provide valuable backup to many sole and small firm lawyers, permit lawyers to reduce their time commitment to the practice of law, and provide work opportunities for other lawyers, whether senior or junior, who prefer to work on a part-time or occasional basis.[102]

337. The practice locum project would include the following features:
   a. an on-line registry, developed in collaboration with legal associations if appropriate, of locum lawyers, specifying information such as the lawyer's qualifications, system for remuneration and expenses, location, availability, timing and practice area and references/discipline history;
   b. guides and checklists on how to make a locum arrangement operate effectively, including how to deal with client conflicts;
   c. sample locum agreements including non-compete clauses;
   d. other resources as required.

---

[101] *Supra* note 21.

[102] *Report of the Small Firm Task Force* (Vancouver: Law Society of British Columbia, 2007) [*Law Society of British Columbia Small Firm Report*].

338. The Working Group concluded that the development and support of a practice locum project would benefit women, and men, in at least two ways:
   a. it would allow women and men to take leaves of absence or to have flexible work schedules while having the opportunity to rely on competent lawyers to maintain their practice on a temporary basis;
   b. it would also allow women and men to undertake practice locum work when they wish to have flexible careers.

339. Successful practice locum programs have been in place, and the value of such programs has been recognized, in foreign jurisdictions such as the U.S., the U.K. and New South Wales. These programs were instituted as a result of demand by lawyers within those jurisdictions.

Final Consultation

340. This recommendation was met with great enthusiasm and lawyers noted that it is timely. For example, the Feminist Legal Association of the Ontario Bar Association considered that a locum program, combined with mentoring and coaching, is key to the retention and advancement of women in private practice. Associations such as the OBA, the CCLA, CDLPA, the Assistant Crown Attorney's Association and the Thunder Bay Law Association indicated through written submissions that they support the recommendation. This program would allow lawyers to make a smooth transition from work to leave of absence and back, allow firms to avoid disruptions in work flow, allow clients to be served while their usual lawyer in unavailable and allow lawyers to take leaves for reasons other than new parenthood.

341. Some women lawyers also saw great benefits in becoming a locum. They believe that contract lawyering would provide them with opportunities to work part-time or on flexible schedules, to work from other locations such as the cottage and/or to gradually return to the practice of law. It was also suggested that retired lawyers would likely be interested in working as contract lawyers. A number of participants in the consultation meetings talked about their positive experiences, in regions and in Toronto, with practice locums either working as contract lawyers or retaining contract lawyers to replace them while on leave.

342. Most of the questions and comments about the practice locum program related to its implementation, such as how to address issues of conflict, insurance and liability issues and issues of competency of the lawyers offering their services on contract. Those issues would all be addressed during the implementation stage of the project.

343. Some regional lawyers noted that clients might be reluctant at first to embrace this concept. However, those who had worked as contract lawyers all indicated that such programs work and provide flexibility to lawyers who do not wish to practise full-time. Some women lawyers noted that they had been successfully working as contract lawyers from their house and their clients' attitudes in accepting contract lawyers have changed over the years. Clients are now more accepting of that type of arrangement, especially in cases of planned parental leave where women have had a chance to introduce the contract lawyer to the clients. Women who work as contract lawyers appear to have the flexibility to take leaves of absences, including parental leaves.

344. Because of the small number of lawyers in some regions, some noted the difficulties that may be faced with developing pools of contract lawyers in those regions. Bilingual

French/English lawyers also noted the difficulty in finding bilingual lawyers to replace them. They suggested that the Law Society consider retaining a pool of lawyers, and cover their legal service fees, to act as contract lawyers for regional sole practices and small firms, particularly in the initial stages of the implementation of the locum project.

345. Although the recommendation was generally very well received, some lawyers warned that a practice locum might not be effective for all practice areas. Some areas of law are so specialized, such as Aboriginal law, and it would be difficult to temporarily transfer such practices.

346. The Advocates' Society suggested that the Law Society move quickly to establish a website related to the practice locum recommendation, which would allow the Working group to determine the level of interest and how to best implement the recommendation at a practical level.

Resource Implications

347. It is anticipated that 0.3 of a full-time equivalent position would be dedicated to this pilot project. Much of the time would be spent communicating and liaising with the regional associations in an effort to find lawyers interested in serving as locums in that region. There will be some minimal resource implications on the Communications Department, as the program will have to be communicated to the legal profession.

Recommendation 4 – Funding for Leaves

348. That the Law Society implement a three year Parental Leave Benefit Pilot Program, effective on January 1, 2009, as follows:
    a. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;
    b. provide a fixed sum of $3,000 a month for three months (maximum $9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave.

Goal of Recommendation

349. The goal of the recommendation is to enable lawyers in small firms who have no other maternity/parental/adoption benefits to take a leave by providing financial assistance to cover some of the expenses of maintaining an office during the period of leave.

350. Women in sole practices and in small firms consistently raise two main issues, the hardship of trying to maintain an income during a leave of absence, and maintaining their practice during a leave.[103] The decision to have a child usually means serious sacrifices with respect to their capacity to practise law and the lack of maternity leave benefits is usually noted as an important barrier to remaining in sole or small practices.

Mandate of Law Society and Power to Implement Funding Program

351. The mandate of the Law Society of Upper Canada is to regulate the legal profession in the interest of the public. The purpose of a parental leave benefits program is to reduce the financial hardship of lawyers, women and men, in small firms and sole practices. It is

[103] *Retaining Women, supra* note 21.

not intended as income replacement, but rather to help defray some of the costs of overhead during the leave from practice.

352. In adopting such a program, the Law Society would be assisting lawyers, women and men, to remain in small firms and sole practices, including practices in the non-urban areas. This, it is believed, would contribute to alleviating the shortage of legal services. This program may also encourage practitioners, and perhaps a more diverse pool of practitioners, to join small firms or to set up sole practices, where they might otherwise be discouraged from doing so because of the financial considerations of family responsibilities and leaves.

353. The Working Group is of the view that a funding program as described in recommendation 4 is consistent with the Ontario Human Rights Code (the "Code").[104] Section 14(1) of the Code allows for "the implementation of special programs designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights".[105]

354. The Working Group proposes to limit the program to women and men in firms of up to five lawyers because studies have shown the vulnerability of lawyers in small firms. Fifty two percent of lawyers in private practice in Ontario and 94% of all firms in the province are firms of 5 lawyers or fewer. Difficulty in financing practices is a challenge unique to those lawyers and is linked to the nature of their client base.[106] Those lawyers report greater difficulty in securing financing and lines of credit from financial institutions. Rising overheads and general market pressures to reduce fees that affect all lawyers have a greater impact on those lawyers because of the narrower margins of financial viability they face.

Other Jurisdictions

355. Research findings show that access to funding sources for maternity and parental leaves is key to the viability of women in small firms and sole practices. The Barreau du Quebec approved a funding program, and the Law Society of British Columbia followed the Barreau's lead by approving a loans program for such leaves. The program adopted by the Barreau du Québec was implemented in January 2005 and has received 66 requests for funding (53 requests were received in the first year, when governmental funding was not available). Only six requests have been refused.[107] Eight men have requested

---

[104] *Supra* note 27.

[105] The Ontario Court of Appeal in *Ontario (Human Rights Commission)* v. *Ontario (Ministry of Health)* (1994), 19 O.R. (3d) 387 (C.A.) noted that the purpose of section 14(1) is to protect affirmative action programs and to promote substantive equality. The purpose of the proposed Law Society funding program is to provide some financial assistance to lawyers in small and sole practices who have no other benefits for maternity/parental/adoption benefits, to assist them with financial hardship when taking leaves of absences to fulfill parental responsibilities.

[106] See *Sole and Small Report, supra* note 21.

[107] The decisions to refuse requests were based on the following factors: that the individuals were not members in good standing of the Barreau du Quebec, that they did not incur operating costs in the context of professional activities or they did not benefit from financial revenue at

funding under either parental or adoption leaves. The Barreau's program was managed by asking lawyers to apply by filling out a form and signing an affidavit (TAB 3).

Why Propose Funding for Maternity, Parental and Adoption?

356. The Working Group proposes that the parental leave program include funding to an equal level to men and women who wish to take a leave due to the birth of a child or to the adoption of a child. Case law has clearly indicated that benefits must be extended to both parental and adoptive leaves, but that benefits can be of a different level and higher for maternity leave than for parental/adoption leave. This does not preclude an organization from providing benefits for both maternity and parental/adoption leaves at an equal level. Therefore, the Working Group's recommendation to provide parental leave benefits to both natural and adoptive parents at an equal level is consistent with legal obligations.[108]

Arguments in Favour of Creating the Fund

357. The Working Group is of the view that the arguments in favour of creating the proposed funding program outweigh the arguments against its creation. Maternity leave benefits were instituted in Canada when women began entering the labour market in large numbers. This phenomenon increased awareness of loss of income they suffered when their work was interrupted as a result of pregnancy. The purpose of such benefits was to provide women with economic and social security on a temporary basis while at the same time helping them to return to the labour market and ensure continued employability and reintegration into the labour market. The purpose of providing adoption and parental benefits is to enable parents to care for their children. The status of adoptive parents carries with it all the rights and obligations of a natural parent.[109]

358. The Working Group's proposal compared the position of women and men partners in small firms or sole practitioners with the position of employees in firms who would be eligible to receive public maternity benefits. Employees in Ontario that meet the minimum hours requirement of employment under the *Employment Insurance Act* (the *"E.I.A."*)[110] are covered by the *E.I.A*.. The entitlement to pregnancy benefits is typically for a period of 15 weeks at a weekly maximum for employment insurance benefits set at around $ 425. If a woman who is an employee in a firm takes a maternity leave and has no top up, that person would receive a maximum of $6, 375 in maternity benefits. This is lower than the proposed scheme recommended by the Working Group, which would entitle women and men to a maximum of $9,000 in parental leave benefits. However, it should be noted that associates in law firms are not responsible to pay overhead costs, while sole practitioners and women and men in small firms are faced with those expenses even while on parental leave.

---

least equal to the benefits offered under the program. In the case of parental or adoption benefits, the lawyer had to temporarily stop working, which was not always the case.

[108] *Schacter* v. *Canada,* [1992] 2 S.C.R. 679.

[109] See *Reference re Employment Insurance Act (Can.), ss. 22 and 23,* [2005] 2 S.C.R. 669.

[110] 1996, R.S.C. c. 23.

359. In any event, the proposed benefits represent an amount that is less than the benefit entitlement under the *E.I.A.* In addition to pregnancy benefits, the *E.I.A.* allows, under certain circumstances[111] , access to parental benefits for a maximum of 35 weeks. The Working Group is of the view that, even if it is not to the same level as federal parental benefits, providing $3,000 per month for three months in parental benefits is a reasonable compensation and allows lawyers to have a financial safety net to take time off for parental responsibilities.

Arguments Against Creating the Fund

360. Some may argue that the establishment of a funding program for maternity/parental/adoption leaves does not fall within the mandate of the Law Society and would be more appropriately dealt with through other sources of funding, either public funding sources or the CBA.

361. The creation of programs to assist lawyers to remain in the profession or to support other organizations through licensee fees is not new or unique. For example, the Law Society provides funding to the amount of between $200,000 and $250,000 per year to the Ontario Lawyers' Assistance Program ("OLAP"), a program to promote a lifestyle of balance and well being for all lawyers and to prevent problems through early intervention. OLAP provides effective and timely assistance, based on the principles of confidentiality and voluntary access, to members of the legal profession and their families dealing 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, counseling, links with related services, education, and information.[112] The program is well regarded by the profession and has provided important assistance to lawyers who struggle to remain in practice.

362. The Law Society also supports a number of worthwhile organizations through grants or contributions. Because the support provided to these organization is important and sometimes essential to the viability of the organizations, the Working Group is of the view that such support must continue. However, that type of support indicates that it is within the mandate of the Law Society to distribute its funds to promote the activities of organizations that support the profession. It would appear illogical to argue that Law Society should not use its funds to also assist new parents, men and women, in small firms and sole practices.

363. For example, the Law Society supports the following organizations:
    a. the County and Districts Law Presidents' Association through annual grants of more than $200,000;

---

[111] Parental benefits are available for a maximum of 35 weeks. They may be claimed by one of the parents or they may be shared by both. Where the benefits are divided between both parents, only one has to serve the two week waiting period. *E.I.A.* sections 14(1.1)(b) and 23(4) & (5). For an outline of the benefits available under the *E.I.A.* consult the Law Society of Upper Canada Model Policy *Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Equity Partners* at http://www.lsuc.on.ca/media/pregnancy_leaves_policy.pdf

[112] Approximately $575,000 of the Law Society budget is dedicated to OLAP, the County and District Law Presidents Association, the Advocates' Society and Pro Bono Law Ontario.

b. the Advocates Society through grants of about $50,000 to assist with professional development programs;
c. Pro Bono Law Ontario through a rent subsidy;
d. the Ontario justice Education Network through office accommodation;
e. The Osgoode Society for Canadian Legal History;
f. The Law Foundation of Ontario;
g. The Law Society Foundation;
h. The Federation of Law Societies of Canada;
i. Canadina Legal Information Institute;
j. LibraryCo Inc.;
k. Legal Aid Ontario.

Other Models Considered

364. The Working Group also considered the following models to assist sole practitioners and/or lawyers in small firms: a loan program for maternity/parental leave, a voluntary op-in insurance plan managed by the Law Society and the Law Society acting as a guarantor for loans provided to those on maternity/parental/adoption leave. The estimated resources required to structure and administer such programs would be extremely onerous and therefore, the Working Group does not recommend any of these options.

365. The Working Group also considered the possibility of working with the Canadian Bar Association ("CBA") to include maternity leaves in its disability insurance plan. When developing its program, the Law Society of British Columbia also considered whether the Canadian Bar Association through the CBA (BC) Benevolent Society would be a more appropriate organization to administer a maternity leave program. Ultimately, the Law Society of British Columbia and the CBA arrived at the conclusion that it would not be appropriate for the CBA to administer the maternity benefit for two reasons. The CBA Benevolent Society program was established to provide assistance to lawyers who have suffered an illness or injury from any cause including alcohol, drugs, stress and physical injury, and to provide assistance to the families and others affected by such lawyers' illness or injury. The Law Society of British Columbia felt that the purpose of the CBA Benevolent Society program was different than the purpose of a maternity benefit program. It was also felt that having the proposed maternity benefits program administered by the CBA Benevolent Society sent the wrong message, as pregnancy and childbearing should not be regarded as a crisis, illness or injury.[113]

366. The CBA Benevolent Society is a British Columbia specific program that is not in place in Ontario. However, the Working Group was also of the view that the Canadian Bar Insurance Association would not be an appropriate organization to manage the proposed program, for similar reasons as those raised by the Law Society of British Columbia. The CBIA offers insurance plans such as income replacement disability, accident and critical illness. The Working Group was of the view that it would not be appropriate to work with the CBIA to consider expanding disability plans to include maternity.

---

[113] The Canadian Bar Insurance Association offers an income replacement plan for lawyers with disabilities, defined, in part, as: "...due to an accident or injury for which you are under the regular care of a physician, you are not gainfully employed and the sickness or injury prevents you from engaging in the regular duties of your occupation."

Final Consultation Findings

367. There is very strong support for the parental funding program. The vast majority of lawyers who participated in meetings in regions and in Toronto voiced their support for the program and written submissions are generally in favour of this recommendation. Several lawyers otherwise supportive of the program, expressed concern that the amount of the benefits should be higher or that the benefit period should be provided for a longer period. Associations such as CDLPA, the Ontario Crown Attorney's Association and a large majority of the CCLA members indicated their support for the leave. The Advocates' Society found the recommendation laudable, noting that it should be recognized that the difficulties faced by women with children in sole practice and small firms are not limited in time to the first three months after their child is born. The OBA received mixed reactions, with members indicating that the proposal is useful and should be carried out because it will alleviate a genuine problem in the profession. The proposal was also seen by some as a good start but the benefits could be higher, should be set up to also assist employees of small firms who often do not receive top up and should also include benefits for those who wish to take a leave because of bereavement, separation or to care for older members of the family.

368. A number of lawyers indicated that, although they support the program, the amount of the benefit, along with the length of time of three months, are insufficient. The amount that was most often quoted as appropriate was $5,000 per month for three months. Some also commented that lawyers are typically called to the bar with tremendous debt loads, which would have an impact on the viability of their practice and the usefulness of the program.

369. The program as presently structured requires that lawyers must show that they are not working in order to be eligible for benefits. Some lawyers indicated that those on parental leave often have to maintain some degree of supervision of their practice, which would make them ineligible for the benefits. It was suggested that the Law Society allow for some flexibility in administering this program. There were also suggestions about splitting the month into weeks or allowing lawyers to continue to undertake some professional activities to maintain their practice during a leave. These issues have merits and ought to be considered prior to implementation.

370. Some lawyers also noted that those trying to care for aging or ailing parents or children with long term illnesses ought also be eligible for the benefit. There were also suggestions, but very few, that the parental benefit should not be limited to firms of 5 or fewer.

371. A number of lawyers noted that the Law Society should review its fees to make it easier for women to take a parental leave of absence or to work part-time. Some were of the view that the twenty-five percent fee category does not provide enough relief to lawyers on parental leave. Also, the lack of part-time fee category appears to have adverse impacts on women who are trying to gradually re-enter private practice. It was suggested that the Law Society seriously consider revisiting the fee structure for part-time work and for parental leaves.

Resource Implications

372. The Working Group retained the services of the actuarial firm Eckler Ltd. to project the potential usage of the program based on the current available demographic profile of the

profession. The Eckler report, *Law Society of Upper Canada Maternity, Parental and Adoptive Leave* is presented at TAB 4. It provides a breakdown of estimates of the potential cost for a parental leave benefit program for lawyers in small firms and sole practices. The costs were determined assuming a monthly benefit of $1000 payable for 1 month. This projection allows the Law Society to multiply the costs provided by a pre-determined factor to estimate the cost for a higher benefit amount for a longer or shorter benefit period.

373. The Eckler report presents two scenarios. The first scenario relies on assumptions that women lawyers fertility rate is at 100% of Ontario fertility rate, a 5% increase in the number of women in the profession based on estimates in 2002 to 2006, a 100% take-up rate of the benefits for women and a 20% take-up rate for men. The second scenario is based on assumptions based on perceived trends in the legal profession and assumes an 80% of Ontario fertility rates for women lawyers, a 3% per year increase in number of women, a 40% take-up rate for women in the first year of implementation (this percentage increases over time) and a 15% take-up rate for men.

374. The Eckler report, presented at TAB 4, indicates estimated costs as follows:

	2009	2010	2011
Scenario 1[114]	$506,700	$523,800	$540,000
Scenario 2[115]	$243,000	$261,000	$303,300

375. The estimated costs per member are as follow:

	2009	2010	2011
Scenario 1	$15	$15	$15
Scenario 2	$5	$6	$8

376. The Working Group considered the costs for the Law Society or for Law PRO to administer the program. It is estimated that one staff member either at the Law Society or at Law PRO would be required to administer the fund. This is consistent with the experience of the Barreau du Québec, which also assigned one staff member to administer its parental leave benefit program.

Overall Resource Implications

377. It is estimated that this program would cost at the most, in 2009, $580,000, including the costs to administer the program (estimated at $70,000). In 2010, the program would cost at the most an estimated $590,000, and in 2011, an estimated $610,000.

[114] The assumption is at 100% of Ontario fertility rate, 5% per year increase in number of females, 0.8% per year increase in number of males, 100% take up of benefits for females and 20% take up for males.

[115] The assumption is at 80% of Ontario fertility rates as the base for females and 100% for spouses of males, 3% per year increase in number of females and .8% per year in number of males, a take up rate for females of 50% for 2009, 60% for 2010 and 80% for 2011 and a take up rate of 15% for males.

Recommendation 5- Direct Resources

378. That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice, as described in this report.

379. Studies have indicated that the Law Society and legal associations have a role to play in providing direct resources to women in sole practices and in small firms. As a first step in the implementation of this recommendation, the Working Group proposes that the following resources be developed:
   a. on-line resources for women in sole practices and small firms;
   b. practice management advice;
   c. direct supports.

On-line Women's Resource Centre

380. The *Sole and Small Report*[116] noted the isolation felt by small firm lawyers and sole practitioners especially in non-urban regions and recommended the design of a matching program, including a list-serve of target group lawyers to connect them with one another. Such initiatives have also been developed by regional legal associations and specialized associations that have created list-serves for its members.

381. The Working Group proposes that the Women's Resource Centre include not only resources for women in large and medium firms, but also resources to address the needs of women in small firms and sole practices. The resources could include regional lists of available childcare service providers, lists of regional networks and CLE events for women and resources to assist in setting up a business. The Law Society would also work with regional legal associations, women's organizations and organizations that promote equality and diversity in the legal profession to determine how to develop effective on-line resources for women in sole practices and small firms.

Access to Practice Management and Career Development Advice

382. Women in the *Retaining Women* consultation noted that they faced challenges because of lack of advice on career development and practice management focused on their needs. Those needs were particularly acute for women who wished to have, or had, children. This initiative could also be developed in collaboration with legal associations and associations, which could also provide practice management advice.

383. The Law Society provides, through its Practice Management Helpline, assistance in interpreting the *Rules of Professional Conduct*. Experienced counsel is available to provide insight on the *Rules*, Law Society legislation and by-laws as well as ethical and practice management issues that lawyers may be facing. The Practice Management Helpline could expand its services to provide resources or refer women to resources designed for women in sole practices and small firms. The current Practice Mentorship Initiative is also available to connect lawyers with experienced practitioners in relevant areas of law to help deal with complex substantive legal issues or specific procedural

[116] *Supra* note 21.

issues outside of the Law Society's advisory mandate. This program can already cater to the needs of women in sole practices and small firms.

384. In order to draw on external resources, the Law Society could also work with regional legal associations, such as the County and District Law Associations, and associations focused on promoting equity and diversity, such as the Women's Law Association of Ontario, to enhance its career and practice management advice services to women in sole practices and small firms.

Direct Support

385. In addition to the recommendations mentioned above, the Working Group proposes that the Law Society continue to provide direct resources to women in small firms and in sole practice, such as career, client and business development workshops and guidelines on effective marketing tips, career development options, and business development skills for women.

Resource Implications

386. It is anticipated that 0.2of a full-time equivalent position will be required to implement this recommendation. This recommendation would be implemented in incremental phases.

E-Working with Law Schools

Recommendation 6– Beginning at Law School

387. That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources.

388. Law schools in the U.S. and in Canada have begun offering programs to inform law students, in some cases gender specific programs for women law students, about the realities of the practice of law. In the U.S., the University of Maryland School of Law, for example, created a Women, Leadership and Equality Program. This program was designed to develop leadership skills in lawyers, both men and women, who are aware of the barriers to women assuming leadership in society and who will actively promote women in leadership roles. The Program consists of three components:

a. course offerings in women and leadership;
b. a fellowship program where students in their third year may do intensive field placements in organizations that advance women in society; and
c. a research component that fosters research on women and leadership across substantive areas of the law.

389. In Ontario, the Faculty of Law of the University of Toronto launched in 2006-2007 an innovative research course for upper-year students on the key elements of legal practice that make it difficult for legal employers to retain women and lawyers from Francophone, Aboriginal and equality-seeking communities. Three members of the profession worked closely with students to explore how to best overcome the barriers that equality-seeking groups encounter in the legal profession. The course was structured to conclude with a Summit that provided an opportunity for members of the profession to explore these barriers, focusing on issues of recruitment, retention, work and family responsibilities, discrimination, workload, billing, client assignments and culture, to name a few. Leading academics, lawyers, judges and others were invited to explore models for reform,

subject these ideas to rigorous scrutiny and try to continue the dialogue about how to move forward as a profession. The Summit also provided an opportunity for law students to present their research papers at a series of noon-hour round tables. The initiative was very well attended and participants found it a valuable learning and networking opportunity for students and members of the profession and the judiciary.

390. Other Ontario law schools have also begun implementing those types of programs.

Final Consultation Findings

391. There was general support for this recommendation. A number of lawyers commented that they were unprepared to take on the business of law, and that they had little information about the realities of practising law after law school. Some lawyers noted that it is important for the Law Society to increase its presence at the law schools.

Resource Implications

392. It is anticipated that this recommendation would be implemented in incremental phases so that additional resources would not be required. It is also expected that this recommendation would require the collaboration of law schools to be successful.

F- Women from Aboriginal, Francophone and/or Equality-Seeking Communities

Recommendation 7– Creation of Advisory Group

393. That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report.

394. In 2005, the Equity and Aboriginal Issues Committee adopted an Equality Template to be applied by the Law Society, including benchers and staff, to the development of policies and programs. The template defines the terms “equality” and “diversity” and recognizes the uniqueness of the Aboriginal and Francophone communities. The Template guides Law Society benchers and staff in considering equality principles when developing policies, projects and initiatives.

395. The Equality Template assists in identifying the potential impact, positive or negative, of policies and initiatives on Aboriginal, Francophone and equality-seeking communities. The instrument is also useful to determine whether there are alternative ways to proceed that would alleviate negative impacts on Aboriginal, Francophone and equality-seeking communities and promote equality.

396. The Working Group recognizes that women in private practice are not a homogeneous group of lawyers, and that they live different realities and experiences and may be more vulnerable due to their membership in Aboriginal, Francophone and/or equality-seeking communities. The Working Group is of the view that the Law Society’s Equality Template should not only guide the recommendations in this project, but be applied to the implementation of recommendations.

397. The Working Group has used an approach to its work that “[…] takes into account the historical, social and political context and recognizes the unique experience of the

individual based on the intersection of all relevant groups."[117] The Working Group hopes that the recommendations will influence the profession, more specifically those in private practice, to acknowledge the complexity of how women experience private practice, recognize that the experience of women in private practice may be unique and take into account the social and historical context of the groups.

398. Fundamental to this approach is the notion that grounds such as race and sex are interconnected, or that race, sex and disability are interconnected and they do not exist as disaggregated identities.[118] For example, a woman who belongs to a particular religion may be treated differently than a man of the same religion or a woman of a different religion. Women lawyers of racialized groups who have disabilities may be treated differently and have different experiences than women who are not racialized or do not have disabilities. The Working Group is of the view that women lawyers' membership in historically under-represented communities, their different experiences and the context in which they practise must be taken into account when developing strategies.

399. Women from Aboriginal, Francophone and/or equality-seeking communities often face significant and unique challenges in private practice in large and medium size firms. Understanding the nature of the challenges is essential to creating solutions to address them. Input from women who are also members of these communities will contribute to this understanding. Some progress has been accomplished through other consultations and studies, although they were conducted for purposes unrelated to this initiative.

400. Specific focus on issues and challenges experienced by women who are members of Aboriginal, Francophone and/or equality-seeking communities is required. Therefore, it is recommended that the Law Society include the perspective of those women lawyers throughout the implementation phase of the project, by creating an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities. The advisory group's role will be to provide expert advice in the implementation of the recommendations in this report. It is anticipated that the group would meet three times a year via teleconference call and network via email.

Final Consultation Findings

401. Those who commented on this recommendation voiced their support for the proposal.

Resource Implications

402. It is anticipated that the group would meet three times a year via teleconference call and network via email. The resource implications to implement this recommendation are minimal.

---

[117] This approach has been called an international approach. *An Intersectional Approach to Discrimination – Addressing Multiple Grounds in Human Rights Claims* (Toronto: Ontario Human Rights Commission, 2001) at 3.

[118] Devon W. Carbado and Mitu Gulati, "The Fifth Black Woman" (2000-2001) 11 Journal of Conteporary Legal Issues 701.

Recommendation 8– Networking

403. That the Equity and Aboriginal Issues Committee facilitate the development of networking strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities in firms of all sizes.

404. Research findings emphasize the importance of networking opportunities when entering and advancing in the legal profession and in private practice. Activities and programs offered by legal associations such as the Canadian Association of Black Lawyers, the AJEFO, the South Asian Bar Association, SOGIC of the OBA, ARCH Disability Law Centre and the Indigenous Bar Association have been critical to assist students and lawyers in the profession. The Working Group recommends that the Equity and Aboriginal Issues Committee facilitate, in collaboration with legal associations, the development of networks and strategies focused on the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

Final Consultation Findings

405. Those who commented on this recommendation voiced their support for the proposal.

Resource Implications

406. Resources required to implement this recommendation are dependent on the decisions of the Equity and Aboriginal Issues Committee.

G- Assessment

Recommendation 9 Review Programs and Next Steps

407. That, after a period of three years of implementation of programs, and after a period of five years of implementation of the Practice Locum program, the Law Society assess the effectiveness of each program and identify further strategies for the retention and advancement of women in private practice.

408. The Working Group is of the view that the effectiveness of programs implemented in the context of this project should be assessed after a period of implementation as specified in recommendation 9 to identify gaps and develop further strategies that may assist women in private practice. The Working Group recognizes that cultural and systemic change takes time. However, it believes that regular reviews of its programs will allow the Law Society to monitor their effectiveness and adapt the programs based on needs.

Resource Implications

409. The resource implications related to the evaluation of programs will be assessed and presented to the Finance Committee, if appropriate, once methodology is identified.

VIII – OVERALL RESOURCE IMPLICATIONS

410. Approximately $70,000 in funding will be available for the implementation of the Retention of Women Working Group recommendations in 2008. Demand on this funding and other Law Society resources required to implement the recommendations are summarized below.

411. It is anticipated that in subsequent years, 1.0 of a full-time equivalent position per year will be required, beginning in 2009, to continue to effectively implement the initiative.

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
1 Justicia project	0.3 of a full-time staff equivalent (beginning in 2009)	$15,000 for 2008 expenses to coordinate meetings will be covered by funds already approved by Convocation (Convocation already approved $70,000 for implementation of project) $15,000 per annum in 2009 and 2010 to coordinate meetings. $20,000 in 2011 to assess effectiveness of project.	
2 Direct support	0.3 of a full-time equivalent position (beginning in 2009)	$30,000 per annum to implement the Institute. It is anticipated that this would be offset by course revenues. Design of change of status survey estimated at up to $25,000 per annum, funded from existing budget in Equity Initiatives Department.	Incremental resource requirements may accumulate
3 Practice locums	0.3 of a full-time equivalent position (beginning in 2009)	Not expected to be material	
4 Parental leave	One additional staff member included in funding (see next column).	$600,000 per annum in 2009, 2010, and 2011. Thereafter to be determined.	

RECOMMENDATION	STAFFING	PROGRAM EXPENSE	OTHER
5 Direct resources	0.1 of full- time equivalent position (beginning in 2009)	Not expected to be material.	Incremental resource requirements may accumulate
6 Law school initiative	Not expected to be material.	Not expected to be material	Incremental resource requirements may accumulate
7 Advisory group	Nominal	Nominal	Teleconference three times a year.
8 Networking	Methodology to be determined.	To be determined	
9 Review	Methodology to be determined.	To be determined	
Total 2008	No additional position required	No additional funding required	
Total 2009 - 2011	1.0 of full-time equivalent per year	$600,000 per year	

SELECTED BIBLIOGRAPHY

Law Society of Upper Canada Studies

Bicentennial Report and Recommendations on Equity Issues in the Legal Profession (Toronto: Law Society of Upper Canada, May 1997)

Final Report of the Sole Practitioner and Small Firm Task Force (Toronto: Law Society of Upper Canada, 2005)

F.M. Kay, C. Masuch and P Curry, Diversity and Change: *The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004)

Fiona M. Kay, C. Masuch and P. Curry, *Turning Points and Transitions: Women's Careers in the Legal Profession* – A Longitudinal Survey of Ontario Lawyers 1990-2002 (Law Society of Upper Canada, September 2004)

Michael Ornstein, The *Changing Face of the Ontario Legal Profession*, 1971-2001 (Toronto: Law Society of Upper Canada, October 2004).

Promoting Dialogue Creating Change: Equity and Diversity in the Legal Profession (Toronto: Law Society of Upper Canada, 2003).

Retaining Women in Private Practice (Ottawa: Gandalf Group, 2007)

*Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment (*Toronto: The Strategic Communications, October 6, 2004) at 8

Students and Lawyers with Disabilities – Increasing Access to the Legal Profession (Toronto: Law Society of Upper Canada, 2005)

Other Canadian Law Societies

Addressing Discriminatory Barriers Facing Aboriginal Law Students (Vancouver: Law Society of British Columbia, 2000).

Merrill Cooper, Joan Brockman, and Irene Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, 2004)

Final Report on the Survey of Lawyers Moving to Retired and Inactive Status (Calgary: Law Society of Alberta, 2004)

Lawyers with Disabilities: Identifying Barriers to Equality (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

Report of the Small Firm Task Force (Vancouver: Law Society of British Columbia, 2007)

Model Policies Adopted by Law Societies

Law Society of Upper Canada
http://mrc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp.

Law Society of British Columbia
http://www.lawsociety.bc.ca/practice_support/articles/practice_intro.html#practice

Law Society of Alberta
http://www.lawsocietyalberta.com/resources/modelEquityPolicies/equityPolicies.cfm

Law Society of Saskatchewan
http://www.lawsociety.sk.ca/Equity/intro.htm

Law Society of Manitoba
http://www.lawsociety.mb.ca/equity.html

Nova Scotia Barristers' Society
http://www.nsbs.ns.ca/equity.html

Canadian Studies

The Honourable Wendy Baker "Structure of the Workplace or, Should We Continued to Knock the Corners Off the Square Pegs or Can We Change the Shape of the Holes?" (1995) 33 Alta. L. Rev. 821.

Beyond a Reasonable Doubt: Building the Business Case for Flexibility (Toronto: Catalyst Canada, 2005)

Beyond a Reasonable Doubt: Creating Opportunities for Better Balance (Toronto: Catalyst Canada, 2005).

Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility (Toronto: Catalyst Canada, 2006)

Carpe Diem, (2003) Lexpert 68.

Beppi Crosariol, "Summer jobs: Superapplicants only, please" *The Globe and Mail* (22 November, 2006).

Government Response to the Fifth Report of the Standing Committee on the Status of Women, *Interim Report on the Maternity and Parental Benefits Under Employment Insurance: the Exclusion of Self-Employed Workers*, presented to the House of Commons on September 18, 2006.

An Intersectional Approach to Discrimination – Addressing Multiple Grounds in Human Rights Claims (Toronto: Ontario Human Rights Commission, 2001) at 3.

Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law firm" (1995) 32 Osgoode Hall Law Journal 413.

Fiona Kay "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 McGill L.J. 699.

Lexpert, Diversity: *The Future Face of Bay Street* (March 2005) at 54.

Jean McKenzie Leiper, Bar Codes – *Women in the Legal Profession* (Toronto: UBC Press, 2006) at 183.

Jean McKenzie Leiper, "Women Lawyers Caught in the Time Crunch" (1998) 13 (2) Canadian Journal of Law and Society 117.

Elizabeth Sheehy and Sheila McIntyre, in *Calling for Change: Women, Law, and the Legal Profession* (Ottawa: University of Ottawa Press, 2006) at 4

The Honourable Bertha Wilson, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, August 1993)

Racial Equality in the Canadian Legal Profession (Ottawa: Canadian Bar Association, 1998) at 78-79

U.S. Studies

Deborah Arron and Deborah Guyol, *The Complete Guide to Contract Lawyering* (Seattle: Decision Books, 2004).

Association of the Bar of the City of New York Statement of Diversity Goals, see: http://www.abcny.org/pdf/diversity_principles2.pdf

Balanced Lives – Changing the Culture of Legal Practice (Washington: Commission on Women in the Legal Profession – American Bar Association, 2001)

Bar of San Francisco *No Glass Ceiling*, see: *http://www.sfbar.org/diversity/no_glass_ceiling.aspx*

"BASF's No Glass Ceiling Initiative Results in Huge Strides for Bay Area Women Attorneys," the Bar Association of San Francisco (July 12, 2005) at http://www.sfbar.org/about/releases/no-glass_ceiling_results.htm.

Devon W. Carbado and Mitu Gulati, "The Fifth Black Woman" (2000-2001) 11 Journal of Conteporary Legal Issues 701.

Catalyst, *Women in Law – Making the Case* (New York: Catalyst, 2001)

Chicago Bar Association's Alliance for Women, Call to Action, see http://www.chicagobar.org/calltoaction/

Creating Pathways to Success – Advancing and Retaining Women in Today's Law Firms (Washington: Women's Bar Association of the District of Columbia Initiative on Advancement and Retention of Women, 2006)

Fair Measure: Toward Effective Attorney Evaluations (Washington: American Bar Association Commission on Women in the Profession, 1997).

Flex-Time Lawyers LLC® see http://www.flextimelawyers.com/

Douglas M. McCracken, "Winning the Talent War for Women: Sometimes It Takes a Revolution" (2000) Harvard Business Review 3.

More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms (Boston: Women's Bar Association of Massachusetts Employment Issues Committee, 2007).

See Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (A): A Hole in the Pipeline" (2003) Harvard Business School.

Rosabeth Moss Kanter and Jane Roessner, "Deloitte & Touche (B): Changing the Workplace" (2003) Harvard Business School.

NALP Directory of Legal Employers (Washington: NALP, published annually)

Presumed Equal (Bloomington; AuthorHouse, 2006)

"66 Firms Commit to No Glass Ceiling for Women," the Bar Association of San Francisco at http://www.sfbar.org/about/noglassceiling/sixtysixnoglass.htm.

Stiller Rikleen, *Ending the Gauntlet – Removing Barriers to Women's Success in the Law* (New York: Thomson West, 2006)

Theda C. Snyder, *Women Rainmakers' Best Marketing Tips* (Washington: American Bar Association, 2007).

The Unfinished Agenda: Women and the Legal Profession (Washington: ABA Commission on Women in the Profession, 2001).

Vault Guide to the Top 100 Law Firms (New York; Vault, published annually).

Walking the Talk, Creating a Law Firm Culture Where Women Succeed (Washington: American Bar Association, 2004)

Women Lawyers and Obstacles to Leadership (Boston: Equality Commission, 2007)

U.K. and New South Wales

Locums are go! September 1, 2005 Law Gazette.

Risk Management for Sole Practitioners – Protecting your Practice in Emergencies (London: Law Society of England and Wales, 2001).

Tab 1

THE CHALLENGES FACED BY WOMEN

A - The Legal Profession in Canada

1. Gender-based challenges faced by women in the legal profession, more specifically in private practice, are well documented. The following provides an overview of some of the findings that indicate significant differences in the experiences of women and men in the legal profession, and show that systemic and cultural norms within the profession have not changed to the extent necessary to be fully inclusive of women's realities. The following studies were reviewed:
   a. Catalyst Canada, *Beyond a Reasonable Doubt: Creating Opportunities for Better Balance;* [119]
   b. Catalyst Canada, *Beyond a Reasonable Doubt: Building the Business Case for Flexibility*;[120]

[119] *Creating Opportunities, supra* note 28. Catalyst surveyed 1,439 lawyers from law firms across Canada to explore lawyers' experiences in managing their work and personal responsibilities, perceptions of the law firm environment and attitudes towards the use of flexible work arrangements.

[120] *Business Case, supra* note 23.

c. Catalyst Canada, *Beyond a Reasonable Doubt: Lawyers State Their Case on Job Flexibility*;[121]
d. Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002;*[122]
e. Jean McKenzie Leiper, *Bar Codes – Women in the Legal Profession;*[123]
f. Law Society of Alberta, *Final Report on Equity and Diversity in Alberta's Legal Profession*;[124]
g. Law Society of Alberta, *Final Report on the Survey of Lawyers Moving to Retired and Inactive Status*;[125]
h. Canadian Bar Association entitled *Racial Equality in the Canadian Legal Profession;*[126]
i. *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession.*[127]

Maintaining Family Life While in Private Practice

2. Both men and women identify time spent with their family as the aspect of their lives that gives them the most satisfaction, a demanding law career often conflicts with family life

---

[121] *Job Flexibility, supra* note 46.

[122] *Women's Careers*, *supra* note 20. In 2004, Professor Fiona Kay concluded a twelve-year longitudinal study in which she surveyed more than 1,500 Ontario lawyers called to the bar between 1975 and 1990, about half women and half men. The survey was first conducted in 1990. In 1996, Professor Kay surveyed the same cohort of participants. The third wave of the longitudinal study was conducted in 2002, with a third survey with the same participants.

[123] (Toronto: UBC Press, 2006) at 183. Jean McKenzie Leiper published the results of a qualitative study in which she interviewed 110 women practising law throughout the province of Ontario to determine whether the experiences of women signaled broad changes in the culture of the legal profession in the past thirty years. Participants were asked about their careers and how they had taken shape in light of their family and community interests.

[124] Merrill Cooper, Joan Brockman, and Irene Hoffart, *Final Report on Equity and Diversity in Alberta's Legal Profession* (Calgary: Law Society of Alberta, 2004) [*Law Society of Alberta Equity Report*]. In 2003, the Law Society of Alberta published its *Final Report on Equity and Diversity in Alberta's Legal Profession.* The objectives of the study were to determine if and how changes have occurred since a 1991 study on gender bias; to collect baseline data on the nature and extent of bias in the profession on grounds of discrimination including gender, race, ethnicity, religion, disability, and sexual orientation; and to collect information about lawyers who move to the inactive list and their reasons motivating their decisions.

[125] (Calgary: Law Society of Alberta, 2004) [*Retired and Inactive Status Survey*].

[126] (Ottawa: Canadian Bar Association, 1998) at 78-79 [*CBA Racial Equality Report*].

[127] (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

and is the most common reason for leaving law practice. The most immediate issues for women in private practice result from childbirth and parenting responsibilities. Studies show that women in the legal profession still take on significantly more of the responsibilities related to childcare than their male counterparts, with men spending 13 hours per week compared to women spending 35 hours per week on childcare.[128] This is true even though women with very young children, adult children and no children work the same mean number of hours as men within the profession.[129]

3. Findings also indicate that women lawyers, especially women associates, disproportionately feel the challenge of managing work with pursuing family responsibilities.[130]Men partners' perceptions and experiences of work-life balance are often different, sometimes dramatically, from those of women partners, women associates and men associates, and the gap in satisfaction levels between men and women lawyers is most pronounced between men partners and women associates. Generally speaking, men partners report higher levels of overall satisfaction with the work environments of their firms, regardless of variables such as practice group, region, firm size or age. It is noteworthy that in *Creating Opportunities*, forty-two percent of men lawyers with children report they have spouses who do not work outside the home, in comparison to ten percent of women lawyers with children. Of men lawyers with children and a spouse who does not work outside the home (76 percent of whom are partners), 49 percent express difficulty managing the demands of work and family life. In comparison, 74 percent of women lawyers with children and a spouse employed full-time (48 percent of whom are partners) express difficulty managing the demands of work and family life.[131] Studies also indicate that women often postpone parenthood in favour of career advancement and are the subject of negative reactions by partners and managers when they announce their pregnancies.[132]

4. Women are leaving the profession, and more particularly private practice, earlier in their careers and in greater numbers than men due in large part to billable hour demands, lack of flexibility, lack of accommodation for childcare, stressful practices, unavailability of part-time partnerships, part-time employment, predictable hours, job sharing and flexibility in hours, lack of networking opportunities and role models in the upper echelons of law.[133]

---

[128] *Women's Careers, supra* note 20.

[129] Women with school-age children work slightly reduced full-time hours. Kay, *Women's Careers, supra* note 20 at 57.

[130] *Creating Opportunities, supra* note 28.

[131] *Creating Opportunities, supra* note 28 at 10.

[132] Jean McKenzie Leiper, *Women in the Legal Profession - Bar Codes* (Vancouver; UBC Press, 2006).

[133] See *Creating Opportunities, supra* note 28; *Business Case, supra* note 23; and *Job Flexibility, supra* note 46. See also Jean McKenzie Leiper, "Women Lawyers Caught in the Time Crunch" (1998) 13 (2) Canadian Journal of Law and Society 117.

5. Although benefits offered by employers have improved over the years, there appears to be a decline in the part-time work, flexible hours, job sharing, or part-time partnerships opportunities in private practice. The availability of paternity and maternity leave has remained stable, but women take the majority of parental leaves.[134] Lawyers in non-private practice generally receive superior benefits than those in private practice, such as medical insurance, dental plans, sick leave, long-term disability income support, pension plans, leaves of absences and sabbaticals, job sharing and part-time work arrangements available in their work place.

6. Lawyers' satisfaction with their ability to manage work and maintain their family responsibilities varies according to the size of their firms. While more men associates are satisfied in large firms, fewer women associates are satisfied in that setting. As firm size increases, fewer men and women partners are satisfied with their ability to manage work and their family responsibilities. [135]

7. Results of studies undertaken by other law societies in Canada reveal similar challenges. In Alberta, for example, about half of the lawyers leave practice either permanently or temporarily, due to dissatisfaction with the practice of law, dissatisfaction with their place of employment and/or the pursuit of more personally rewarding opportunities elsewhere.[136] Women lawyers who are employed as law firm associates are more likely to move to inactive status if they have children. Many women with children report that they have deliberately chosen to work for the government in order to access maternity leave benefits, accommodate their parenting responsibilities, and achieve better work-life balance. Lawyers who have moved to inactive status say that they were extremely dissatisfied with the hours of work and billing expectations associated with private practice. It was generally agreed that the legal profession, and private practice in particular, is inhospitable to women with children.

<u>Work Environment</u>

8. Studies also show that women's career paths in the legal profession differ significantly from men's career paths. For example, women are more likely than men to enter the legal profession in governmental positions or in work settings outside of private practice.[137] This may be the case in part because of benefits and fewer work hours.

---

[134] *Women's Careers, supra* note 20 at 109.

[135] *Creating Opportunities, supra* note 28 at 10. In the Catalyst analysis, large firms are firms with more than 301 lawyers, mid-size firms have between 151 and 300 lawyers and small firms have 150 lawyers or less.
Twenty-five percent of women associates in large firms are satisfied with their ability to manage work and personal/family responsibilities, in comparison to 38 percent of men associates. More women in mid-size firms are satisfied (53 percent) in comparison to women partners in large firms (39 percent).

[136] *Retired and Inactive Status Survey, supra* note 125. See also *Law Society of Alberta Equity Report, supra* note 124.

[137] *Women's Careers*, supra note 20, at 64-65. See also F.M. Kay, C. Masuch and P. Curry, *Diversity and Change: The Contemporary Legal Profession in Ontario* (Toronto: Law Society of Upper Canada, 2004) [*Contemporary Legal Profession*].

Although the vast majority of lawyers work on a full-time basis, women are more likely to work part-time.[138] Initial jobs tend to be full-time, and part-time jobs increase in frequency among women as they move through their careers.[139]

9. Approximately one in four Canadian lawyers employed in law firms report having used a flexible work arrangement, but about six times as many women lawyers reported using some kind of part-time flexible work arrangements compared to their male counterparts.[140] Most lawyers still perceive full-time or part-time flexible work arrangements to be career limiting,[141] and they believe that those who enter into flexible work arrangements could never become partners as the flexible work arrangement limits their professional development.[142]

Job Interruptions

10. There are gender differences in the number of job interruptions and types of activities between professional positions. Generally lawyers move between professional positions without interruptions. However, interruptions are more likely to occur for women and women are more likely than men to report child care as a primary activity during work interruptions, while men are more likely to travel or to undertake education and professional development activities that impact positively on their career advancement.[143]

Partnership

11. Although the majority of lawyers work in the private practice of law, men are more likely than women to be made partners, while women are considerably more likely than men to

---

[138] By the third position held, 15% of women and 4% of men worked part-time. By their 4th and 5th positions, 17% of women and 3% of men, and 26% of women and 2% of men respectively worked part-time.

[139] *Women's Careers, supra* note 20 at 63.

[140] Telecommuting means that individuals work some or all of their 40 hours off-site, often at home. Flextime means that while the number of hours worked and billing requirements remain constant, the individual decides when he/she comes into the office and when work is actually done.

[141] Other types of flexible arrangements include a "compressed work week" where individuals work their expected hours in a smaller block of longer days in a week, or in a smaller block of longer weeks in a month. There are also "part-time flexible" work arrangements, such as "job sharing", where at least two or more lawyers share the responsibilities of one full-time lawyer, and "reduced work schedule" or "part-time" where lawyers work fewer hours or fewer days.

[142] For the purpose of the report, a flexible work arrangement was defined as "explicit conditions of employment involving adjustments of hours, scope and/or place of work for a sustained period of time (mutually agreed upon) between associates and the firm and between partners and the firm or the firm's management committee". See *Job Flexibility, supra* note 46, Executive Summary.

[143] *Women's Careers, supra* note 20 at 67.

leave the practice of law.[144] There are significant differences not only between the percentage of men and women who are partners, but also in the types of partnership arrangements they occupy.[145] In Professor Kay's study, the lawyers who continued to practise were well along in their careers, with between 12 and 27 years experience in the profession when they were surveyed.[146] By then, it would have been expected that most would have attained partnership status. However, men were much more likely than women to be partners (78% of men and 65% of women), men were more often senior partners (71% of men and 51% of women) and women were more likely to be junior partners and to hold alternative types of partnerships such as salaried or part-time partners (18% of men and 40% of women).[147]

12. In 2003, Lexpert magazine noted, "The inescapable reality is that women are the child bearers and still the primary caregivers on the home front. Also inescapable are the demands of practice in large firms."[148] The article notes that the average percentage of women equity partners in a select number of major Canadian firms is 20%. Reasons given for such a low percentage include firms' expectation of high billable hours and lack of work life balance at the partnership level.

Women from Aboriginal, Francophone and/or Equality-Seeking Communities

13. Women from Aboriginal, Francophone and/or equality-seeking communities often face greater challenges due to their membership in those communities. Racialized and Aboriginal lawyers face significant challenges when entering private practice and they are more likely than non-racialized lawyers to leave the practice of law because of an inability to find a job.[149] Changes are warranted in law firms, including ensuring that marketing initiatives are consistent with equality principles, reviewing recruitment criteria, developing and publicizing criteria for

---

[144] In second jobs, 10% of women were not practising law compared with 8% of men and in third jobs, 11% of women were no longer practising law, compared with 9% of men. By the fourth position, 18% of women and 16% of men were not practising law.

[145] *Women's Careers, supra* note 20 at 37.

[146] See also Fiona M. Kay and John Hagan, "Changing Opportunities for Partnership for Men and Women Lawyers during the Transformation of the Modern Law Firm" (1995) 32 Osgoode Hall Law Journal 413. Fiona Kay also looked at gender disparities in the Quebec legal profession in "Crossroads to Innovation and Diversity: The Careers of Women Lawyers in Quebec" (2002) 47 McGill L.J. 699. The Honourable Wendy Baker discusses the structure of the workplace in the legal profession from the perspective of a woman who has practised law for fifteen years and who is a member of the Supreme Court of British Columbia. See "Structure of the Workplace or, Should We Continue to Knock the Corners Off the Square Pegs or Can We Change the Shape of the Holes?" (1995) 33 Alta. L. Rev. 821.

[147] *Women's Careers, supra* note 20 at 106. Law Society statistics indicate that 82% of partners are men compared to 18% of women.

[148] *Carpe Diem,* (2003) Lexpert 68 at 70.

[149] See *Law Society of Alberta Equity Report, supra* note 124. See *CBA Racial Equality Report, supra* note 119.

the evaluation of legal work, consistently applying and reviewing performance appraisal processes, ensuring that law firm internal complaints procedures and policies provide effective remedies and conducting exit interviews to assist in identifying patterns of direct or systemic discrimination.[150]

14. Lawyers with disabilities also face barriers entering and remaining in the legal profession, more particularly in private practice.[151] They are more likely than lawyers without disabilities to leave private practice because of illness or injury and involuntary loss of employment, inability to find a job practising law, discrimination and lack of credit for work.

15. Women who are members of equality-seeking communities face heightened vulnerabilities in the profession. For example, lawyers with disabilities report facing challenges in private practice because of attitudes and assumptions that disabilities hinder the ability to practise, and because of issues of accessibility. Aboriginal women say they suffer considerable sexist oppression and harassment and that they have to do more networking and be more visible in the legal profession to advance. Racialized women state that they experience discrimination on the basis of race, most often in combination with gender, and most of the participants felt that it had affected their careers. They also note the dearth of racialized women lawyers as partners in major law firms.

B - Sole Practice and Small Firms – Unique Challenges

16. Women in small firms[152] and sole practices face challenges that are unique to the firm size and the nature of sole practice. Women in sole practice consistently raise two significant issues, the hardship of trying to maintain an income during a leave of absence, and the difficulties in maintaining their practice during a leave.[153] Women also note that they have little access to business and client development and networking opportunities. Many women opt for sole practice after leaving large or medium firms, but they find that they are not trained for, and had not planned to be, sole practitioners.

17. The *Report of the Sole Practitioner and Small Firm Task Force*[154] points to the difficulties faced by women sole practitioners or women who are partners or associates in small firms. The study includes in the target group lawyers in sole practices and small firms of five or fewer lawyers. Twenty-one percent of respondents in the target group

---

[150] *Addressing Discriminatory Barriers Facing Aboriginal Law Students* (Vancouver: Law Society of British Columbia, 2000).

[151] *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, 2005). See also *Lawyers with Disabilities: Identifying Barriers to Equality* (Vancouver: Law Society of British Columbia, 2001) and *Lawyers with Disabilities: Overcoming Barriers to Equality* (Vancouver: Law Society of British Columbia, 2004).

[152] We refer here to small firms as firms of five lawyers or less.

[153] *Retaining Women, supra* note 20.

[154] *Sole and Small Report, supra* note 20.

were women compared with 33% of the non-target group. The report provides the following findings:

a. Within the target group, women are more likely to be associates or employees of small firms (33%), and less likely to be partners in those firms (13%).
b. Although women enter the legal profession in greater numbers each year, they are under-represented in the target group and are over-represented as associates or employees and under-represented as partners.
c. All other factors being equal, men are likely to earn more than women.
d. In the focus groups with lawyers from equality-seeking communities, women reported more serious concerns over low income than did men.
e. Gender differences were perceived by the women participants to be fundamental in shaping perceptions related to managing work and life. Women discussed specific drawbacks of the practice context and the many disadvantages that women face in practising law. Women all agreed that practising law in a sole practice or small firm environment imposed very serious restrictions on the viability of having children.[155]
f. Participants noted the lack of maternity leave benefits. All participants conceded that the decision to have a child meant serious sacrifices with respect to their capacity to practise law.
g. Women focus group participants discussed issues of sexual harassment and condescension toward women within the legal profession and reported that sexual harassment is pervasive.

18. This situation is not unique to Ontario. Following its Benchers' Retreat in June 2005, the Law Society of British Columbia created a Small Firm Task Force to consult with sole and small firm practitioners and to make recommendations to benchers on how the Law Society of British Columbia might take meaningful steps to strengthen and support sole and small firm practice. Although the Task Force did not undertake a study about the challenges faced specifically by women in small firms and sole practices, the challenges and recommendations identified by the Task Force are relevant to women's experiences.[156] More particularly, many sole and small firm lawyers reported that it is difficult if not impossible to take time off from the practice of law because there is no one available to provide essential services to their clients in the interim. This concern is particularly acute for women who are more likely to take, or to want to take, maternity and/or parental leaves.

C – U.S. Experience

19. Women in other common law jurisdictions appear to face similar challenges to Canadian women lawyers in private practice. Research and the development of best practices to retain women in private practice have been underway in the United States for decades and are relevant to the Law Society initiative.

---

[155] *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment* (Toronto: The Strategic Communications, October 6, 2004) at 8 [*Equality-Seeking Communities – Small Firm Environment*].

[156] See *Report of the Small Firm Task Force* (Vancouver: Law Society of British Columbia, 2007) [*Law Society of British Columbia Small Firm Report*].

20. As in Canada, both men and women rank the conflict between family and work life as one of the most significant barriers to success in private practice in the U.S. While those with children report the highest levels of conflict, men and women without children also find it difficult to balance their professional and personal life.[157]

21. One of the most comprehensive studies to describe the challenges faced by women in private practice, and one that outlines findings from various other studies, is Lauren Stiller Rikleen's Ending the Gauntlet – *Removing Barriers to Women's Success in the Law*.[158] She describes the experiences of women in law firms in the United States and provides insights into the systemic practices that law firms should address to increase women's chances of advancement and retention. The following components of law firms' practices increase the difficulties faced by women in private practice:
    a. The single most important managerial activity in a professional service firm is good client files. However, assignment of files processes are generally "steeped in mystery and riddled with discretion", which tends to disadvantage women.[159]
    b. The increase in billable hour demands, combined with technology's expanded opportunities for instant communications and faster results is an impediment to women's advancement in large firms. Women with family responsibilities find it difficult to put in 70 to 80 hour weeks and the billable hour system does not value efficiency in work habits.[160]
    c. The emphasis on creating rainmakers, lawyers with high ability to attract clients, and the failure to promote team work in business development efforts means that women are often disadvantaged by not inheriting work and are often excluded from client development processes.[161]
    d. Firms establish their own compensation systems, which are often not transparent.[162]
    e. Because success in a law firm depends largely on a combination of challenging assignments and exposure to clients, the key to a lawyer's success is often due to the help of a strong mentor. Women are often excluded from informal mentoring relationships. Therefore, formal mentoring programs are encouraged, and mentors should be encouraged to not only protect the mentee, but actively promote women lawyers to clients and partners.[163]

---

[157] Catalyst, *Women in Law – Making the Case* (New York: Catalyst, 2001). See also *Ending the Gauntlet, supra* note 54; *Obstacles to Leadership, supra* note 54; *Pathways to Success, supra* note 54; *Balanced Lives, supra* note 54. A U.S. Catalyst's 2001 study of 1400 lawyers found that 70% of both men and women report work/life conflict. A third of male respondents, and almost half of female respondents identify work/life balance as one of their top three reasons for choosing their employer.

[158] *Ending the Gauntlet, supra* note 54.

[159] *Ibid.* at chapter 3.

[160] *Ibid at* chapter 4.

[161] *Ibid at* chapter 5.

[162] *Ibid at* chapter 6.

[163] *Ibid at* chapter 7.

f. Law firms generally have great difficulty implementing effective reduced ours policies, when they exist. The law firm culture has made it difficult to allow parents to reduce their full-time commitment to the practice of law and still remain valued lawyers. This has had a particularly detrimental impact on women, resulting in decisions to leave the practice of law. Most law firms use the existence of their written reduced hours policies as recruitment tools to demonstrate a commitment to family. However, statistics reveal that most lawyers are worried about adverse career repercussions to take advantage of them. Women often believe that their status as a part-time lawyer would affect their advancement to partnership.[164]

g. Partnership evaluation processes and criteria are often subjective and many women are frustrated with vague criteria and little meaningful feedback. Women in Rikleen's study indicated that the importance of business development as a key element of partnership consideration is a source of great frustration for them. Lawyers are told to work hard and bill a lot of hours. However, embedded in the firm's subjective evaluation process is the potential of being a rainmaker and women do not receive adequate business development training to effectively fulfill that role.[165]

h. Women are often not well represented at the firms' management level including at the Managing Partner level, the executive committee level, in substantive law groups, and in firms' multiple locations and branch offices.[166]

i. The perception that flexible hours policies are an accommodation for women, as opposed to a focused effort by the firm to retain talent, manifests itself in a casual approach to the success of reduced hours arrangements.[167]

Tab 2

JUSTICIA THINK TANK – PROPOSED LAW FIRM COMMITMENT

Statement of Diversity Principles

1. The Law Society of Upper Canada and the law firm signatories ("Participating Law Firms") hereto acknowledge the challenges faced by the legal profession in general and law firms in particular in the retention and advancement of women.

2. To this end, we commit to the following principles and pledge to participate in the Law Society Justicia Think Tank for the retention and advancement of women and encourage other law firms in the Province of Ontario to do the same.

---

[164] *More than Part-Time: The Effect of Reduced-Hours Arrangements on the Retention, Recruitment and Success of Women Attorneys in Law Firms* (Boston: Women's Bar Association of Massachusetts Employment Issues Committee, 2007).

[165] *Ending the Gauntlet, supra* note 54 at chapter 10.

[166] *Ibid* at chapter 13.

[167] *Ibid* at 261.

3. We also recognize that women in the Participating Law Firms are diverse by virtue of, but not limited to, ethnicity, ancestry, place of origin, colour, citizenship, race, religion or creed, disability, sexual orientation, marital status, age and/or family status. We will take into account this diversity when implementing this initiative.

Participating Law Firms Commitment

4. Each Participating Law Firm commits to participate in this project for three years.

5. The Participating Law Firm managing partners ("Managing Partners Network Group") will attend a minimum of two summit meetings of the Justicia Think Tank in each calendar year. It is anticipated that summit meetings will last between 1 and 2 hours.

6. Each Participating Law Firm will nominate a partner and/or a director of students, associates and/or partners who has the expertise and knowledge of issues related to diversity and the advancement of women in the firm, to have operational responsibility for the Justicia Think Tank ("Gender Diversity Officer").

7. The Gender Diversity Officers will attend such regular meetings as are required to advance understanding of issues affecting women and develop best practices and programming and will serve as a liaison between the Law Society and the Participating Law Firm ("the Gender Diversity Officers Working Group"). Consideration will be given to the needs of women from Aboriginal, Francophone and/or equality-seeking communities.

8. The Participating Law Firms will develop a system to maintain statistical data about gender in the composition of the firm. Participating Law Firms will record their individual firm gender statistics on such matrices as articling student composition, articling student hire back, advancement into income and equity partnership, number of women in management roles, attrition rates from the associate and partner ranks and such other criteria as may be agreed to. The firms will also consider whether they wish to maintaining statistical data about membership in Aboriginal, Francophone and/or equality-seeking communities.

9. By the end of 2011, Participating Law Firms will commit to having effective written policies, based on their organization's needs and culture, with respect to maternity, parental and adoption leave, flexible work arrangements, and to revise existing policies, if any, with respect to partnership admission, and consider the impact of flexible work or maternity leave arrangements on partnership admission.

10. Participating Law Firms will monitor and measure their own experiences with the programs and, on a voluntary basis, share these with the Law Society and Participating Law Firms in order to develop best practices that can be shared with the profession.

The Law Society of Upper Canada's Role

11. The Law Society of Upper Canada will,
    a. coordinate the Justicia Think Tank and provide expertise, advice and administrative support for the project;

b. coordinate a Managing Partners Network Group, organize at least two Justicia summit meetings[168] in each calendar year and provide administrative support to the Managing Partners Network Group;
c. coordinate regular meetings of the Gender Diversity Officers Working Group with the objective of advancing understanding of issues affecting women, developing best practices and programming, serving as a forum for information sharing between participating firms and the Law Society, and providing administrative support to the Gender Diversity Officers Working Group;
d. coordinate teleconference meetings of an advisory group of women from Aboriginal, Francophone and/or equality seeking communities,
e. provide advice and expertise to assist Participating Law Firms in the implementation of programs.

12. The following are the types of activities that the Law Society will undertake,
a. develop guidelines and templates on recording demographic data;
b. collect and disseminate to the Participating Law Firms examples of flexible work arrangements policies and seek input with respect to best practices with a view of developing an Ontario Flexible Work Arrangements Policy;
c. provide the Participating Law Firms with models of networking and business development activities tailored for women lawyers and clients, to identify best practices with respect to business development training for women;
d. provide the Participating Law Firms with models of mentoring and leadership skills development models for women.
e. promote best practices in the legal profession as a whole;
f. assess the effectiveness of the project and identify next steps with Participating Law Firms and in the legal profession.

Project Description

13. The three-year project with Participating Law Firms will begin in 2008 with the commitment of firms to participate in the project. It will run until end of 2011, followed by an assessment period and identification of next steps.

14. The <u>first step</u> of the project, to be conducted during the first half of 2008, will involve a period of networking with firms to encourage them to commit to the project. This period will also allow the firms to designate Gender Diversity Officers. The Law Society will coordinate the first summit meeting of Managing Partners during 2008, and will schedule regular meetings of the Diversity Gender Officers Working Group.

15. The <u>second step</u> of the project is a three-year period, between 2009 and end of 2011, during which Participating Law Firms will develop and implement programs, with the collaboration and assistance of the Law Society. The programs will focus on the following four core areas: tracking demographics; parental leave program and flexible work arrangements; networking and business development; and mentoring and leadership development skills for women. The development and implementation of each program will be staggered to ensure that Participating Law Firms have established the appropriate resources to optimize the effectiveness of the programs. The Law Society will coordinate at least two Managing Partners' summit meetings in each calendar year and regular Gender Diversity Officers Working Group meetings.

[168] It is anticipated that the summit meetings will last between 1 to 2 hours.

16. The third step of the project will include the following:
    a. an assessment of the programs to identify best practices and develop model policies and guidelines;
    b. communication of best practices to the legal profession as a whole;
    c. identification of other law firms that may wish to implement best practices; and
    d. establishment of next steps with Participating Law Firms.

Step 1 – Selection of Firms - 2008

17. The Law Society will invite all firms with over 25 lawyers, and the two largest firms in each region, to participate in the three-year project. The Law Society will also welcome firms of 6 to 25 that wish to participate.

18. Participating Law Firms will designate a Gender Diversity Officer to act as liaison in the Justicia Think Tank.

19. The Law Society will organize the first Managing Partners summit meeting in 2008. The Law Society will schedule regular meetings of the Gender Diversity Officers Working Group.

Step 2 – Programs

20. During the three-year period the Justicia Think Tank will focus on the following four core areas: tracking gender demographics, parental leave program and flexible work arrangements, networking and business development, and mentoring and leadership skills development for women. The Law Society will organize at least two Justicia Think Tank summit meetings in each calendar year and will organize regular Gender Diversity Officers Working Group meetings.

Programs Mid – 2009
Launch of Tracking Demographics and Flexible Work Arrangements Programs

21. In 2009, the Justicia Think Tank will focus on the development of the two following programs with Participating Law Firms: tracking gender demographics and parental leave program and flexible work arrangements. Participating Law Firms will develop the following programs based on their firm needs and culture and work with the Law Society to develop best practices.

- *Demographic Framework*

22. The Law Society and the Participating Law Firms will develop a template to track gender demographics, which may guide Participating Law Firms in developing their tracking methodology. The template will include gender demographics about articling student composition, articling student hire back, advancement into income and equity partnership, numbers of women in management roles in the firm, attrition rates from the associate and partner ranks and such other criteria as may be agreed to.

23. Participating Law Firms will begin tracking gender demographic information once the system is in place and before 2010. Results will be kept confidential to each law firm, and the Law Society will not monitor or request that the Participating Law Firms report demographics. However, Participating Law Firms may agree to share some or all of their data or to share general trends.

- *Parental Leave Program and Flexible Work Arrangements*

24. Beginning in mid-2008, the Law Society, with the collaboration of the Participating Law Firms, will focus on the collection of examples of parental leave program and flexible work arrangements policies in Canadian and US law firms, with a goal to creating a draft Ontario Flexible Work Arrangements Model Policy. This stage includes gathering information and seeking input with respect to best practices on creating and monitoring flexible work arrangements that are suitable for individual lawyers and his or her practice group.

25. Participating Law Firms will review their existing written policies relating to maternity, parental and adoption leave, flexible work arrangements, accommodations and partnership admission to consider incorporating the impact of flexible work arrangements or maternity leave arrangements on partnership admission. Participating Law Firms will consider developing, with the assistance of the Law Society if required, their own written policies relating to those topics.

26. Participating Law Firms will begin working with their teams and their practice groups to support such arrangements, to ensure that there is full acceptance and understanding throughout the firm of the benefits of these arrangements and to ensure that there is transparency about how the flexible work arrangements are constructed and granted. Participating Law Firms will monitor the effectiveness of flexible work arrangements.

Programs 2010
Launch of Networking and Business Development Initiative

27. In 2010, the Participating Law Firms will continue to build on existing programs by examining the current allocation of their business development resources and networking opportunities, taking into account allocation by gender, to better understand the focus and allocation of resources.

28. The Law Society, in collaboration with Participating Law Firms, will share information about business development and networking opportunities specifically tailored for women lawyers and women clients. They will undertake a review of best practices with respect to business development training for women.

29. Participating Law Firms will develop a strategic business development plan and allocate appropriate resources to implement effective business development opportunities and networking opportunities focused on women lawyers' needs and women clients.

Programs 2011 –
Launch of Mentoring and Leadership Skills Development for Women

30. In 2011, the Law Society, with the collaboration of the Participating Law Firms, will identify various models of mentoring and leadership skills development programs.

31. Participating Law Firms will, through consultation, identify what women in their firms need and want regarding mentoring and leadership development opportunities, and identify the resources to support those programs. Participating Law Firms will consider whether women lawyers are well represented throughout the firm, as group leaders, committee members, including executive and compensation committee members, and other positions of leadership. The Participating Law Firms will identify gaps and develop strategies to enhance women's participation in the leadership of the firm.

32. Participating Law Firms will consider the various models and begin to implement, as a pilot, forms of mentoring for women, which will include but not be limited to substantive legal mentoring of women; individual and peer-to-peer group career mentoring of women as well as supportive programs.

Step 3 – Promotion of Best Practices and Next Steps

33. In 2012, the Law Society will coordinate meetings with Participating Law Firms Managing Partners and Gender Diversity Officers to share information about the success of their programs and work with the Law Society to identify best practices on tracking demographics, flexible work arrangements, networking and business development programs and mentoring and leadership development programs. Model policies and guidelines will be developed, if appropriate, for each program.

34. The Law Society, with the assistance of Participating Law Firms, will share and promote the best practices and model policies and guidelines to the profession as a whole, with a goal of creating a broad-based commitment from the profession.

35. The Law Society will identify law firms that wish to adopt a project to roll out the programs designed in this project.

36. The Law Society will work with Participating Law Firms to identify next steps.

Timelines

Programmes	2008	2009	2010	2011	2012
Launch	Firms commit. Firms designate a Gender Diversity Officer.				
Tracking Demographics		Law Society and firm develop template. Firms develop tracking system.	Firm implement tracking	Firm implement tracking	
Flexible Work Arrangements		Law Society collects examples. Firms review their policies. Firms consider adopting policies. Firms begin implementation.	Firms continue implementation	Firms continue implementation	
Networking			Firms examine	Firms continue	

and Business Development			allocation of resources. Law Society provides information about models. Firms implement.	implementation.	
Mentoring and Women in Leadership Roles				Law Society provides models. Firms consult to assess need. Firms begin implementing.	
Completion and Next Steps					Meeting of firms – sharing information. Promotion of best-practices to legal profession. Roll out to other firms. Identification of next steps. Assessment of program

Tab 3

Parental Assistance Program for Self-employed Workers

The text that follows is a summary of the rules governing the maternity and paternity assistance program for lawyers who are member of the Barreau du Québec, which were approved by the general meeting of members of the Barreau du Québec on May 31, 2003. The complete text of the rules is available on the internet site of the Barreau du Québec or on request to member services.

In the event of discrepancy between the text that follows and the rules, the rules govern.

Objectives of the Program

The Program is for lawyers who have no financial support, as listed in the eligibility criteria, when a child is born to them or adopted by them. Its purpose is to cover a portion of the operating costs incurred for running an office during a certain period while professional activities are suspended because of the birth or adoption of a child.

Eligibility

The Program is not intended to replace existing public or private assistance programs. As well, in order to receive benefits under the program, members must not be covered by:

1. an employment insurance plan or any other government program of the same nature;
2. a partnership contract;
3. a policy at the firm or organization where they practice;
4. an individual agreement with the firm or organization where they practice;
5. any other form of income replacement, except for any support received from family members or a spouse's family members.

Three Types of Benefits

The program provides three types of benefits.

Maternity (maximum 3 months)

These benefits are intended for:

- lawyers who give birth to a child after January 1, 2005;
- lawyers who are pregnant and, on medical advice, have to cease professional activities prior to delivery, where delivery occurs after January 1, 2005;
- lawyers whose pregnancy is interrupted after the 19th week of pregnancy, where the interruption occurs after January 1, 2005.

Parental (maximum 1 month)

These benefits are intended for members who become parents after January 1, 2005. If both parents are members of the Barreau, either parent may claim benefits.

Adoption (maximum 1 month)

These benefits are intended for members who adopt a child after January 1, 2005. If both parents are members of the Barreau, either parent may claim benefits.

In all cases, the member must cease professional activities for the period for which benefits are requested, the objective of the Program being to cover a portion of the operating costs incurred during a certain period while professional activities are suspended because of the birth or adoption of a child.

Combining Benefits

It is possible for a lawyer to combine maternity benefits and parental benefits. In all cases, benefits will be paid for a maximum of four months for any birth. Accordingly, if both parents are members of the Barreau, only one may claim parental benefits. Parental benefits may be paid before the end of the maternity benefit period.

For the purpose of the Program, the birth of more than one child as a result of a single pregnancy and the adoption of more than one child at the same time will be considered to be a single birth and a single adoption.

Benefit Amount

The amount of the benefits offered by the Barreau du Québec is:

- $1,500 per month in the event that operating expenses, calculated on a monthly basis, are equal to or greater than $1,500;

or

- the actual amount of the operating expenses, calculated on a monthly basis, if they are less than $1,500 per month.

For the purposes of the Program, operating expenses are expenses eligible for tax deduction as expenses incurred in the course of operating a business (e.g. rent, telephone, electricity, etc.).

Benefits will be paid by cheque, in monthly instalments, where the lawyer meets all of the requirements and submits the necessary documents required for consideration of his/her application.

The Barreau du Québec reserves the right to require additional supporting documentation for the consideration of any application.

For tax purposes, the benefits paid under the Program are considered to be taxable income. No information slip will be issued by the Barreau du Québec.

Deadline

In order for benefits to be paid under the Program, the application must be filed within 12 months of the birth or adoption of the child or interruption of the pregnancy.

Information

To view the rules governing the Program and the documents required for making an application, visit our internet site or contact member services at (514) 954-3442 or 1-800- 361-8495 ext. 3442.

APPLICATION FOR BENEFITS AND AFFIDAVIT

I, the undersigned_____, domiciled and residing at _____, request that the Barreau du Québec pay me the benefits to which I am entitled under the Parental Assistance Program for Self-employed Workers (the "Program"), and for the purpose of this application I solemnly affirm as follows:

1) I have reviewed the provisions of the Program as adopted by the members at the general meeting on May 31, 2003.

2) I request that I be paid the following benefits: (check the appropriate box(es))

☐ Maternity benefits (max. 3 months)

> Indicate the months or fractions of months (0.5) _____ months

• Child's date of birth _____/_____/_____
Year Month Day

OR

• Date on which professional activities ceased before birth on medical advice
_____/_____/_____
year Month Day

OR

• Date of interruption of pregnancy (after 19 weeks)
_____/_____/_____
Year Month Day

☐ Parental benefits (max. 1 month) [1]

> Indicate the months or fractions of months (0.5) _____ months

• Child's date of birth ____/_____/_____
Year Month Day

☐ Adoption benefits (max. 1 month)

> Indicate the months or fractions of months (0.5) _____ months

• Date on which child was adopted ____/_____/_____
Year Month Day

3) I declare: (check the appropriate box(es))

a) ☐ that I am not receiving any financial support identified in the rules of the Program;

OR

☐ that I am receiving financial support in an amount less than the amount of the benefits allowed, in the total amount of:

$_____

b) ☐ that I have monthly operating expenses in an amount at least equal to the benefits provided under the Program;

OR

☐ that I have monthly operating expenses in an amount less than the amount of the benefits under the Program, in the total amount of:

$_____

c) that my professional activities have ceased or will cease for the period of the benefits.

4) I agree to inform the Barreau du Québec of any event, such as return to work, that might change the period of the benefits requested.

5) In support of my application, I am providing the documents required:
(check the appropriate box(es))

☐ certificate or declaration of the birth of the child (original or certified copy)

☐ judgment ordering placement or foreign adoption judgment or immigration visa issued to Canada Customs [sic] (original or certified copy)

☐ medical certificate in the event of cessation of professional activities before delivery or in the event that of interruption of pregnancy (original or certified copy)

[1] If the application relates to two members, each member must complete a form

In witness whereof, I have signed at _____, this_____

_____ (_____)
Signature Member No.

Solemnly affirmed before me at _____ on _____

_____

Commissioner for oaths for the district of _____

(Version : 2004-12-21)

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

Copy of the Eckler Report re: Law Society of Upper Canada Maternity, Parental and Adoptive Leave dated November 2007.

(Tab 4)

A friendly amendment was made to Recommendation 4 by deleting the words "on January 1, 2009" and substituting "in 2009".

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin, that Recommendation 4 be approved as amended.

Carried

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin, that the balance of the recommendations be approved.

Carried Unanimously

ROLL-CALL VOTE

Aaron	For	Lewis	For
Anand	For	McGrath	For
Backhouse	For	Marmur	For
Banack	For	Millar	For
Boyd	For	Minor	For
Braithwaite	For	Pawlitza	For
Caskey	For	Potter	For
Chahbar	For	Pustina	For
Chilcott	For	Rabinovitch	For
Dickson	For	Ross	For
Dray	For	Rothstein	For
Elliott	For	Ruby	For
Epstein	For	St. Lewis	For
Go	For	Sandler	For
Gold	For	Schabas	For
Gottlieb	For	Sikand	For
Halajian	For	Silverstein	For
Hare	For	C. Strosberg	For
Hartman	For	Swaye	For
Henderson	For	Symes	For
Krishna	For	Tough	For
Lawrie	For	Warkentin	For
Legge	For	Wright	For

Item for Information

- Equity Public Education Series Calendar 2008

Report to Convocation
May 22, 2008

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

Committee Members
Janet Minor, Chair
Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Susan Hare
Paul Henderson
Doug Lewis
Judith Potter
Robert Topp

Purposes of Report: Decision and Information

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

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on May 8, 2008. Committee members Janet Minor, Chair, Mary Louise Dickson, Douglas Lewis and Judith Potter participated. Chantal Morton, representative of the Equity Advisory Group (the "EAG"), also participated. Staff members Josée Bouchard and Marisha Roman attended.

FOR INFORMATION

EQUITY PUBLIC EDUCATION SERIES CALENDAR
2008

National Aboriginal Day
Date: June 20, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

Pride Week
In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association
Date: June 24, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

Louis Riel Day
Date: November 13, 2008
Time: Workshop from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation
May 22, 2008

Professional Regulation Committee

Committee Members
Clayton Ruby, Chair
Julian Porter, Vice-Chair
Linda Rothstein, Vice-Chair
Melanie Aitken
Christopher Bredt
Tom Conway
Brian Lawrie
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Decision and Information

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

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on May 8, 2008. In attendance were Linda Rothstein (Vice-chair and Acting Chair), Melanie Aitken (by telephone), Jack Braithwaite, James Caskey, Tom Conway, Gary Gottlieb, Brian Lawrie (by telephone), Ross Murray and Bonnie Tough. Staff attending were Naomi Bussin, Michael Elliott, Terry Knott, Zeynep Onen, Elliot Spears, Sybila Valdivieso and Jim Varro. Kathleen Waters and Duncan Gosnell from LAWPRO attended part of the meeting.

AMENDMENTS TO RULES 1.02 AND 6.07 OF THE RULES OF PROFESSIONAL CONDUCT

Motion

2. That Convocation amend the *Rules of Professional Conduct* as follows:

   a. With respect to rule 1.02, make the following amendments to the definition of "conduct unbecoming a barrister and solicitor" and Commentary:

      "conduct unbecoming a barrister or solicitor" means conduct, <u>including conduct</u> in a lawyer's personal or private capacity<u>,</u> that tends to bring discredit upon the legal profession including, for example,

      (a) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer,

      (b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or

      (c) engaging in conduct involving dishonesty or conduct which undermines the administration of justice;

~~Commentary~~ ~~Dishonourable or questionable conduct on the part of a lawyer in either private~~

~~life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.~~

~~Generally, however, the Society will not be concerned with the purely private or extra professional activities of a lawyer that do not bring into question the lawyer's professional integrity.~~

b. With respect to subrule 6.07(3), replace the number "IV" with the number "II" in the commentary following the subrule.

A. AMENDMENTS TO RULE 1.02

Introduction

3. A question about the commentary to the definition of "conduct unbecoming" in the *Rules of Professional Conduct* was raised with the Chair of the Committee by a member of the Hearing Panel following the hearing of a conduct application in December 2007.

4. The Hearing Panel was asked to make a finding of "conduct unbecoming" in respect of certain activities of a licensee. The Law Society's prosecutor relied on the definition in s. 1.02 (see below). The definition provides inter alia that "conduct unbecoming" means conduct in a lawyer's "personal or private capacity that tends to bring discredit upon the legal profession..."

5. The Hearing Panel noted that the definition speaks of conduct in a "personal or private capacity" but that the Commentary seems to indicate otherwise. It says in part, "Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely..." Thus, the definition is limited to conduct in a "personal or private capacity" but the Commentary is not. The Panel indicated to the Chair that this created some difficulty in interpreting the definition.

6. The Panel concluded that the Society had not made out its case for other reasons, and mentioned this aspect of the definition only in passing and not as the main ground for dismissal of the application.

7. After considering staff research on the issue, including a history of the rule, discipline cases decided on the basis of "conduct unbecoming" and other law societies rules and some options for dealing with the issue, the Committee is proposing that rule 1.02 be amended as set out in the motion at paragraph 2.a.

The Current Definition

8. The current definition and commentary are as follows:

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

…

"conduct unbecoming a barrister or solicitor" means conduct in a lawyer's personal or private capacity that tends to bring discredit upon the legal profession including, for example,

(d) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer,

(e) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or

(f) engaging in conduct involving dishonesty;

Commentary
Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action. Generally, however, the Society will not be concerned with the purely private or extra professional activities of a lawyer that do not bring into question the lawyer's professional integrity.

9. When the Rules were redrafted in 2000, the definition of "conduct unbecoming" was derived in part from ABA Model Rule 8.4 and part of the Comment to that rule, which read:

Maintaining The Integrity Of The Profession

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:
(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally,

the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

10. The language in the Commentary that follows the definition in the Law Society's current Rules was drawn from the Commentary to former Rule 1 (Integrity). Rule 1 read:

> Integrity
> *Rule 1*
>
> The lawyer must discharge with integrity all duties owed to clients, the court, the public and other members of the profession.[1]
>
> COMMENTARY
>
> 1. Integrity is the fundamental quality of any person who seeks to practice as a member of the legal profession. If the client is in any doubt as to the lawyer's trustworthiness, the essential element in the true lawyer-client relationship will be missing. If personal integrity is lacking, the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.[2]
>
> 2. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice as a whole.[3] If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer as a professional consultant, the Society may be justified in taking disciplinary action.[4]
>
> 3. Generally speaking, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer which do not bring into question the lawyer's professional integrity or competence.

11. Of the footnotes to the above rule, the relevant note for the Committee's review was footnote 3. It elaborated on the type of conduct that would offend the integrity required of the rule, and noted the difference in most jurisdictions between professional misconduct and conduct unbecoming. An excerpt from the footnote reads as follows:

> 3. Illustrations of conduct which may infringe the Rule (and, often, other provisions of this Code) include:
> (a) committing any personally disgraceful or morally reprehensible offence which reflects upon the lawyer's integrity (whereof a conviction by a competent court would be prima facie evidence);

(b) committing, whether professionally or in the lawyer's personal capacity, any act of fraud or dishonesty, e.g., by knowingly making a false tax return or falsifying a document even without fraudulent intent, whether or not prosecuted therefor;
(c) making untrue representations or concealing material facts from a client with dishonest or improper motives;
(d) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of a client;
(e) misappropriating or dealing dishonestly with the lawyer's client's monies;
(f) failing without the client's consent to pay over for that purpose any money received from or on behalf of a client expressly for a specific purpose;
(g) knowingly assisting, enabling or permitting any person to act fraudently, dishonestly or illegally towards the lawyer's client;
(h) failing to be absolutely frank and candid in all dealings with the courts, fellow lawyers and other parties to proceedings, subject always to not betraying the client's cause, abandoning the client's legal rights or disclosing the client's confidences;
(i) failing, when dealing with a person not legally represented, to disclose material facts, e.g., the existence of a mortgage on a property being sold, or by supplying false information, whether the lawyer is professionally representing a client or is concerned personally;
(j) failing to honour the lawyer's word when pledged, even though under technical rules the absence of a writing might afford a legal defence;
(k) some other examples are specifically dealt with in subsequent chapters.

…

Abstract of disciplinary provisions illustrating the distinction, in disciplinary proceedings, between "professional misconduct" and "unprofessional conduct":

[provincial jurisdictions noted]

…

England: *Cordery on Solicitors* at 315

…

"Counsel . . . takes the position that the expressions (unprofessional conduct and professional misconduct) are synonymous . . . I agree . . . that the phrases are often used interchangeably but cannot agree that this is always so. . . . Accepting as I do that the terms are not synonymous. . .": *Re Novak and Law Society* (1973), 31 D.L.R. (3d) 89 at 102 (B.C.S.C.), McKay J.

Conduct Unbecoming Cases – 2000-2007

12. Cases decided on the issue of conduct unbecoming since the new Rules were adopted in 2000 appear in the following chart. In virtually all cases, the finding was made where the conduct related to criminal or other federal or provincial offences, and was personal to the lawyer. In some cases, the conduct related to the lawyer's activities that arose from but were not within the practice of law (e.g. an estate trustee).

Nature of Misconduct	Penalty
Criminal conviction in the United States for fraud ($4.5 million)	Disbarred

Nature of Misconduct	Penalty
Possession of cocaine (criminal conviction)	Reprimanded. Monitoring agreement for a period of five years from the date of the order.
Theft over $5,000, contrary to s. **334(a)** of the *Criminal Code* (criminal conviction) (In 1992, the lawyer left practice to operate his own structured settlements business. In the course of that business, he received $72,500 on behalf of a young man who had lost an eye in a BB-gun incident. The lawyer used these proceeds for his own purposes and those of his family, instead of carrying out his obligations to his client.)	Disbarred.
Fraud	Granted permission to resign from the Society within 30 days, failing which she would be disbarred
Allegation that the lawyer caused a false sketch of the location of a creek to be submitted to the Ministry of Natural Resources (MNR) in order to mislead the MNR and to divert the creek to one end of the property thereby maximizing its commercial value to him, an owner of the property. The lawyer had pleaded guilty to one charge of destroying fish habitat contrary to section 35 of the *Fisheries Act* (Can.). He received a $1000 fine and a probation order requiring him to restore the property and make a substantial cash donation to an environmental group.	No finding - the panel held that it did not establish a *prima facie* case that the document in question, the sketch, was intended by the lawyer to be relied upon and indeed to mislead. The panel also held that the evidence of the *Fisheries Act* guilty plea was only evidence of the intentional destruction of fish habitat without authorization. One incident of a breach of a regulatory offence was not sufficient to take the lawyer's conduct into the category of conduct unbecoming.
Convictions on various criminal charges (i.e. death threats, assaults, breaches of recognizance, undertakings and probation orders)	Reprimand
Criminal conviction on two counts of obtaining for consideration the sexual services of a person under the age of 18 years, one count of assault (the lawyer was a Crown Attorney at the time)	Disbarred
A student member offered legal services to the public while he was a paralegal. In the Ontario Court (Provincial Division) he was fined $1,000 and undertook to no longer practise or hold himself out as a lawyer. He then breached his undertaking, and also misled or attempted to mislead the Law Society by submitting false or misleading documents respecting his articles and by providing false or misleading information to the Law Society investigator.	Student member's membership was revoked

Nature of Misconduct	Penalty
The lawyer pled guilty to conspiracy to commit wire, mail and securities fraud, in the United States. Penalty: 18 months' imprisonment, a fine of $20,000 and supervised release of three years.	Disbarred
Findings based on the passing of accounts proceedings before the Surrogate Court and upheld by the Court of Appeal. As estate trustee, the lawyer provided excessive compensation to his own company for management services provided to companies controlled by the estates without obtaining the approval of the board of directors to do so, his actions during his term as estate trustee and during the litigation were reprehensible and scandalous his evidence was misleading "half-truths", and unreliable. The panel said: "The duties of the member as estate trustee were, as maintained by the Society, akin to those of a lawyer. The member's conduct reflects adversely upon the integrity of the profession. The member is indeed an officer of the court and he was found to have filed false affidavits and given misleading *viva voce* evidence, which reflects poorly upon his standing as an officer of the court."	Two month suspension and other terms
The lawyer pled guilty to possession of cocaine, contrary to s. 4(1) of the *Controlled Drugs and Substances Act*. Penalty: conditional discharge, probation for a period of 12 months, on terms	Suspended for 45 days, with conditions, including continued participation in rehabilitation programs and random drug testing.
Conduct unbecoming charges: • while employed in a law firm, the lawyer improperly appropriated monies in the amount of $19,085, more or less, from the firm in breach of her employment agreement, • failed to disclose to the law firm client files on which the lawyer completed legal work and for which she received payment, which were not clients of the firm, in breach of her employment agreement, and • while acting as estate trustee, the lawyer failed to honour a specific bequest of $500	On consent, finding of professional misconduct (based as well on other charges of professional misconduct); Suspended for 12 months, to practise for a further period of 12 months under the supervision of another member, to complete the practice review program
The lawyer pled guilty to charge of being an	One month suspension

Nature of Misconduct	Penalty
accessory after the fact, under s. **463(d)** of the *Criminal Code,* to an inmate's commission of the offence of possession of a controlled substance.	
Application for restoration of membership in abeyance (judge); the Ontario Judicial Council following a hearing found that the judge had conducted himself in a manner incompatible with the due execution of the duties of his office. Before resumption of the hearing on sancation, the Applicant resigned from the Court. Law Society found that that the judge engaged in sexual misconduct that was incompatible with the due execution of his office, and that, if done by a lawyer, would be professional misconduct or conduct unbecoming a barrister and solicitor.	(by order of the Appeal Panel) Membership restored, member to practise only as an employee of another member of the bar, for a period of two years from the date of the Order.

Other Canadian Jurisdictions

13. The following are examples of how other Canadian law societies have defined "conduct unbecoming".

Law Society of British Columbia

14. In the *Legal Profession Act*, the definitions include the following:

> Definitions – s. 1(1) In this Act:
>
> "conduct unbecoming a lawyer" includes a matter, conduct or thing that is considered, in the judgment of the benchers or a panel,
> (a) to be contrary to the best interest of the public or of the legal profession, or
>
> (b) to harm the standing of the legal profession;

15. This appears to capture what is included in the Law Society of Upper Canada Rules, which relates conduct unbecoming to bringing discredit upon the legal profession, but the conduct is not discussed in terms of the personal or professional activities of the lawyer.

16. British Columbia's Professional Conduct Handbook includes language in its Integrity chapter under the heading "dishonourable conduct" that mirrors the language used in the Law Society of Upper Canada's commentary to the definition of conduct unbecoming:

CHAPTER 2
INTEGRITY

Dishonourable conduct

> 1. A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on

the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

Alberta

17. The Law Society of Alberta's *Code of Professional Conduct* includes a rule in Chapter 3, Relationship of the Lawyer to the Profession, that discusses conduct that brings discredit to the profession. Although the conduct described is not defined as "conduct unbecoming", it appears to address the same issues that other law societies have characterized under such a definition.

> R.1 A lawyer must refrain from personal or professional conduct that brings discredit to the profession.
>
> C.1 Because of a lawyer's quasi-official position in society (see Chapter 1, *Relationship of the Lawyer to Society and the Justice System),* the personal and professional behaviour of a lawyer may attract more attention than that of a non-lawyer and may directly or indirectly influence the public's perception of the justice system and the profession. It follows that a lawyer has a responsibility to avoid even the appearance of impropriety, and to act in a manner that encourages the confidence, respect and trust of society.
>
> Behaviour considered to bring discredit to the profession would include incidents reflecting adversely on a lawyer's personal integrity (such as those involving fraud or dishonesty) as well as conduct that is demeaning to the profession or to the administration of justice generally (such as public abusiveness or offensiveness or counselling illegal acts).

Saskatchewan

18. Saskatchewan's *Legal Profession Act, 1990* includes a definition of conduct unbecoming similar to that in British Columbia but with the addition of a competence component.

> 2(1) In this Act:
> (d) "conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, that:
> (i) is inimical to the best interests of the public or the members; or
> (ii) tends to harm the standing of the legal profession generally;
> and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);

19. Saskatchewan's *Code of Professional Conduct* has a similar "integrity" rule to that of British Columbia. Paragraphs 3 and 4 of the commentary to the rule include the entirety of the Law Society of Upper Canada's commentary following the definition of conduct unbecoming:

> CHAPTER I
> INTEGRITY
>
> RULE
> The lawyer shall discharge with integrity all duties owed to the clients, the court, other members of the profession and the public.

Commentary

Guiding Principles

1. Integrity is the fundamental quality of any person who seeks to practise as a member of the legal profession. If the client is in any doubt about the lawyer's trustworthiness the essential element in the lawyer-client relationship will be missing. If personal integrity is lacking the lawyer's usefulness to the client and reputation within the profession will be destroyed regardless of how competent the lawyer may be.2

2. The principle of integrity is a key element of each rule of the Code.

Disciplinary Action

3. Dishonourable or questionable conduct on the part of the lawyer in either private life or professional practice will reflect adversely upon the lawyer, the integrity of the legal profession and the administration of justice as a whole.3 If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer as a professional consultant, a governing body may be justified in taking disciplinary action.

Non-professional Activities

4. Generally speaking, however, a governing body will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the integrity of the legal profession or the lawyer's professional integrity or competence.

Nova Scotia

20. Regulations under Nova Scotia's *Legal Profession Act* include the following, which most closely replicate the Law Society of Upper Canada's rule:

> Conduct Unbecoming, Professional Incompetence and Professional Misconduct
>
> 9.1.3 When considering complaints or charges, the Complaints Investigation Committee and a hearing panel may determine that conduct constitutes
>
> (a) conduct unbecoming, if it involves conduct in a member's personal or private capacity that tends to bring discredit upon the legal profession including:
>
> i) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or competence as a member of the Society;
>
> ii) taking improper advantage of the youth, inexperience, lack of education, lack of sophistication, or ill health of any person;
>
> iii) engaging in conduct involving dishonesty;
>
> (b) professional incompetence, if the lawyer fails to apply relevant knowledge, skills and attributes in a manner appropriate to matters undertaken on behalf of a

client, and within the reasonable parameters of the lawyer's experience and the nature and terms of the lawyer's engagement;

(c) professional misconduct if it involves conduct in a lawyer's professional capacity that tends to bring discredit upon the legal profession including:

i) violating or attempting to violate one of the provisions in the Legal Ethics Handbook or a requirement of the Act or these regulations;

ii) knowingly assisting or inducing another lawyer to violate or attempt to violate the provisions in the Legal Ethics Handbook or a requirement of the Act or these Regulations;

iii) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property; or

iv) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The Committee's View

21. The Committee considered the current definition of "conduct unbecoming" and its primary focus on the personal or private activity of the lawyer that offends the standard of integrity required of lawyers. The Committee noted the differentiation between "conduct unbecoming" and "professional misconduct" in the definitions in rule 1.02. The definition of "professional misconduct" reads:

> "professional misconduct" means *conduct in a lawyer's professional capacity* that tends to bring discredit upon the legal profession including
>
> (a) violating or attempting to violate one of the rules in the *Rules of Professional Conduct* or a requirement of the Law Society Act or its regulations or by-laws,
>
> (b) knowingly assisting or inducing another licensee to violate or attempt to violate the rules in the *Rules of Professional Conduct, the Paralegal Rules of Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws,
>
> (c) knowingly assisting or inducing a non-lawyer partner or associate of a multi-discipline practice to violate or attempt to violate the rules in the *Rules of Professional Conduct* or a requirement of the *Law Society Act* or its regulations or by-laws,
>
> (d) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property,
>
> (e) engaging in conduct that is prejudicial to the administration of justice,
>
> (f) stating or implying an ability to influence improperly a government agency or official, or

(g) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(emphasis added)

22. Based on the history of the Law Society's definition of "conduct unbecoming" and Commentary, other law societies' treatment of this concept and the manner in which the Hearing Panel has applied the definition, it would appear that the current definition may be too narrow and that the Commentary, as the Hearing Panel suggested, creates some confusion about what "conduct unbecoming" is intended to encompass.

23. The Committee determined that three changes should be made to the definition of "conduct unbecoming" and the Commentary to make the scope of the definition clearer.

24. The first is to add words that indicate that conduct in the lawyer's personal or private capacity, such as that described in the examples in the definition, is included in but is not the only conduct relevant to "conduct unbecoming". The Committee felt that conduct of a lawyer arising from activities related to his or her role as a lawyer, but which may not necessarily meet the definition of "professional misconduct" (i.e. conduct arising in a lawyer's professional capacity) should be considered "conduct unbecoming" and should be captured in the definition.

25. An example is an Ontario lawyer purporting to act as a lawyer in another province and defrauding a party of funds. This would not necessarily be professional misconduct as the lawyer was not acting in a professional capacity (as a qualified lawyer practicing law) in the other province. Under the current definition of "conduct becoming", while this conduct falls within one of the examples (criminal conduct), it may not be caught, as arguably it is not "personal or private" but linked to what would otherwise be the professional role of a lawyer.

26. The Committee believes that the proposed change is a reasonable clarification to the definition and reflects an appropriate standard. To express this intent, it is proposed that the words "including conduct" be added to the opening paragraph of the definition, which would then read:

> "conduct unbecoming a barrister or solicitor" means conduct, <u>including conduct</u> in a lawyer's personal or private capacity<u>,</u> that tends to bring discredit upon the legal profession including, for example, …

27. The second change is to amend the definition of "conduct unbecoming" to capture conduct which may not be dishonest *per se* but which undermines the administration of justice. In the Committee's view, this is an appropriate addition and mirrors similar language in the definition of "professional misconduct".

28. The proposal is to add the words "or conduct which undermines the administration of justice" to paragraph (c) of the definition, as follows:

> "conduct unbecoming a barrister or solicitor" means conduct, <u>including conduct</u> in a lawyer's personal or private capacity<u>,</u> that tends to bring discredit upon the legal profession including, for example,

a. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer,

b. taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or

c. engaging in conduct involving dishonesty or conduct which undermines the administration of justice;

29. The third change is with respect to the Commentary. The Committee determined that while the commentary elaborates on the standards discussed in the definition, arguably, the definition is sufficiently clear in its meaning and does not *require* further comment. Moreover, the current Commentary appears to comment on more than the definition of "conduct unbecoming", but the Committee did not see the value in attempting to amend it.

30. For these reasons, the Committee proposes that the Commentary be deleted.

B. AMENDMENT TO RULE 6.07

31. A housekeeping amendment is required to the Commentary following subrule 6.07(3). The Commentary currently references "Part IV" of By-Law 7.1. As a result of amendments to By-Law 7.1, the relevant part of the By-Law for the purposes of the subrule is now Part II.

32. The proposal is to amendment the Commentary to replace "IV" with "II", as follows:

Commentary

Part II ~~IV~~ of By-Law 7.1 (Operational Obligations and Responsibilities) and Part II.1 of By-Law 9 (Financial Transactions and Records) set out the obligations of a lawyer whose license to practise law is suspended.

UNDISCHARGED BANKRUPTS AND LAWPRO POLICY EXCLUSIONS FOR MANDATORY REAL ESTATE PRACTICE COVERAGE

Motion

33. That Convocation maintain the *status quo* respecting LAWPRO's policy exclusion for undischarged bankrupts for mandatory real estate practice coverage.

Introduction and Background

34. At April 24, 2008 Convocation, the Chair of the Committee agreed to have the Committee consider two questions set out in a motion relating to undischarged bankrupts and LAWPRO's policy exclusion for mandatory real estate practice coverage. The Chair's agreement made Convocation's vote on the motion unnecessary, and it was not put to a vote.

35. The Committee reviewed the questions in the motion, set out below in its entirety:

That Convocation request the Professional Regulation Committee, in consultation with LAWPRO, review the application of the LAWPRO policy precluding every lawyer not

discharged from bankruptcy (even where the bankruptcy is unrelated to the practice of law) from purchasing mandatory additional LawPRO coverage intended to protect against the registration of fraudulent instruments under the *Land Titles Act*. The Committee is specifically asked to expeditiously address and report for June Convocation at least in respect of the following:

1. Is there any correlation between the fact that a lawyer may be an undischarged bankrupt (without any prior/outstanding criminal prosecution/conviction or discipline investigation or regulatory sanction) and the risk that that lawyer may thus be more susceptible to mortgage fraud related activity and should thus have their licence to practice law restricted notwithstanding the absence of any individual – specific regulatory breach?
2. Should LawPRO be requested to immediately revise its policy exclusions for the purchase of mandatory real estate registration coverage?

BACKGROUND

1. In September 2007, Convocation accepted the LAWPRO proposed insurance program for 2008 as presented by Ms. Carpenter-Gunn.
2. The changes to the 2008 insurance program included the following:

"(vii) Any lawyer intending to practice real estate law in Ontario will be required to purchase coverage that will provide specific protection for the registration of fraudulent instruments under the *Land Titles Act*.
(viii) the Law Society would restrict the eligibility to apply for and purchase this coverage to limit the cost of providing this coverage. The following categories will be excluded.

- Persons who are in bankruptcy;
- Persons who have been convicted or disciplined in connection with real estate fraud; and
- Those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or an undertaking not to practise real estate

Any lawyer intending to practise real estate will be required to purchase this coverage".

3. The term real estate law was defined as follows:
"REAL ESTATE LAW means the practice of the law of Canada, its provinces and territories, that concerns:
(i) the registration of any instrument under the *Land Titles Act;* and
(ii) the actual or contemplated transfer, charging, insuring or otherwise affecting, an estate, right or interest in land; and may include, without limitation, anyone or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge and/or with respect to the issuance of any title insurance policy."

COMMENTARY

4. The LAWPRO report was responsive in part to the Ontario Government imposing changes to real estate practice arising from passage of Bill 152. One objective was to improve the integrity of the system by tightening the rules governing registration of documents in the Land Tiles system.

5. The report does not contain any information indicating a co-relation between the fact that a lawyer may be an undischarged bankrupt (without any prior/outstanding criminal prosecution/conviction or discipline investigation or regulatory sanction) and the risk that that lawyer may thus be more susceptible to mortgage fraud related activity.

6. Further, neither the LAWPRO report nor any discussion in Convocation addressed the effect on a lawyer who might be ineligible to purchase the real estate related insurance resulting in limited licence practice restrictions notwithstanding the absence of any individual-specific regulatory breach.

7. For example, an undischarged bankrupt, litigation lawyer is unable to register and discharge construction liens and Certificates of Pending Litigation. In a particular case a lawyer in practice for over 40 years has advised that he is an undischarged bankrupt as a result of outstanding personal tax arrears which had accumulated arising from his divorce. The bankruptcy was completely and totally unrelated to his practice. Convocation's decision is having a profound impact on his practice including his feelings of self worth as he does not consider it appropriate that he is being "lumped in" by Convocation with lawyers who have been charged with or are under investigation for real estate fraud and have been suspended from the practice of real estate law.

8. It does not appear from the record that Convocation turned its mind to nor did the LAWPRO report address the unintended consequence which would be visited upon a lawyer with an unblemished discipline record suddenly finding that although entitled to practise in all areas of law, (except real estate) they are precluded from even the most straight forward of registrations arising from construction liens or Certificates of Pending Litigation.

36. The Committee determined that while there was no evidence before it to answer "yes" to question 1, sensible and reasonable judgment in addressing the overarching question relating to question 1 also addresses the question of such evidence. That overarching question is "Is the fact of a person's undischarged bankruptcy an appropriate measure for excluding a person from the LAWPRO coverage in question?" The Committee answered this question "yes".

37. On question 2, the Committee answered "no".

38. Given the answers to the two questions, the Committee is recommending that Convocation maintain the *status quo*, i.e. its approval in September 2007 of the policy exclusion for undischarged bankrupts for LAWPRO's mandatory real estate practice coverage.

39. The Committee's views in support of its recommendation are provided in this report. To assist the Committee in its deliberations, Kathleen Waters (President and CEO of

LAWPRO), Duncan Gosnell (Vice-President, Underwriting, LAWPRO) and James Caskey, who serves as Vice-Chair of the LAWPRO board, attended the meeting.

Information Reviewed by the Committee

40. The Committee reviewed the following information related to this issue:
    a. The relevant excerpt from LAWPRO's September 2007 Report to Convocation, which describes the new coverage for real estate practice (reproduced below) and information provided by LAWPRO at the meeting;
    b. Information on the Law Society's legislation and regulations respecting the bankruptcy of a licensee and excerpts from federal bankruptcy legislation (see Appendix 1); and
    c. Communications to and from the lawyer whose matter prompted the motion.

41. The following is an excerpt from LAWPRO's Report to September 20, 2007 Convocation. In approving this report, Convocation approved the criteria for the availability of the LAWPRO real estate practice coverage as part of the mandatory professional liability insurance program for 2008. This criteria became relevant as of April, 2008 when the Ministry of Government and Consumer Services implemented its new controls over electronic land registration.

    Changes Affecting Real Estate Practitioners

    14. In October 2006, the Ontario government announced a two-phase program of reform that will reshape residential real estate practice. The first phase was reflected in the government's *Consumer Protection and Service Modernization Act* ("Bill 152") which among other things:
        · Increased the ability of the Ministry of Government Services (Ministry) to suspend and/or revoke electronic registration credentials;
        · Clarified the effect of registration of fraudulent instruments;
        · Made the Land Transfer Assurance Fund ("LTAF") a fund of first resort for compensation in the event of a fraudulent instrument; and
        · Clarified that title insurers cannot seek reimbursement from the LTAF.

    15. The second phase includes further revisions to the electronic registration account eligibility and processes, and other initiatives to protect the public. The Law Society has been in active discussions with the Ministry concerning this phase.

    16. In this regard, the government is proposing a range of fraud-prevention and consumer protection measures, including:
        · Restricting access to the Land Titles system, such that only lawyers can register transfers;
        · Requiring that the registration of a transfer involve two lawyers—a lawyer for the transferor and a lawyer for the transferee, with very few exceptions;
        · Ensuring faster payments to innocent homeowners and purchasers from the LTAF; and
        · Establishing standards of due diligence for lenders and others applying the LTAF.

    17. The Ministry has developed a new set of criteria for those who wish to register documents through the electronic land registry system. The criteria are based on three standards that are important in developing an effective strategy against

fraud: Identity, financial solvency and appropriate qualifications. In applying these criteria, the Ministry has determined that the registration of transfers of titles will be restricted to lawyers. By restricting the ability to register transfers to lawyers, who are part of a self-governing body with a legislative framework that deals with integrity and practice standards for its members, the Ministry can further secure the electronic land registry system and isolate one of the main types of documents involved in title fraud, thereby providing consumers with additional protection.

18. The financial solvency criteria would be satisfied, for lawyers, by the existence of a new insurance coverage for fraud in the LAWPRO policy in the event that a lawyer acts fraudulently in completing a registration.

(a) Insurance coverage details

19. The new coverage would provide specific protection for the registration of fraudulent instruments under the *Land Titles Act*. This particular coverage would:
- Only apply to the registration of fraudulent instruments under the Land Titles Act, and not to other circumstances involving fraud;
- Apply regardless of whether there was a retainer between the wronged party and the fraudulent lawyer;
- Not apply to claims for which title insurance would apply; and
- Be subject to a sub-limit of $250,000 per claim and $1 million in aggregate.

20. The Law Society would restrict the eligibility to apply for and purchase this coverage, to limit the cost of providing this coverage. The following categories will be excluded:
- Persons who are in bankruptcy;
- Persons who have been convicted or disciplined in connection with real estate fraud; and
- Those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate, or an undertaking not to practise real estate.

Any lawyer intending to practise real estate will be required to purchase this coverage.

21. "Real estate law" would be a broadly defined term that is not limited to specific types of transactions, such as transfers or charges. Rather, the term would be defined as follows:

"REAL ESTATE LAW means the practice of the law of Canada, its provinces and territories, that concerns:

(i) the registration of any instrument under the *LAND TITLES ACT;* and/or

(ii) the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy."

22. For all practising real estate lawyers, the government will require confirmation of the existence of this additional real estate insurance coverage on an automated basis as transfers are processed through the land registry system. Lawyers who wish to be exempt from the requirement to pay insurance because they have a single employer and only engage in the practice of law for and on behalf of the employer (that is, no services are rendered to third parties), will need to make separate arrangements with the government to satisfy their insurance requirements before electronic registry system access will be enabled for transfers.

(b) Pricing of this additional coverage

23. Fraud exposures have historically been excluded from coverage under the program, and then separately underwritten and paid for. The added exposure for this expanded coverage is such that an additional premium would need to be charged[1] . This exposure relates exclusively to the real estate bar. So, consistent with the principles of risk-rating, the cost of this added exposure should be carried by the real estate bar.

24. It is anticipated that about 6,000 of the approximately 21,000 lawyers in practice will require this coverage.

25. As this is a new coverage, there is limited historical insurance data to rely on in developing the pricing. Many, if not most of the claims that would be compensated under this coverage, would not have been otherwise paid by the insurance program or Lawyers Fund for Client Compensation. The LTAF has traditionally had 10 fraud claims per year, but only ever acted as a fund of last resort, significantly limiting the exposure of the Fund to claims. Responding to the new role of the LTAF as a fund of first resort, the LAWPRO insurance coverage does not require that other avenues of claims recovery first be exhausted. LAWPRO's best estimate of the cost to provide this new coverage is $3 million per annum - $500 on a per lawyer basis. To the extent that claims experience proves to be different than expected, premiums for future years will be adjusted.

26. Consideration was given to whether a real estate transaction levy mechanism should fund the costs associated with this enhanced coverage, but was rejected in that the risk of fraud is not proportional to the size of a lawyer's practice, but rather to the absence of controls in that practice.

[1] The new coverage goes beyond the required Innocent Party protection carried by lawyers in partnership or association, as well as the optional Innocent Party protection available to these and other lawyers under the program.

27. LAWPRO expects to implement this change effective January 1, 2008, in order to satisfy government requirements. It is possible, however, that the government will instead require implementation late in 2007. Should this occur, no additional premium would be charged for the stub period.

28. Lawyers will be advised during the insurance application process that, if they intend to practise real estate law in Ontario in 2008 they must first be eligible, apply for, and be granted this coverage before being able to practise real estate law.

29. LAWPRO will provide this new real estate practice coverage at a cost of $500 per real estate lawyer for the year. Lawyers who cease or commence practicing real estate law part way through the year will be eligible for a *pro rata* premium adjustment, subject to a 60-day minimum premium and only one such premium adjustment for the year.

42. The Committee considered the questions raised in the motion in light of the background information and information provided by LAWPRO.

Information from LAWPRO

43. The key question for the Committee, based on the motion, was whether it is appropriate, as determined in the 2008 insurance program arrangements between the Law Society and LAWPRO, that persons who are in bankruptcy are not eligible to purchase the real estate practice coverage. The Committee found the information provided by LAWPRO helpful in determining its conclusions on this question. The following summarizes the key points.

44. The eligibility criteria were developed through the exercise of LAWPRO's underwriting judgment. In keeping with the Report to Convocation of the Insurance Task Force and the Insurance Committee[2] as the basis for guiding principles in implementing the mandatory insurance professional liability program, LAWPRO is mandated to operate in a commercially reasonable manner. When introducing new coverage, LAWPRO has regard to the exercise of underwriting judgment in the commercial market.

45. The real estate coverage in question offers protection against a fidelity-related exposure.[3] LAWPRO advised that it considers it to be prudent underwriting practice that a clear indicator of financial distress, whether arising from personal, business or professional causes, will make an applicant ineligible for this fidelity-related coverage. The rationale is that financial distress can make a person more susceptible to a risk of committing an improper act. In other words, the lack of financial stability increases the risk that a person will do something improper.

---

[2] Convocation, October 1994

[3] The coverage provides indemnity protection where the insured lawyer holding electronic registration credentials dishonestly, fraudulently, criminally or maliciously registers a fraudulent instrument under the *Land Titles Act* and damages are caused. The coverage provides sub-limit coverage in the amount of $250,000 per claim and $1 million in the aggregate for the policy period.

46. The seriousness of being an undischarged bankrupt is evident in the *Bankruptcy and Insolvency Act*, where the following offence is set out in section 199:

> An undischarged bankrupt who
>
> (a) engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or
>
> (b) obtains credit to a total of five hundred dollars or more from any person or persons without informing such persons that the undischarged bankrupt is an undischarged bankrupt,
>
> is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

47. LAWPRO determined that the more focused criteria of bankruptcy status was the best *objective* indicator of financial distress. LAWPRO advised that a commercial underwriter may have required an acceptable credit report on every applicant for the real estate coverage, which is a more expensive and subjective underwriting criteria. LAWPRO's view is that if this approach had been taken, bankrupts, and likely many others, would have been excluded from coverage. In all cases, no insurer would offer fidelity-related coverage without a "financial health" assessment.

48. A lawyer is already required to report his or her bankruptcy to the Law Society under By-Law 8 and lawyers are prohibited from holding trust funds while in bankruptcy under By-Law 9. In such situations, a bankrupt lawyer is required to have another licensee, approved by the Law Society, appointed as custodian of the trust account. The Committee noted that if a lawyer cannot have control of his or her trust account, it is very difficult to practise real estate law, even with another lawyer as custodian of the account.[4]

49. LAWPRO advised that several American Bar-related® title insurers have reported that an undischarged bankrupt would not be approved for membership in the Bar-related title insurance fund. In other words, similar organizations with stewardship responsibility for insurance company assets raised by lawyers would not underwrite the real estate work of a lawyer who was an undischarged bankrupt for fidelity purposes.

50. LAWPRO advised that its underwriting approach to the real estate coverage is reasonably conservative, but the primary reason for this is that the long-term costs associated with this new coverage are not fully known.

51. With respect to the second question, LAWPRO advised that it would be unprecedented for the Law Society, having agreed to LAWPRO's offer of insurance by approving the

---

[4] The bankrupt lawyer whose matter prompted the motion is primarily a litigator. There is nothing prohibiting that lawyer from having another lawyer with electronic registration credentials perform registrations of Court orders, construction liens, and so forth on his behalf, since real estate litigators are not required to obtain the real estate coverage.

LAWPRO Report in September 2007, to request mid-way through the policy period (the calendar year) that the terms on which the insurance is structured and priced be changed.

52. If the eligibility criteria for the real estate coverage were to be made more liberal, to include those of greater risk, there are implications for the cost. The quoted and charged cost would have to be reconsidered. A differentiated cost would have to be determined for undischarged bankrupts, to meet the Task Force recommendation that LAWPRO should adopt risk-rating. LAWPRO advised, however, there is a dearth of evidence to make that assessment, and the cost might well exceed the ability of an undischarged bankrupt to pay. There is no ready means by which past bankruptcies could be identified by LAWPRO and there is no existing cross-referencing of bankruptcy status to current or past claims data.

53. LAWPRO advised that it would request the following if the criteria are to be reevaluated:
    a. that all lawyers who have been convicted or disciplined in connection with mishandling trust funds also be considered ineligible, and
    b. that the Law Society confirm that the existing criteria regarding lawyers who have been convicted or disciplined in connection with real estate fraud includes lawyers who were not actually named as fraudsters in the discipline decision but who were so willfully negligent that they were disciplined as the result of involvement in a file where there was a real estate fraud.

The Committee's Views

54. The Committee recognizes that the effect of this eligibility criteria is that an undischarged bankrupt is not able to practise real estate law in Ontario or to obtain electronic registration credentials from the Ministry of Government and Consumer Services for use under Ontario's land titles system.

55. However, based on the reasons provided by LAWPRO, the Committee does not recommend that any change be made to the criteria. In the Committee's view, this is an underwriting issue, which is a matter of judgment, not evidence, in circumstances in which a new fidelity-related insurance product is offered through LAWPRO. The fact that that there may or may not be a correlation as described in question 1 of the motion is not determinative of the issue.

56. The criteria were formulated as part of LAWPRO's underwriting judgment. The Committee had no reason to question the soundness of LAWPRO's judgment in using bankruptcy as a criteria, based on the type of coverage and the fact that it is a new product.

57. The Committee believes it would be inadvisable to change the criteria at this stage, for the reasons cited above. In addition to cost implications, it did not appear appropriate to recommend to Convocation that it effectively reconsider its September 2007 approval of the insurance program because of the issue raised in the motion.

58. The Committee felt that in future, after gaining some experience with this real estate practice coverage, it may be possible to revisit the issue.

APPENDIX 1

INFORMATION ON BANKRUPTCY - OVERVIEW AND LEGISLATION

1. OVERVIEW OF BANKRUPTCY

The information in this overview was derived from the websites of the Canada Revenue Agency and the Office of the Superintendent of Bankruptcy.

Bankruptcy is a legal process by which a person may be discharged from most of debts. The purpose is to permit a debtor to obtain a discharge from the debts, subject to reasonable conditions. Upon declaring bankruptcy, the person's property is given to a trustee in bankruptcy who then sells it and distributes the money among the creditors.

There are three different ways to become a bankrupt:

> voluntary assignment - where insolvent persons make an assignment of all their assets for the general benefit of all creditors;
>
> involuntary assignment - when a creditor files a petition in a provincial court for a receiving order against the debtor's assets, known as being petitioned into bankruptcy; and
>
> deemed bankruptcy - when a proposal in bankruptcy under the *Bankruptcy Insolvency Act* has failed.

Certain forms must be completed and filed with the Official Receiver. One is an "Assignment", and the other is the "Statement of Affairs". In the assignment, the person states that he or she is handing over all of his or her property to the trustee for the benefit of creditors. In the statement of affairs, assets, liabilities, income and expenses are listed. The person must also answer several questions about family, employment and disposition of assets. Once these documents have been filed with the Official Receiver, the person is legally bankrupt and, at this point, the process cannot be reversed without a court order. The bankrupt is required to perform the duties of a bankrupt set out in the legislation (see s. 158 of the *Bankruptcy and Insolvency Act* later in this memorandum). Generally, this includes such things as disclosure of information to the trustee, notification of matters relating to property, co-operating with the trustee, etc.

The bankrupt has the right to earn a living. For this purpose, the bankrupt is allowed to engage in or continue a taxable business activity outside of the estate, after a bankruptcy. While for the most part, bankruptcy should not affect employment, there are some special cases. For example, the bankrupt may have difficulty being bonded. Section 199 of the Act says that an undischarged bankrupt who engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt is guilty of an offence punishable on summary conviction and subject to a fine or prison term.

The general time frame for first time consumer bankruptcies is nine months. There will be an automatic discharge for first-time bankrupts nine months after they became bankrupt unless the

trustee recommends a discharge with conditions or it is opposed by either a creditor, the trustee or the Superintendent of Bankruptcy.

The trustee is required to recommend a discharge with conditions if either of the following circumstances exists:

- the bankrupt did not pay the agreed amount of surplus income, or
- the bankrupt filed for bankruptcy instead of proposing a viable repayment plan (called a proposal).

If the bankrupt or a creditor does not agree with the trustee's recommendation, mediation may be requested as long as there is no other ground for opposition. If mediation fails to resolve the issue or if an opposition is filed, the trustee will have to obtain a date for a court hearing. The party opposing the discharge will have to give his or her reasons to a court official who will make a decision. A first-time individual bankrupt who refuses or neglects to receive the required counselling sessions will not qualify for an automatic discharge.

For those who have already been bankrupt before or who do not qualify for the automatic discharge, the trustee is required within one year from the beginning of the bankruptcy to apply to the court for a hearing of the application for a discharge. The court official has several options from which to choose.

At a hearing for a discharge the court decides whether to postpone the hearing to a later date, refuse the discharge, or issue any of the following orders:

Order of Absolute Discharge
This official document relieves you of the debts incurred before you declared bankruptcy, taking under consideration the exceptions provided in the Act.

Order of Conditional Discharge
The court may impose certain conditions that must be met before your discharge becomes absolute. For example, the Court may require you to pay an amount to your trustee for distribution to your creditors.

Order of Suspended Discharge
The court orders a delay so that the discharge will not be effective until a certain date.

The discharge may be delayed by an opposition by a creditor, the trustee or the Superintendent of Bankruptcy on such grounds as an ongoing criminal investigation or a breach of duties as specified in the *Bankruptcy and Insolvency Act.*

Upon discharge, the bankrupt is released of most debts. However, some debts are not released, such as an award for damages in respect of an assault, a claim for alimony, spousal or child support, a debt arising out of fraud, any court fine, or debts or obligations for student loans when the bankruptcy occurs while the debtor is still a student or within ten years after the bankrupt has ceased to be a student.

2. THE *LAW SOCIETY ACT* AND BANKRUPCTY

The *Law Society Act* refers to bankruptcy in two places:

1. s. 46(4) on suspension for failure to pay fees and levies

Discharge from bankruptcy
(4) A suspension under this section is not terminated by the licensee's discharge from bankruptcy, but the licensee may apply to the Hearing Panel under subsection 49.42 (3).

2. s. 49.42(3) on reinstatement and varying an order

Discharge from bankruptcy
(3) If an order made under section 46 suspended a licensee's licence, the Hearing Panel may, on application by the licensee, make an order discharging or varying the order on the basis that the licensee has been discharged from bankruptcy.

3. THE LAW SOCIETY'S BY-LAWS WITH RESPECT TO BANKRUPTCY

Two By-laws include provisions around bankruptcy. The first is By-Law 8 which requires licensees to report a bankruptcy to the Society. The second is By-Law 9 which prohibits licensees who are bankrupts from receiving or handling trust funds, except with the permission of the Society and on terms the Society imposes.

BY-LAW 8
Made: May 1, 2007
Amended: June 28, 2007

REPORTING AND FILING REQUIREMENTS

PART I

REPORTING REQUIREMENTS
…

BANKRUPTCY OR INSOLVENCY OF LICENSEE

Notice of bankruptcy or insolvency

2. A licensee shall immediately notify the Society whenever any of the following events occurs:
1. The licensee receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).
2. The licensee makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

BY-LAW 9
Made: May 1, 2007
Amended: June 28, 2007
January 24, 2008
February 21, 2008

FINANCIAL TRANSACTIONS AND RECORDS

…

PART II

HANDLING OF MONEY BY BANKRUPT LICENSEE

Handling of money by bankrupt licensee

2. (1) Subject to subsections (2) and (3), a licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) shall not receive from or on behalf of a person or group of persons any money or other property and shall not otherwise handle money or other property that is held in trust for a person or group of persons.

Exception

(2) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may receive from or on behalf of a person or group of persons money,
(a) in payment of fees for services performed by the licensee for the person or group; or
(b) in reimbursement for money properly expended, or for expenses properly incurred, on behalf of the person or group.

Same

(3) A licensee who is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada) may apply in writing to the Society for permission to receive from or on behalf of a person or group of persons any money or other property, other than as permitted under subsection (2), or for permission to handle money or other property that is held in trust for a person or group of persons, and the Society may permit the licensee to do so, subject to such terms and conditions as the Society may impose.

3. PROVINCIAL LEGISLATION

The *Corporations Act* (Ontario), which applies to the Law Society, includes subsection 286(5), which reads:

> Bankrupts
> (5) No undischarged bankrupt shall be a director, and, if a director becomes a bankrupt, he or she thereupon ceases to be a director. R.S.O. 1990, c. C.38, s. 286 (5).

4. FEDERAL LEGISLATION

The following pages include relevant excerpts from the *Bankruptcy and Insolvency Act* (Canada), some of which are referenced earlier in this material. Included are the definition of "bankrupt", the sections mentioned in the By-Laws (43 and 49), and the relevant sections on acts of bankruptcy (42), proposals (50), bankrupts' duties (158), discharge (168.1), annulling a discharge (180) and bankruptcy offences (198 and 199).

"bankrupt" means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person;

ACTS OF BANKRUPTCY

Acts of bankruptcy

42. (1) A debtor commits an act of bankruptcy in each of the following cases:

(a) if in Canada or elsewhere he makes an assignment of his property to a trustee for the benefit of his creditors generally, whether it is an assignment authorized by this Act or not;

(b) if in Canada or elsewhere the debtor makes a fraudulent gift, delivery or transfer of the debtor's property or of any part of it;

(c) if in Canada or elsewhere the debtor makes any transfer of the debtor's property or any part of it, or creates any charge on it, that would under this Act be void or, in the Province of Quebec, null as a fraudulent preference;

(d) if, with intent to defeat or delay his creditors, he departs out of Canada, or, being out of Canada, remains out of Canada, or departs from his dwelling-house or otherwise absents himself;

(e) if the debtor permits any execution or other process issued against the debtor under which any of the debtor's property is seized, levied on or taken in execution to remain unsatisfied until within five days after the time fixed by the executing officer for the sale of the property or for fifteen days after the seizure, levy or taking in execution, or if any of the debtor's property has been sold by the executing officer, or if the execution or other process has been held by the executing officer for a period of fifteen days after written demand for payment without seizure, levy or taking in execution or satisfaction by payment, or if it is returned endorsed to the effect that the executing officer can find no property on which to levy or to seize or take, but if interpleader or opposition proceedings have been instituted with respect to the property seized, the time elapsing between the date at which the proceedings were instituted and the date at which the proceedings are finally disposed of, settled or abandoned shall not be taken into account in calculating the period of fifteen days;

(f) if he exhibits to any meeting of his creditors any statement of his assets and liabilities that shows that he is insolvent, or presents or causes to be presented to any such meeting a written admission of his inability to pay his debts;

(g) if he assigns, removes, secretes or disposes of or attempts or is about to assign, remove, secrete or dispose of any of his property with intent to defraud, defeat or delay his creditors or any of them;

(h) if he gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts;

(i) if he defaults in any proposal made under this Act; and

(j) if he ceases to meet his liabilities generally as they become due.

APPLICATION FOR BANKRUPTCY ORDER

Bankruptcy application

43. (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

(a) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and

(b) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

…

ASSIGNMENTS

Assignment for general benefit of creditors

49. (1) An insolvent person or, if deceased, the executor or administrator of their estate or the liquidator of the succession, with the leave of the court, may make an assignment of all the insolvent person's property for the general benefit of the insolvent person's creditors.

Sworn statement

(2) The assignment made under subsection (1) shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among his creditors, the names and addresses of all his creditors and the amounts of their respective claims and the nature of each, whether secured, preferred or unsecured.

Filing of assignment

(3) The assignment made under subsection (1) shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with that official receiver, who shall refuse to file the assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

Appointment of trustee

(4) Where the official receiver files the assignment made under subsection (1), he shall appoint as trustee a licensed trustee whom he shall, as far as possible, select by reference to the wishes of the most interested creditors if ascertainable at the time, and the official receiver shall complete the assignment by inserting therein as grantee the name of the trustee.

Cancellation of assignment

(5) Where the official receiver is unable to find a licensed trustee who is willing to act, the official receiver shall, after giving the bankrupt five days notice, cancel the assignment.

Procedure in small estates

(6) Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after the claims of secured creditors are deducted, will not exceed five thousand dollars or such other amount as is prescribed, the provisions of this Act relating to the summary administration of estates shall apply.

Future property not to be considered

(7) In the determination of the realizable assets of a bankrupt for the purposes of subsection (6), no regard shall be had to any property that may be acquired by the bankrupt or devolve on the bankrupt before the bankrupt's discharge.

Where subsection (6) ceases to apply

(8) The official receiver may direct that subsection (6) shall cease to apply in respect of the bankrupt where the official receiver determines that

(a) the realizable assets of the bankrupt, after the claims of secured creditors are deducted, exceed five thousand dollars or the amount prescribed, as the case may be, or
(b) the costs of realization of the assets of the bankrupt are a significant proportion of the realizable value of the assets,

and the official receiver considers that such a direction is appropriate.

PART III
PROPOSALS
DIVISION I
GENERAL SCHEME FOR PROPOSALS

Who may make a proposal

50. (1) Subject to subsection (1.1), a proposal may be made by

(a) an insolvent person;

(b) a receiver, within the meaning of subsection 243(2), but only in relation to an insolvent person;

(c) a liquidator of an insolvent person's property;

(d) a bankrupt; and

(e) a trustee of the estate of a bankrupt.

…

Result of refusal of proposal

57. Where the creditors refuse a proposal in respect of an insolvent person,

(a) the insolvent person is deemed to have thereupon made an assignment;

(b) the trustee shall forthwith file a report thereof in the prescribed form with the official receiver, who shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 49; and

(c) the trustee shall either

(i) forthwith call a meeting of creditors present at that time, which meeting shall be deemed to be a meeting called under section 102, or

(ii) if no quorum exists for the purpose of subparagraph (i), send notice, within five days after the day the certificate mentioned in paragraph (b) is issued, of the meeting of creditors under section 102,

and at either meeting the creditors may by ordinary resolution, notwithstanding section 14, affirm the appointment of the trustee or appoint another licensed trustee in lieu of that trustee.

…

Duties of bankrupt

158. A bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(a.1) in such circumstances as are specified in directives of the Superintendent, deliver to the trustee, for cancellation, all credit cards issued to and in the possession or control of the bankrupt;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver, attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath with respect to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within five days following the bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of the bankrupt's affairs in the prescribed form verified by affidavit and showing the particulars of the bankrupt's assets and liabilities, the names and addresses of the bankrupt's creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that the bankrupt alone cannot reasonably prepare a proper statement of affairs, the official receiver may, as an expense of the administration of the estate, authorize the employment of a qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within the period beginning on the day that is one year before the date of the initial bankruptcy event or beginning on such other antecedent date as the court may direct, and ending on the date of the bankruptcy, both dates included, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within the period beginning on the day that is five years before the date of the initial bankruptcy event and ending on the date of bankruptcy, both dates included;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend on the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute such powers of attorney, conveyances, deeds and instruments as may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

(n.1) inform the trustee of any material change in the bankrupt's financial situation;

(o) generally do all such acts and things in relation to his property and the distribution of the proceeds among his creditors as may be reasonably required by the trustee, or may be prescribed by the General Rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

…

DISCHARGE OF BANKRUPTS

First-time individual bankrupt

168.1 (1) Except as provided in subsection (2), the following provisions apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction:

(a) the trustee shall, before the end of the eight-month period immediately following the date on which a bankruptcy order is made against, or an assignment is made by, the individual bankrupt, file a report prepared under subsection 170(1) with the Superintendent and send a copy of the report to the bankrupt and to each creditor who requested a copy;

(a.1) the trustee shall, not less than fifteen days before the date of automatic discharge provided for in paragraph *(f)*, give notice of the impending discharge, in the prescribed form, to the Superintendent, the bankrupt and every creditor who has proved a claim, at the creditor's latest known address;

(b) where the Superintendent intends to oppose the discharge of the bankrupt, the Superintendent shall give notice of the intended opposition, stating the grounds therefor, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(c) where a creditor intends to oppose the discharge of the bankrupt, the creditor shall give notice of the intended opposition, stating the grounds therefor, to the Superintendent, to the trustee and to the bankrupt at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(d) where the trustee intends to oppose the discharge of the bankrupt, the trustee shall give notice of the intended opposition in prescribed form and manner, stating the grounds therefor, to the bankrupt and the Superintendent at any time prior to the expiration of the nine month period immediately following the bankruptcy;

(e) where the Superintendent, the trustee or a creditor opposes the discharge of the bankrupt, the trustee shall, unless the matter is to be dealt with by mediation under section 170.1, forthwith apply to the court for an appointment for the hearing of the opposition in the manner referred to in sections 169 to 176, which hearing shall be held

(i) within thirty days after the day the appointment is made, or

(ii) at such later time as may be fixed by the court at the request of the bankrupt or the trustee; and

(f) where the Superintendent, the trustee or a creditor has not opposed the discharge of the bankrupt in the nine month period immediately following the bankruptcy, then, subject to subsection 157.1(3),

(i) on the expiration of that nine month period, the bankrupt is automatically discharged, and

(ii) forthwith after the expiration of that nine month period, the trustee shall issue a certificate to the discharged bankrupt, in the prescribed form, declaring that the

bankrupt is discharged and is released from all debts except those matters referred to in subsection 178(1), and shall send a copy of the certificate to the Superintendent.

Application not precluded

(2) Nothing in subsection (1) precludes an individual bankrupt from applying to the court for discharge before the expiration of the nine month period immediately following the bankruptcy, and subsection (1) ceases to apply to an individual bankrupt who makes such an application before the expiration of that period.

Application of other provisions

(3) The provisions of this Act concerning the discharge of bankrupts apply in respect of an individual bankrupt who has never before been bankrupt under the laws of Canada or of any prescribed jurisdiction, to the extent that those provisions are not inconsistent with this section, whether or not the bankrupt applies to the court for a discharge referred to in subsection (2).

Effect of automatic discharge

(4) An automatic discharge by virtue of paragraph (1)(f) is deemed, for all purposes, to be an absolute and immediate order of discharge.

1992, c. 27, s. 61; 1997, c. 12, s. 98; 2004, c. 25, s. 81.

Bankruptcy to operate as application for discharge

169. (1) Subject to section 168.1, the making of a bankruptcy order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing, files in the court and serves on the trustee a waiver of application before being served by the trustee with a notice of the trustee's intention to apply to the court for an appointment for the hearing of the application as provided in this section.

Appointment to be obtained by trustee

(2) The trustee, before proceeding to the discharge and in any case not earlier than three months and not later than one year following the bankruptcy of any person who has not served a notice of waiver on the trustee, shall on five days notice to the bankrupt apply to the court for an appointment for a hearing of the application on a date not more than thirty days after the date of the appointment or at such other time as may be fixed by the court at the request of the bankrupt or trustee.

Application for discharge

(3) A bankrupt who has given a notice of waiver as provided in subsection (1) may, at any time at the bankrupt's own expense, apply for a discharge by obtaining from the court an appointment for a hearing, which shall be served on the trustee not less than twenty-one days before the date fixed for the hearing of the application, and the trustee on being served therewith shall proceed as provided in this section.

…

Trustee to prepare report

170. (1) The trustee shall prepare a report in the prescribed form with respect to

(a) the affairs of the bankrupt,

(b) the causes of his bankruptcy,

(c) the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the court,

(d) the conduct of the bankrupt both before and after the date of the initial bankruptcy event,

(e) whether the bankrupt has been convicted of any offence under this Act, and

(f) any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge,

and the report shall be accompanied by a resolution of the inspectors declaring whether or not they approve or disapprove of the report, and in the latter case the reasons of the disapproval shall be given.

Filing and service of report

(2) Where an application of a bankrupt for a discharge is pending, the trustee shall file the report prepared under subsection (1) in the court not less than two days, and forward a copy thereof to the Superintendent, to the bankrupt and to each creditor who requested a copy not less than ten days, before the day appointed for hearing the application, and in all other cases the trustee, before proceeding to the discharge, shall file the report in the court and forward a copy to the Superintendent.

Superintendent may file report

(3) The Superintendent may make such further or other report to the court as he deems expedient or as in his opinion ought to be before the court on the application referred to in subsection (2).

Representation by counsel

(4) The trustee or any creditor may attend the court and be heard in person or by counsel.

Evidence at hearing

(5) For the purposes of the application referred to in subsection (2), the report of the trustee is evidence of the statements therein contained.

Right of bankrupt to oppose statements in report

(6) Where a bankrupt intends to dispute any statement contained in the trustee's report prepared under subsection (1), the bankrupt shall at or before the time appointed for hearing the

application for discharge give notice in writing to the trustee specifying the statements in the report that he proposes at the hearing to dispute.

Right of creditors to oppose

(7) A creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the trustee's report shall give notice of the intended opposition, stating the grounds thereof to the trustee and to the bankrupt at or before the time appointed for the hearing of the application for discharge.

R.S., 1985, c. B-3, s. 170; 1997, c. 12, s. 100.

Recommendation

170.1 (1) The report prepared under subsection 170(1) shall include a recommendation as to whether or not the bankrupt should be discharged subject to conditions, having regard to the bankrupt's conduct and ability to make payments.

Factors to be considered

(2) The trustee shall consider the following matters in making a recommendation under subsection (1):

(a) whether the bankrupt has complied with a requirement imposed on the bankrupt under section 68;

(b) the total amount paid to the estate by the bankrupt, having regard to the bankrupt's indebtedness and financial resources; and

(c) whether the bankrupt, if the bankrupt could have made a viable proposal, chose to proceed to bankruptcy rather than to make a proposal as the means to resolve the indebtedness.

Presumption

(3) A recommendation that the bankrupt be discharged subject to conditions is deemed to be an opposition to the discharge of the bankrupt.

Request for mediation…

Court hearing

(7) Where the issues submitted to mediation are not thereby resolved or the bankrupt has failed to comply with conditions that were established by the trustee or as a result of the mediation, the trustee shall forthwith apply to the court for an appointment for the hearing of the matter, which hearing shall be held

(a) within thirty days after the day the appointment is made, or

(b) at such later time as may be fixed by the court,

and the provisions of this Part relating to applications to the court in relation to the discharge of a bankrupt apply, with such modifications as the circumstances require, in respect of an application to the court under this subsection.

Certificate of discharge

(8) Where the bankrupt complies with the conditions imposed on the bankrupt by the trustee in relation to the discharge of the bankrupt or as a result of mediation referred to in this section, the trustee shall

(a) issue to the bankrupt a certificate of discharge in the prescribed form releasing the bankrupt from all debts other than a debt referred to in subsection 178(1); and

(b) send a copy of the certificate of discharge to the Superintendent.

File
(9) Documents contained in a file on the mediation of a matter under this section form part of the records referred to in subsection 11.1(2).

1997, c. 12, s. 101.

…

Court may grant or refuse discharge

172. (1) On the hearing of an application of a bankrupt for a discharge, the court may either grant or refuse an absolute order of discharge or suspend the operation of the order for a specified time, or grant an order of discharge subject to any terms or conditions with respect to any earnings or income that may afterwards become due to the bankrupt or with respect to his after-acquired property.

Powers of court to refuse or suspend discharge or grant conditional discharge

(2) The court shall on proof of any of the facts mentioned in section 173

(a) refuse the discharge of a bankrupt;

(b) suspend the discharge for such period as the court thinks proper; or

(c) require the bankrupt, as a condition of his discharge, to perform such acts, pay such moneys, consent to such judgments or comply with such other terms as the court may direct.

Court may modify after year

(3) Where at any time after the expiration of one year after the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of the order, the court may modify the terms of the order or of any substituted order, in such manner and on such conditions as it may think fit.

Power to suspend

(4) The powers of suspending and of attaching conditions to the discharge of a bankrupt may be exercised concurrently.

R.S., c. B-3, s. 142.

Facts for which discharge may be refused, suspended or granted conditionally

173. (1) The facts referred to in section 172 are:

(a) the assets of the bankrupt are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities, unless the bankrupt satisfies the court that the fact that the assets are not of a value equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities has arisen from circumstances for which the bankrupt cannot justly be held responsible;

(b) the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by the bankrupt and as sufficiently disclose the business transactions and financial position of the bankrupt within the period beginning on the day that is three years before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included;

(c) the bankrupt has continued to trade after becoming aware of being insolvent;

(d) the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet the bankrupt's liabilities;

(e) the bankrupt has brought on, or contributed to, the bankruptcy by rash and hazardous speculations, by unjustifiable extravagance in living, by gambling or by culpable neglect of the bankrupt's business affairs;

(f) the bankrupt has put any of the bankrupt's creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against the bankrupt;

(g) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred unjustifiable expense by bringing a frivolous or vexatious action;

(h) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, when unable to pay debts as they became due, given an undue preference to any of the bankrupt's creditors;

(i) the bankrupt has, within the period beginning on the day that is three months before the date of the initial bankruptcy event and ending on the date of the bankruptcy, both dates included, incurred liabilities in order to make the bankrupt's assets equal to fifty cents on the dollar on the amount of the bankrupt's unsecured liabilities;

(j) the bankrupt has on any previous occasion been bankrupt or made a proposal to creditors;

(k) the bankrupt has been guilty of any fraud or fraudulent breach of trust;

(l) the bankrupt has committed any offence under this Act or any other statute in connection with the bankrupt's property, the bankruptcy or the proceedings thereunder;

(m) the bankrupt has failed to comply with a requirement to pay imposed under section 68;

(n) the bankrupt, if the bankrupt could have made a viable proposal, chose bankruptcy rather than a proposal to creditors as the means to resolve the indebtedness; and

(o) the bankrupt has failed to perform the duties imposed on the bankrupt under this Act or to comply with any order of the court.

…

Court may grant certificates

175. (1) A statutory disqualification on account of bankruptcy ceases when the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part.

Appeal

(2) The court may, if it thinks fit, grant a certificate mentioned in subsection (1), and a refusal to grant such a certificate is subject to appeal.

R.S., c. B-3, s. 145.

Duty of bankrupt on conditional discharge

176. (1) Where an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until the terms, conditions or judgment is satisfied,

(a) give the trustee such information as he may require with respect to his earnings and after-acquired property and income, and

(b) not less than once a year, file in the court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge,

and the trustee or any creditor may require the bankrupt to attend for examination under oath with respect to the facts contained in the statement or with respect to his earnings, income, after-acquired property or dealings.

Penalty for failure to comply

(2) Where the bankrupt fails to give information or to file a statement as required by subsection (1), to attend for examination when required to do so or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the court may on the application of the trustee or of any creditor revoke the order of discharge.

Trustee to distribute funds payable under conditional discharge

(3) Where a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt, all payments on account thereof shall be made to the trustee for distribution to the creditors.

R.S., c. B-3, s. 146.

177. [Repealed, 2000, c. 12, s. 17]

178.

…

Claims released

(2) Subject to subsection (1), an order of discharge releases the bankrupt from all claims provable in bankruptcy.

R.S., 1985, c. B-3, s. 178; R.S., 1985, c. 3 (2nd Supp.), s. 28; 1992, c. 27, s. 64; 1997, c. 12, s. 105; 1998, c. 21, s. 103; 2000, c. 12, s. 18; 2001, c. 4, s. 32; 2004, c. 25, s. 83.

Court may annul discharge

180. (1) Where a bankrupt after his discharge fails to perform the duties imposed on him by this Act, the court may, on application, annul his discharge.

Annulment of discharge obtained by fraud

(2) Where it appears to the court that the discharge of a bankrupt was obtained by fraud, the court may, on application, annul his discharge.

Effect of annulment of discharge

(3) An order revoking or annulling the discharge of a bankrupt does not prejudice the validity of a sale, disposition of property, payment made or thing duly done before the revocation or annulment of the discharge.

R.S., 1985, c. B-3, s. 180; 2004, c. 25, s. 85(F).

Power of court to annul bankruptcy

181. (1) If, in the opinion of the court, a bankruptcy order ought not to have been made or an assignment ought not to have been filed, the court may by order annul the bankruptcy.

Effect of annulment of bankruptcy

(2) If an order is made under subsection (1), all sales, dispositions of property, payments duly made and acts done before the making of the order by the trustee or other person acting under the trustee's authority, or by the court, are valid, but the property of the bankrupt shall vest in any person that the court may appoint, or, in default of any appointment, revert to the bankrupt

for all the estate, or interest or right of the trustee in the estate, on any terms and subject to any conditions, if any, that the court may order.

R.S., 1985, c. B-3, s. 181; 2004, c. 25, s. 86.

Stay on issue of order

182. (1) An order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or delivered until the expiration of the time allowed for an appeal, and, if an appeal is entered, not until the appeal has been finally disposed of.

(2) [Repealed, 1992, c. 27, s. 65]

R.S., 1985, c. B-3, s. 182; 1992, c. 27, s. 65.

Bankruptcy offences

198. 1. Any bankrupt who

a. makes any fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event,

b. refuses or neglects to answer fully and truthfully all proper questions put to the bankrupt at any examination held pursuant to this Act,

c. makes a false entry or knowingly makes a material omission in a statement or accounting,

d. after or within one year immediately preceding the date of the initial bankruptcy event, conceals, destroys, mutilates, falsifies, makes an omission in or disposes of, or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of, a book or document affecting or relating to the bankrupt's property or affairs, unless the bankrupt had no intent to conceal the state of the bankrupt's affairs,

e. after or within one year immediately preceding the date of initial bankruptcy event, obtains any credit or any property by false representations made by the bankrupt or made by any other person to the bankrupt's knowledge,

f. after or within one year immediately preceding the date of the initial bankruptcy event, fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from the bankrupt, or

g. after or within one year immediately preceding the date of the initial bankruptcy event, hypothecates, pawns, pledges or disposes of any property that the bankrupt has obtained on credit and has not paid for, unless in the case of a trader the hypothecation, pawning, pledging or disposing is in the ordinary way of trade and unless the bankrupt had no intent to defraud, is guilty of an offence and is liable, on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year or to both, or on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

2. A bankrupt who, without reasonable cause, fails to comply with an order of the court made under section 68 or to do any of the things required of the bankrupt under section 158 is guilty of an offence and is liable

a. on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
b. on conviction on indictment, to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding three years, or to both.

Failure to disclose fact of being undischarged

199. An undischarged bankrupt who

a. engages in any trade or business without disclosing to all persons with whom the undischarged bankrupt enters into any business transaction that the undischarged bankrupt is an undischarged bankrupt, or

b. obtains credit to a total of five hundred dollars or more from any person or persons without informing such persons that the undischarged bankrupt is an undischarged bankrupt,

is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding one year, or to both.

AMENDMENTS TO BY-LAWS 7.1 AND 8

Motion

59. That Convocation amend By-Laws 7.1 and 8 as follows:
a. Amend subsection 23(6) of By-Law 7.1 by striking out “after” and substituting “upon”; and
b. Amend paragraph 2 of subsection 9 (1) of By-Law 8 by adding “period” after “time”.

Background

60. On April 24, 2008, Convocation amended By-Law 7.1 to add requirements for licensees to identify and verify the identity of clients (in Part III), and By-Law 8 to specify the information about licensees to be published in the Law Society register (in Part III).

61. During the discussion at Convocation, certain questions about the amendments were raised. Two of these questions were reviewed by the Committee and the Paralegal Standing Committee, which are recommending the amendments in this report.[5]

Amendment to By-Law 7.1 Concerning Client Identification Requirements for Organizational Clients

[5] Other issues relating to By-Law 7.1 and 8 are under review and will be dealt with at a future meeting.

62. Subsection 23(6) of By-Law 7.1 reads:

> Timing of verification, organizations
> (6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after engaging in the activities described in clause 22 (1) (b).[6]

63. At Convocation, it was suggested that this language was confusing, as it does not specify "60 days after commencing the engagement." For example, the current language, "after engaging in the activities", could permit the verification to take place 60 days after the end of the retainer.

64. The Committees determined that this matter may be resolved by using the word "upon" instead of "after", so that it is clear that the 60 day period runs from the point the licensee commences the activities described. This mirrors the language in subsection 23(5), which prescribes the time an individual's identity must be verified ("upon engaging in the activities…"). The amended subsection would read:

> Timing of verification, organizations
> (6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days upon engaging in the activities described in clause 22(1)(b).

Amendment to By-Law 8 Respecting the Contents of the Law Society Register

65. Paragraph 9(1) 2 of By-Law 8 describes one item in the Law Society's register. This paragraph states that the register will contain:

> An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario

66. At Convocation, it was suggested that for clarity and for consistency with paragraphs 3 and 4 which reference "time period"[7] , the word "period" be added after the word "time". The Committees agree with this change, and the amended paragraph would read:

---

[6] This clause refers to the receiving, paying or transferring of funds.

[7] 3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
i. where and in what capacity the licensee practises law or provides legal services, and
ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.

4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,
i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.

An indication of every time period that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.

INFORMATION

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

67. Professional Regulation Division's Quarterly Report (first quarter 2008), 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 January to March 2008.

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

A copy of the Professional Regulation Division Quarterly Report.

(pages 57 – 102)

Re: Undischarged Bankrupts and LAWPRO Policy Exclusions for Mandatory Real Estate Practice Coverage

It was moved by Ms. Rothstein, seconded by Mr. Ruby, that Convocation maintain the *status quo* respecting LAWPRO's policy exclusion for undischarged bankrupts for mandatory real estate practice coverage.

Carried

Re: Amendments to By-Laws 7.1 and 8

It was moved by Ms. Rothstein, seconded by Mr. Ruby, that –

Convocation amend By-Laws 7.1 and 8 as follows:

By-Law 7.1 Subsection 23 (6) of By-Law 7.1 is amended by striking out "after/suivant" and substituting "upon/dès".

By-Law 8 Paragraph 2 of subsection 9 (1) of By-Law 8 is amended by striking out "time/des moments au cours desquels" and substituting "time period/des périodes au cours desquelles".

Not Put

The motion was referred back to the Committee.

Re: Amendments to Rules 1.02 and 6.07 of the *Rules of Professional Conduct*

It was moved by Ms. Rothstein, seconded by Mr. Ruby, that Convocation amend the *Rules of Professional Conduct* as follows:

a. With respect to Rule 1.02, make the following amendments to the definition of "conduct unbecoming a barrister and solicitor" and Commentary:

"conduct unbecoming a barrister or solicitor" means conduct, including conduct in a lawyer's personal or private capacity, that tends to bring discredit upon the legal profession including, for example,

(a) committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer,

(b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health, or unbusinesslike habits of another, or

(c) engaging in conduct involving dishonesty or conduct which undermines the administration of justice;

~~Commentary~~
~~Dishonourable or questionable conduct on the part of a lawyer in either private life or professional practice will reflect adversely upon the integrity of the profession and the administration of justice. If the conduct, whether within or outside the professional sphere, is such that knowledge of it would be likely to impair the client's trust in the lawyer, the Society may be justified in taking disciplinary action.~~

~~Generally, however, the Society will not be concerned with the purely private or extra-professional activities of a lawyer that do not bring into question the lawyer's professional integrity.~~

b. With respect to subrule 6.07(3), replace the number "IV" with the number "II" in the commentary following the subrule.

A friendly amendment was made that the second paragraph of the commentary be retained except the word "however."

It was further accepted as a friendly amendment that the entire commentary be retained.

The motion as amended was approved.

Carried

Item for Information

- Professional Regulation Division Quarterly Report

ADDRESS BY JOHN HUNTER

Mr. John Hunter, President of the Law Society of British Columbia addressed Convocation.

FINANCE COMMITTEE REPORT

Mr. Millar presented the Report.

…….

IN CAMERA

…….

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

…….

IN PUBLIC

…….

Re: Working Capital Reserve

Report to Convocation
May 22, 2008

Finance Committee

Committee Members
Derry Millar, Chair
Brad Wright, Vice-Chair
Melanie Aitken
Jack Ground
Susan Hare
Carol Hartman
Janet Minor
Jack Rabinovitch
Paul Schabas
Gerald Swaye

Purposes of Report: Decision
Information

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

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on May 8, 2008. Committee members in attendance were: Derry Millar(C.), Brad Wright (vc.), Susan Hare, Carol Hartman, Jack Rabinovitch, Paul Schabas and Gerald Swaye (phone).

   Also in attendance were Beth Symes, Marshall Crowe, Ab Chahbar, Ross Murray and Vern Krishna as members of the Audit Committee.

2. Staff in attendance were: Wendy Tysall, Fred Grady, and Brenda Albuquerque Boutilier.

FOR DECISION

WORKING CAPITAL RESERVE

Motion

12. That Convocation approve the transfer of $2.7 million from the Unrestricted Fund Balance to the Working Capital Reserve.

13. The Working Capital Reserve and the end of year balance of the Unrestricted Fund comprise the Society's Operating Reserve. As defined by policy, the purpose of the Operating Reserve is " to provide Convocation greater flexibility in establishing the annual member levy and to enable the funding of unanticipated expenditures or revenue shortfalls together with the funding of short-term cash requirements."

14. In 2002, Convocation approved the following policy set out more fully in Appendix 1:

> "The Operating Reserve is maintained to ensure adequate cash reserves for the continuous financing of the General Fund operations for up to two months."

At December 31, 2007, the balance of the Working Capital Reserve was $7,975,000, unchanged since 2002, and the Unrestricted Fund was $3,538,000.

Issue

15. In their Management Letter issued subsequent to their audit of the 2007 financial statements, our auditors, Deloitte & Touche LLP stated:

> "The balance in the Working Capital Reserve is intended to finance the General Fund's operations for up to two months. The balance at the end of 2007 does not meet this benchmark, based on the 2007 operating expenses, while the Unrestricted Fund continues to grow"

They recommended the Working Capital Reserve fund balance be monitored to ensure that it is at the recommended level.

Discussion

16. Based on 2008 budgeted operating expenses, a two-month operating reserve would be approximately $10.6 million. The Society's Unrestricted Fund balance at the end of 2007 is $3.5 million. Of this balance, $800,000 has been utilized in the 2008 budget to reduce the annual fee for lawyers. The remaining $2.7 million is available for the general use of the Society.

17. As part of the 2008 budget material presented to Convocation in October 2007, it was noted that the Working Capital Reserve was $2.7 million below the two month maximum prescribed by policy. It was further noted that any Unrestricted Fund balance not utilized to reduce fees in 2008 could be transferred to the Working Capital Reserve.

18. In discussions with the Audit Committee, our auditors indicated that the optimum reserve amount would depend on the circumstances of individual organisations. Prior assessments indicated it would not be unusual for an organization such as the Law

Society to maintain surplus funds equivalent to four to six months of operating expenses. A current review of unrestricted and reserve fund balances found a wide range in the large law societies across Canada. Comparing unrestricted and working capital reserve fund balances as a percentage of annual operating expenses showed a range of 53% (Manitoba), 42% (Alberta), 1% (Quebec) to a low of minus 39% (at the end of 2006, British Columbia had an accumulated fund deficit of $5.8 million).

19. Convocation is requested to approve the transfer of $2.7 million from the Unrestricted Fund balance to the Working Capital Reserve to bring the balance of the Working Capital Reserve in full compliance with the operating reserve policy. After the transfer is made, the balance in the Unrestricted Fund will be reduced to $838,000 and the Working Capital Reserve increased to $10.675 million.

Appendix 1
Approved by Convocation – May 23, 2002

Policy for the Operating Reserve

Purpose:

To provide Convocation greater flexibility in establishing the annual member levy and to enable the funding of unanticipated expenditures or revenue shortfalls together with the funding of short-term cash requirements.

For the purpose of this policy the Operating Reserve is defined as the combined end of fiscal year balances of the Society's Unrestricted Fund and the Working Capital Reserve Fund.

Objective:

With respect to operating the Society in a sound and prudent fiscal manner, Convocation will endeavour to maintain an Operating Reserve that provides for up to two months of the Society's operating expenses.

Policy:

To achieve this objective, Convocation will, as a general principle, adopt budgets that maintain an Operating Reserve balance sufficient to provide the Society's operating expenses for up to two months.

In the event this balance exceeds two months of annual operating expenses at the end of any fiscal year, Convocation should designate the excess be employed as follows,

- Appropriated to reduce the next year's annual membership levy;
- Transferred to the Capital and Technology fund;
- Appropriated to fund one-time expenditures;
- Appropriated to fund start-up expenditures for new programs not included in the annual budget.

If at the end of a fiscal year, the Operating Reserve falls below two months of annual operating expenses, the CEO shall inform Convocation of the implications and options for restoring the Operating Reserve balance to an acceptable level.

This policy is intended to guide Convocation's fiscal oversight and management of the Operating Reserve. It is not intended to restrict Convocation's discretion to use some or all of the Operating Reserve balance when needed.

FOR INFORMATION
2009 BUDGET PROCESS

20. Convocation is requested to review the suggested structure and timetable for the 2009 budget process.

21. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).

22. A comprehensive, rotational system of program reviews linked to the budget has been in place since 2002. The operations to be reviewed for the 2009 budget are still to be determined

23. The rotational review of activities has the benefits of:
- Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
- Increasing discipline in budget development
- Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
- Reducing the length of the budget process
- Increasing bencher understanding of a number of specific activities each year.
- Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

Operational Reviews for the 2009 Budget

24. A history of operational reviews since Convocation approved the process in 2002 is set out below.

2002 Client Service Centre, Lawyers Fund for Client Compensation and Great Library
2003 Professional Development & Competence and Communications
2004 Professional Regulation and Policy & Legal Affairs
2005 Compensation Fund and the Customer Service Centre
2006 Professional Development & Competence and Information Systems
2007 Professional Regulation and Communications

25. All significant Law Society programs have had previous reviews as the process works its way through a second cycle.

26. It is intended that the operational reviews for the 2009 budget be completed and presented to the Finance Committee in June and September 2008 as set out in the timetable below. The operations to be reviewed are still to be determined. Presentations on the LibraryCo budget would also be conducted in September.

Budget Process Changes for 2009

27. Circumstances which differentiate the 2009 budget process from recent years are primarily the establishment of a Priority Planning Committee and the regulation of paralegals.

Priorities

28. At a Priority Planning session in September 2007, benchers identified nine priorities for the 2007-2011 bencher term. Convocation approved the priorities in October and also approved a process for moving forward with the priorities. The Priority Planning Committee will consult with benchers and staff to develop recommendations for goals for each priority area and for achievement of those goals. The Committee will report back to Convocation with its recommendations during the first half of 2008. The timing of this report may depend on the new Treasurer.

29. Listed in no particular order, the nine priorities are:
- Discipline
- Access to justice
- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation

Paralegals

30. The first operating budget for paralegals, effective for the 2008 financial year, was approved by Convocation in February 2008. We also have a relatively reliable estimate of the number of licensed paralegals. It is intended that the paralegal budget be approved at the same time as the lawyer budget.

DATE (2008)	PROCESS
May	The Senior Management Team (SMT) commences the budget process by considering individual and collective budget assumptions, variables and objectives. This review also includes how the proposed 2009 budget fits into longer-term plans for the organization and departments. Finance Committee and Convocation approve a process for preparing the 2009 budget that includes Standing Committee endorsement of operational reviews. Bencher's comments on the program reviews and budget process are invited.
June	SMT Budget Planning session – how each division will address the priorities of Convocation. Operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend.
July	The components reviewed and approved above are compiled into an operating

August	budget for the Law Society. Facilities and Information Systems compile a capital budget with the assistance of user departments. Further assessments of LibraryCo operations.
September	If not completed in June, operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend. The Finance Committee reports results of the program reviews to Convocation and program review material is available to all benchers. Bencher's comments on the program reviews and budget process are invited. Opportunity for the Priority Planning Committee / Convocation to convey policy objectives and budget priorities to the Finance Committee. A budget information session is held for all benchers to ensure a full exchange of information on the 2009 budget. LibraryCo submits preliminary submissions on 2008 activities and 2009 projections to the Finance Committee at this time. 2009 budget requests from external organizations such as CDLPA received by this time.
October	Draft operating budgets for lawyers and paralegals and a capital budget for 2009 is presented to the Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval.

It was moved by Mr. Millar, seconded by Ms. McGrath, that Convocation approve the transfer of $2.7 million from the Unrestricted Fund Balance to the Working Capital Reserve.

Carried

Item for Information

- 2009 Budget Update

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report To Convocation
May 22, 2008

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Bonnie Warkentin (Vice-Chair)
Raj Anand

Larry Banack
Jennifer Halajian
Derry Millar
Joanne St. Lewis

Purposes of Report: Decision
Information

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

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Committee met on May 8, 2008. Committee members Mark Sandler (Chair), Larry Banack, Jennifer Halajian and Derry Millar attended. Staff members Katherine Corrick, A.K. Dionne, Grace Knakowski, Elliot Spears, Sophia Sperdakos and Sybila Valdivieso also attended.

FOR DECISION

APPROVAL OF CONSULTATION PROCESS FOR PROPOSED NEW RULES OF PRACTICE AND PROCEDURE

MOTION

2. That Convocation authorize the Tribunals Committee to consult with the profession in stages on the proposed new Rules of Practice and Procedure set out at Appendix 1 as follows:
   a. To first seek input from a number of lawyers who appear regularly before Law Society Hearing Panels and incorporate any additional changes the Committee considers appropriate.

   b. To then seek input from legal organizations and the profession at large.

3. That input and written comments be accepted until September 2, 2008 after which time the Committee will provide revised rules to Convocation for its consideration.

Background

4. In May 2005 Convocation approved the report of the Tribunals Task Force. As a result of that report Convocation authorized the development of new Rules of Practice and Procedure. The Committee, with the assistance of a staff working group, considered the rules of a number of other administrative tribunals, the Society of Ontario Adjudicators and Regulators (SOAR) rules, the Rules of Civil Procedure and the Society's own current rules and developed draft rules to reflect the Law Society's commitment to open and transparent hearing processes. At this stage, the draft rules apply only to Hearing Panel matters. Once the Hearing Panel rules have been approved corresponding rules for appeals will be developed. The draft rules are set out at APPENDIX 1.

5. In January 2008, the Committee provided its draft rules to the Professional Regulation Committee for its comments, a number of which have been included in the draft rules. In addition, the Committee accepted the Professional Regulation Committee's recommendation for the introduction of a procedure for requesting a party to admit the truth of a fact or authenticity of a document.

6. The Professional Regulation Committee also considered the Law Society's current approach to the standard of evidence used in Law Society proceedings and the issue of defense disclosure and provided the Committee with a range of views on these issues, but with no recommendation on whether to undertake a new approach. The Tribunals Committee was not of the view that changes to either the standard of evidence or defense disclosure should be included in the draft rules at this time given the Professional Regulation Committee's position. Moreover, it was the Committee's view that both of these issues could be taken up and reflected in the new rules in the future, should the Professional Regulation Committee propose and Convocation so direct.

7. The Committee is of the view that the draft rules would now benefit from both specific and general commentary and input as follows:
   a. Committees may wish to consider whether to comment on the rules from the perspective of their specific mandates. So, for example, the Equity and Aboriginal Issues Committee may have comments on those rules dealing with the "language of the hearing" or the "provision of interpreters."

   b. The Committee proposes to seek input from a small group of lawyers who appear regularly before Law Society Hearing Panels and have particular experience with using the Rules of Practice and Procedure.

   c. The Committee proposes to seek written input from legal organizations.

   d. The Committee proposes to seek written input from the profession in general.

   e. The Committee may seek input from other regulatory bodies on how the draft rules compare with their processes.

8. The Committee wishes to proceed with the consultation on a staggered basis, seeking input from smaller groups first, such as lawyers who appear regularly before Law Society Hearing Panels and Law Society committees. It can then incorporate changes it

considers appropriate, and subsequently consult with legal organizations and the profession at large. It anticipates that the consultation process will proceed from the end of May until the beginning of September 2008. At that time, the Committee will report to Convocation on the consultation process and provide revised draft rules for Convocation's consideration.

APPENDIX 1

RULE 1

APPLICATION AND INTERPRETATION

Application

1.01 These Rules apply to the following proceedings:

1. A licensing proceeding.
2. A restoration proceeding.
3. A conduct proceeding.
4. A capacity proceeding.
5. A competence proceeding.
6. A non-compliance proceeding.
7. A reinstatement proceeding.
8. A terms dispute proceeding.

Definitions and interpretation

1.02 In these Rules, unless the context requires otherwise,

"capacity proceeding" means a proceeding under section 38 of the Act;

"competence proceeding" means a proceeding under section 43 of the Act;

"complainant" means a person who has made a complaint to the Society regarding a licensee, which is relevant to a proceeding;

"conduct proceeding" means a proceeding under section 34 of the Act;

"deliver" means serve and file with the Tribunals Office with proof of service;

"hearing" does not include a proceeding management conference or a pre-hearing conference;

"holiday" means,

(a) any Saturday or Sunday,

(b) New Year's Eve Day, and where New Year's Eve Day falls on a Saturday or Sunday, the preceding Friday,

(c) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday,

(d) Family Day,

(e) Good Friday,

(f) Easter Monday,

(g) Victoria Day,

(h) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday,

(i) Civic Holiday,

(j) Labour Day,

(k) Thanksgiving Day,

(l) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday,

(m) Christmas Eve Day, and where Christmas Eve Day falls on a Saturday or Sunday, the preceding Friday,

(n) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday,

(o) Boxing Day, and

(p) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

"licensing proceeding" means a proceeding under section 27 of the Act;

"moving party" means a person who makes a motion;

"non-compliance proceeding" means a proceeding under section 45 of the Act;

"non-party participant" means a person who is not a party to a proceeding who is permitted to participate in a proceeding or a part thereof;

"panel" means the panelist or, collectively, the panelists assigned to a hearing;

"panelist" means a member of the Hearing Panel;

"party" includes a moving party and a responding party;

"reinstatement proceeding" means a proceeding under section 49.42 of the Act;

"representative" means a person authorized under the Law Society Act to represent a person in a proceeding;

"responding party" means a person against whom a motion is made;

"restoration proceeding" means a proceeding under section 31 of the Act;

"subject of the proceeding" means,

(a) in a licensing proceeding, the person referred to, in subsection 27 (5) of the Act, as the applicant,

(b) in a restoration proceeding, the person referred to, in subsection 31 (4) of the Act, as the person whose licence is in abeyance,

(c) in a conduct proceeding, the person referred to, in subsection 34 (2) of the Act, as the licensee who is the subject of the application,

(d) in a capacity proceeding, the person referred to, in subsection 38 (2) of the Act, as the licensee who is the subject of the application,

(e) in a competence proceeding, the person referred to, in subsection 43 (2) of the Act, as the licensee who is the subject of the application,

(f) in a non-compliance proceeding, the person referred to, in subsection 45 (2) of the Act, as the licensee who is the subject of the application,

(g) in a reinstatement proceeding, the person referred to, in subsection 49.42 (4) of the Act, as the applicant, and

(h) in a terms dispute proceeding, the person referred to, in subsection 49.43 (3) of the Act, as the applicant;

"terms dispute proceeding" means a proceeding under section 49.43 of the Act.

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

RULE 2

NON-COMPLIANCE WITH RULES

Effect of non-compliance

2.01 (1) A failure to comply with a procedural requirement in these Rules is an irregularity and does not render a proceeding or a step or document in a proceeding a nullity.

Orders on motion attacking irregularity

(2) On the motion of a party to attack a proceeding or a step or document in a proceeding for irregularity, an order may be made,

(a) granting any relief necessary to secure the just determination of the real matters in issue; or

(b) dismissing the proceeding or setting aside a step or document in the proceeding in whole or in part only where and as necessary in the interests of justice.

Attacking irregularity

(3) A motion to attack a proceeding or a step or document in a proceeding for irregularity shall not be made, except with leave of the Hearing Panel,

(a) after the expiry of a reasonable period of time after the moving party knows or ought reasonably to have known of the irregularity;

(b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity; or

(c) if the moving party has otherwise consented to the irregularity

Order dispensing with compliance

2.02 (1) On the motion of a party or a non-party participant, or on a panel's own motion, an order dispensing with compliance with any procedural requirement in these Rules may be made where it is necessary in the interests of justice.

Consent to non-compliance

(2) A party may dispense with compliance with any procedural requirement in these Rules with the consent of all other parties.

RULE 3

TIME

Computing time

3.01 In computing time under these Rules, or under an order made under these Rules,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.

Extension or abridgment of time periods

3.02 (1) On the motion of a party or a non-party participant, an order extending or abridging any time prescribed by these Rules, or by an order made under these Rules, may be made where it is just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

RULE 4

REPRESENTATION

Change in representation

Notice of change of representative

4.01 (1) A party or a non-party participant who has a representative of record may change the representative of record by serving on the representative and every other party and non-party participant and filing with the Tribunals Office, with proof of service, a notice of change of representative giving the name, address, telephone number, fax number and e-mail address of the new representative.

Form 4A

(2) The notice mentioned in subrule (1) may be in Form 4A.

Notice of appointment of representative

(3) A party or a non-party participant acting in person may appoint a representative of record by delivering a notice of appointment of representative giving the name, address, telephone number, fax number and e-mail address of the representative.

Form 4B

(4) The notice mentioned in subrule (3) may be in Form 4B.

Notice of intention to act in person

(5) A party or a non-party participant who has a representative of record may elect to act in person by serving on the representative and every other party and non-party participant and filing with the Tribunals Office, with proof of service, a notice of intention to act in person that sets out the person's address for service, telephone number, fax number, if any, and e-mail address, if any.

Form 4C

(6) The notice mentioned in subrule (5) may be in Form 4C.

Removal of representative of record

4.02 On the motion of a representative, a party or another person, or on a panel's own motion, an order may be made removing the representative as the representative of record.

RULE 5

COMMUNICATION WITH HEARING PANEL

Communication with panel

5.01 No party, non-party participant, representative or other person who attends at or participates in a hearing shall communicate with a panel outside of the hearing with respect to the subject matter of the hearing except,

(a) in the presence of all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives; or

(b) in writing by sending the written communication to the Tribunals Office and a copy of the written communication to all parties and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives.

RULE 6

ADDING PARTIES

Adding parties

6.01 (1) On the motion of a person, an order may be made adding a person as a party to a proceeding where the person is entitled under the Law Society Act or otherwise by law to be a party to the proceeding.

Time for bringing motion

(2) A motion under this Rule shall be made prior to the hearing on the merits of the proceeding.

RULE 6.1

JOINDER OR SEVERANCE OF PROCEEDINGS

Hearing proceedings together or consecutively

6.1.01 (1) On the motion of a party, an order may be made that the merits of two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other if,

(a) the proceedings have a question of fact, law or mixed fact and law in common;

(b) the proceedings involve the same parties;

(c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or

(d) for any other reason an order ought to be made under this Rule.

Time for bringing motion

(2) A motion under this Rule shall be made,

(a) prior to the hearing on the merits of any affected proceeding; or

(b) at any time, with leave of the Hearing Panel.

Effect of hearing proceedings together or consecutively

(3) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the effects of hearing the merits of the proceedings together or one immediately after the other and may give such directions as it deems just with respect to those effects.

Separating proceedings

(4) Where the Hearing Panel makes an order under subrule (1), if hearing the merits of the proceedings together or one immediately after the other unduly complicates or delays the proceedings or causes prejudice to a party, on the motion of a party or on its own motion, the Hearing Panel may order separate hearings for all or any part of the proceedings.

Dividing proceeding

6.1.02 (1) On the motion of a party, or on a panel's own motion, an order may be made that a proceeding be divided into two or more proceedings.

Effect of order

(2) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the effects of making the order, including how the merits of the separate proceedings shall be heard, and may give such directions as it deems just with respect to the division of the proceeding.

RULE 7

NON-PARTY PARTICIPATION

Non-party participation

7.01 (1) On the motion of a person, an order may be made permitting a person who is not a party to a proceeding to participate in the proceeding or a part thereof if the participation of the person is in the interests of justice.

Extent of participation

(2) Where the Hearing Panel makes an order under subrule (1), the Hearing Panel shall determine the extent of the person's participation and may give such directions as it deems just with respect to the person's participation.

Intervening as "friend of the court"

7.02 A panel may invite a person, without becoming a party to a proceeding, to participate in the proceeding or a part thereof for the purpose of rendering assistance to the Hearing Panel by way of argument.

RULE 8

COMMENCEMENT, AMENDMENT AND ABANDONMENT OF PROCEEDINGS

How proceeding commenced

8.01 (1) A proceeding shall be commenced by the issuing of an originating process.

Notice of application

(2) The originating process for the following proceedings is a notice of application (Form 8A):

1. A conduct proceeding.

2. A capacity proceeding.

3. A competence proceeding.

4. A non-compliance proceeding.

5. A reinstatement proceeding.

6. A terms dispute proceeding.

Notice of referral for hearing

(3) The originating process for the following proceedings is a notice of referral for hearing (Form 8B):

1. A licensing proceeding.

2. A restoration proceeding.

How originating process issued

(4) An originating process is issued by the act of it being assigned a file number and being dated by the Tribunals Office.

Same

(5) An originating process may be issued,

(a) on personal attendance in the Tribunals Office by the party seeking to issue it or by someone on the party's behalf;

(b) by mail or courier, by the party seeking to issue it,

(i) mailing an original of the originating process by regular lettermail or registered mail to the Tribunals Office,or

(ii) sending an original of the originating process by courier to the Tribunals Office.

Copy of originating process to be sent to party

(6) Where an originating process is issued by mail or courier, the Tribunals Office shall mail a copy of the originating process as issued by regular lettermail to the party that issued it.

File copy of originating process

(7) An original of the originating process as issued shall be filed in the Tribunals Office when it is issued.

Service of originating process

(8) A copy of the originating process as issued shall be served by the party that issued it on every other party and proof of service shall be filed with the Tribunals Office within thirty days after the originating process is issued.

Deemed abandonment

(9) Where a party that issued an originating process fails to file, within thirty days after the originating process is issued, proof of service of the originating process on every other party, the proceeding commenced by the issuing of the originating process is deemed to have been abandoned by that party.

Motion to set aside deemed abandonment

(10) On the motion of a person who was deemed to have abandoned a proceeding under subrule (9), an order may be made, as is just, setting aside the deemed abandonment.

Effect of deemed abandonment on subsequent proceeding

(11) Where a party is deemed to have abandoned a proceeding under subrule (9), the deemed abandonment is not a bar to a subsequent proceeding commenced by that party involving the same subject matter.

Amendment of originating process by party

8.02 (1) A party may amend its originating process,

(a) at any time prior to ten days before the hearing on the merits of the proceeding; and

(b) at any time after the time mentioned in clause (a), with leave of the Hearing Panel.

Leave to amend

(2) In considering whether to grant leave to a party to amend its originating process, the Hearing Panel may consider,

(a) prejudice to a person;

(b) timeliness of notice to the opposite party; and

(c) any other relevant factor.

No addition of party

(3) An amendment under this rule shall not include the addition of a party.

How amendment made

(4) A party amending its originating process shall file, with the Tribunals Office, a fresh copy of the original originating process as amended, bearing the date of the original originating process and the title of the original originating process preceded by the word “amended”.

Amendment underlined

(5) An amendment to an originating process shall be underlined so as to distinguish the amended wording from the original wording.

Same

(6) Where an originating process is amended more than once, each subsequent amendment shall be underlined with an additional line.

Duties of Tribunals Office

(7) When an amended originating process is filed with the Tribunals Office, the Tribunals Office shall note on it the date on which it is filed and the authority by which the amendment was made.

Date of amendment

(8) The date on which an amended originating process is filed with the Tribunals Office shall be deemed to be the date on which the original originating process is amended.

Service of amended originating process

(9) A party that amends its originating process shall serve a copy of the amended originating process on every other party forthwith after it is filed with the Tribunals Office.

Same

(10) An amended originating process shall be served in accordance with subrule 9.01 (1).

Proof of service

(11) Proof of service of an amended originating process shall be filed with the Tribunals Office forthwith after it is served.

Amendment at hearing

(12) Where an originating process is amended at the hearing on the merits of the proceeding, the amendment shall be made on the face of the record and a fresh copy of the original originating process as amended need not be filed with the Tribunals Office and the amended originating process need not be served.

Abandonment of proceedings prior to hearing on the merits

Conduct, capacity, competence, non-compliance reinstatement or terms dispute proceeding

8.03 (1) Prior to the hearing on the merits of the following proceedings, the applicant may abandon the proceeding by delivering a notice of abandonment (Form 8C):

1. A conduct proceeding.

2. A capacity proceeding.

3. A competence proceeding.

4. A non-compliance proceeding.

5. A reinstatement proceeding.

6. A terms dispute proceeding.

Abandonment of licensing or restoration proceeding by Society

(2) Prior to the hearing on the merits of a licensing or a restoration proceeding, the Society may abandon the proceeding by delivering a notice of abandonment (Form 8D).

Abandonment of licensing or restoration proceeding by applicant

(3) Prior to the hearing on the merits of a licensing or restoration proceeding, the applicant may abandon the application that has been referred for a hearing and the proceeding by delivering a notice of abandonment (Form 8E).

RULE 9

SERVICE OF DOCUMENTS

Manner of service: originating process

9.01 (1) An originating process shall be served by personal service or by an alternative to personal service.

Manner of service: all other documents

(2) A document other than an originating process may be served,

(a) by personal service or an alternative to personal service,

(b) by sending a copy of the document by courier to the last known address of the person or the person's representative;

(c) by faxing a copy of the document to the last known fax number of the person or the person's representative, but if the person being served is a party, service under this clause is only effective if the recipient consents to the faxing prior thereto; or

(d) by e-mailing a copy of the document to the last known e-mail address of the person or the person's representative, but service under this clause is only effective,

(i) if the person being served is a party, if the recipient consents to the e-mailing prior thereto, and

(ii) if the recipient provides by e-mail an acceptance of service and the date of the acceptance.

Service by fax

(3) A document that is served by fax under clause (2) (c) shall include a cover page indicating,

(a) the sender's name, address and telephone number;

(b) the name of the person to be served;

(c) the date and time of transmission;

(d) the total number of pages, including the cover page, transmitted;

(e) the fax number of the sender; and

(f) the name and telephone number of a person to contact in the event of transmission problems.

Service by e-mail

(4) A document that is served by e-mail under clause (2) (d) shall be attached to an e-mail message that shall include,

(a) the sender's name, address, telephone number, fax number and e-mail address;

(b) the date and time of transmission; and

(c) the name and telephone number of a person to contact in the event of transmission problems.

Personal service

(5) Where a document is to be served by personal service, the service shall be made,

(a) on an individual, by leaving a copy of the document with the individual;

(b) on a person other than the Society, by leaving a copy of the document with an adult individual at the premises at which the person carries on business; and

(c) on the Society, by leaving a copy of the document with a Discipline Counsel of the Society.

Alternatives to personal service

(6) Where a document may be served by an alternative to personal service, the service shall be made,

(a) by leaving a copy of the document with a person's representative; or

(b) by mailing a copy of the document by regular lettermail or registered mail to the last known address of the person.

Substituted service or dispensing with service

(7) On the motion of a person, an order may be made permitting substituted service or dispensing with service where it appears that it is impractical for any reason to effect service as required under this rule or where it is necessary in the interests of justice.

Effective date of service

9.02 (1) Service under rule 9.01 is deemed to be effective,

(a) if a copy of the document is left with a person,

(i) before 4 p.m., on the day it is left with the person, or

(ii) after 4 p.m., on the day following the day it is left with the person;

(b) if a copy of the document is mailed to a person, on the fifth day after mailing;

(c) if a copy of the document is sent by courier to a person, on the second day after the document was provided to the courier;

(d) if a copy of the document is faxed to a person,

(i) before 4 p.m., on the day it is faxed to the person, or

(ii) after 4 p.m., on the day following the day it is faxed to the person; or

(e) if a copy of the document is e-mailed to a person,

(i) where the e-mail acceptance of service is received before 4 p.m. on any day, on that day,

(ii) where the e-mail acceptance of service is received after 4 p.m. but before midnight on any day, on the following day.

Effective date of service: substituted service

(2) If an order is made permitting substituted service, the order shall specify when service in accordance with the order is effective.

Effective date of service: service dispensed with

(3) If an order is made dispensing with service, the document shall be deemed to have been served on the effective date of the order for the purpose of the computation of time under these Rules.

Proof of Service

9.03 (1) Service of a document may be proved by,

(a) an affidavit of the person who served it; or

(b) where the document is served on a representative or on a Discipline Counsel of the Society, the written admission or acceptance of service of the representative or Discipline Counsel.

(2) The affidavit or written admission or acceptance of service may be printed on the back sheet or on a stamp or sticker affixed to the back sheet of the document served.

RULE 10

SCHEDULING

Hearing on merits of proceeding

Scheduling by panelist

10.01 (1) Subject to subrule (2), a panelist shall schedule every hearing on the merits of a proceeding.

Scheduling by Tribunals Office

(2) The Tribunals Office may schedule a hearing on the merits of a proceeding where,

(a) the hearing is to determine whether a licensee has contravened section 33 of the Act by one or more of the following means:

i. failing to maintain financial records as required by the by-laws,

ii. failing to respond to inquiries from the Society,

iii. failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act;

(b) the nature of the proceeding requires that the hearing be expedited; or

(c) the parties agree on the date of the hearing, which is not later than 90 days after the day the originating process is deemed to have been served on the

respondent, and the parties notify the Tribunals Office in writing of their agreement.

Endorsement

(3) An endorsement of every scheduled hearing on the merits of a proceeding shall be made on the originating process by the panelist, if the hearing is scheduled by a panelist, or by the Tribunals Office, if the hearing is scheduled by the Tribunals Office.

Notice of hearing on merits of proceeding

10.02 (1) The Tribunals Office shall send to all parties and all non-party participants who have been permitted to participate in the hearing on the merits of a proceeding a notice of the hearing on the merits of the proceeding.

Oral hearing

(2) A notice of an oral hearing shall include,

(a) a statement of the date, time, place and purpose of the hearing; and

(b) a statement that if a person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding.

Written hearing

(3) A notice of a written hearing shall include,

(a) a statement of the date and purpose of the hearing and details about the manner in which the hearing will be held;

(b) a statement that the hearing shall not be held as a written hearing if an order is made that the hearing be held, not as a written hearing, but as an oral or electronic hearing and an indication of the procedure to be followed for seeking the order; and

(c) a statement that if a person notified neither acts under clause (b) nor participates in the hearing in accordance with the notice, the panel may proceed without the person's participation and the person will not be entitled to any further notice in the proceeding.

Electronic hearing

(4) A notice of an electronic hearing shall include,

(a) a statement of the date, time and purpose of the hearing and details about the manner in which the hearing will be held; and

(b) a statement that if a person notified does not participate in the hearing in accordance with the notice, the panel may proceed without the person's

participation and the person will not be entitled to any further notice in the proceeding.

Effect of non-attendance at or non-participation in hearing after due notice

(5) Where notice of a hearing has been given to a person in accordance with subrule (3), (4) or (5), and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice in the proceeding.

Hearing of motion

10.03 (1) A motion may be scheduled for hearing on,

(a) any day on which the merits of the proceeding to which the motion relates is scheduled to be heard; or

(b) a day obtained from the Tribunals Office.

RULE 11

PROCEEDINGS MANAGEMENT

Proceeding management conference

11.01 (1) A proceeding management conference shall be conducted by a panelist on the date specified in the originating process unless, by that date,

(a) a hearing on the merits of the proceeding has been scheduled by the Tribunals Office; and

(b) if a pre-hearing conference is required under clause 21.02 (a), the pre-hearing conference has been scheduled by the Tribunals Office.

Request for proceeding management conference

(2) A party to a proceeding may, at any time, request to attend before a panelist for a proceeding management conference.

Request to Tribunals Office

(3) A request to attend before a panelist for a proceeding management conference shall be made to the Tribunals Office.

Notice of proceeding management conference

(4) Where a request to attend before a panelist for a proceeding management conference has been made, the Tribunals Office shall send to all parties a notice of the date and time of the proceeding management conference.

Proceeding management conference: format

11.02 A proceeding management conference may be held in person, by telephone conference, by exchange of documents or by any combination of the aforementioned formats.

Attendance at proceeding management conference

11.03 (1) Unless otherwise directed by the panelist conducting the proceeding management conference, or the parties consent, all the parties to the proceeding, or their representatives, are required to attend at or participate in the proceeding management conference.

Failure to attend or participate

(2) Where a person who is required to attend at or participate in a proceeding management conference does not attend at or participate in the conference, the panelist conducting the conference may proceed in the absence of the person or without the person's participation.

Matters to be dealt with

11.04 (1) At a proceeding management conference, a panelist may,

(a) schedule a further proceeding management conference;

(b) direct the parties to attend at a pre-hearing conference;

(c) schedule or reschedule a pre-hearing conference;

(d) schedule or adjourn a hearing; and

(e) give directions.

Results of proceeding management conference

(2) At the conclusion of a proceeding management conference, the panelist who conducted the conference shall endorse on the originating process the results of the conference, including any future scheduled proceeding management conference and any directions given by the panelist.

RULE 12

MOTIONS

Making the motion

12.01 (1) The following motions shall be made by notice of motion (Form 12A):

1. A motion relating to the jurisdiction of the Hearing Panel.

2. A motion to stay or dismiss a proceeding.

3. A motion raising any constitutional issues, including issues raised under the *Canadian Charter of Rights and Freedoms.*

4. A motion relating to disclosure.

5. A motion that a hearing or a part of a hearing in a proceeding be held in the absence of the public.

6. A motion to prohibit a person from disclosing information disclosed in a hearing.

Same

(2) A motion not mentioned in subrule (1) shall be made by notice of motion (Form 12A) unless the nature of the motion or the circumstances make a notice of motion unnecessary.

Contents of notice of motion: motion for order for hearing in absence of public or for non-disclosure

(3) In a motion for an order that a hearing or a part of a hearing in a proceeding be held in the absence of the public or for an order prohibiting a person from disclosing information disclosed in a hearing, the moving party shall include in the notice of motion the grounds upon which the order is sought but shall not include in the notice of motion the specific matters, document or communication in respect of which the order is sought.

Moving party's obligations

Application of rule

12.02 (1) This rule applies where a motion is made by notice of motion.

Service of motion record

(2) The moving party shall serve on every responding party at least ten days before the hearing of the motion a motion record.

(3) The moving party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;

(b) the notice of motion; and

(c) all affidavits and other material upon which the moving party intends to rely.

Service of factum and book of authorities

(4) The moving party shall serve on every responding party at least seven days before the hearing of the motion a factum, if any, and a book of authorities, if any.

Filing documents with Tribunals Office

(5) The moving party shall file with the Tribunals Office, with proof of service, at least seven days before the hearing of the motion any documents served on a responding party under this rule.

Same

(6) When filing a document with the Tribunals Office, the moving party shall file,

(a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and

(b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Responding party's obligations

Application of rule

12.03 (1) This rule applies where a motion is made by notice of motion.

Service of motion record, factum and book of authorities

(2) A responding party shall serve on the moving party and every person served with the moving party's motion record, at least three days before the hearing of the motion, its motion record, if any, its factum, if any, and its book of authorities, if any.

Responding party's motion record

(3) The responding party's motion record shall have consecutively numbered pages and shall contain,

(a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and

(b) any materials upon which the responding party intends to rely that are not contained in the moving party's motion record.

Filing documents with Tribunals Office

(4) A responding party shall file with the Tribunals Office, with proof of service, at least three days before the hearing of the motion any document served on a person under this rule.

Same

(5) When filing a document with the Tribunals Office, a responding party shall file,

(a) two copies of the document where the motion is to be heard by a panel consisting of one panelist; and

(b) four copies of the document where the motion is to be heard by a panel consisting of three panelists.

Abandoning a motion

12.04 (1) Prior to the hearing of a motion, the moving party may abandon the motion by delivering a notice of abandonment (Form 12B).

(2) Where a moving party serves a motion record but does not file it or appear at the hearing of the motion, the motion is deemed to have been abandoned by the moving party.

(3) Where a motion is abandoned or is deemed to have been abandoned, every responding party on whom the motion record was served is entitled to the costs of the motion.

Motion on consent

12.05 Where a motion is on consent, when filing the motion record with the Tribunals Office, the moving party shall also file the consent of every person served with the motion record and a draft of the formal order.

Disposition of motion

12.06 After hearing a motion, the panel may,

(a) make the order sought;

(b) dismiss the motion, in whole or in part;

(c) adjourn the hearing of the motion, in whole or in part; or

(d) if the motion is heard prior to the hearing on the merits of the proceeding in which the motion is made or to which the motion relates, adjourn the hearing of the motion to the panel presiding at the hearing on the merits of the proceeding.

RULE 13

ADJOURNMENTS

How to obtain

Before date of hearing

13.01 (1) Where a hearing is scheduled and prior to the date of the hearing a party wishes to adjourn the hearing to another date, the party shall,

(a) request the adjournment from a panelist at a proceeding management conference;

(b) if the Tribunals Office advises the party that a proceeding management conference cannot be scheduled prior to the date of the hearing, make a motion to the panel for an order adjourning the hearing; or

(c) in the case of a hearing of a motion, where all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment, request the adjournment from the Tribunals Office.

On date of or during hearing

(2) Where a hearing is scheduled and on the date scheduled for the hearing or during the course of the hearing a party wishes to adjourn the hearing, or the remaining part of the hearing, to a future date, the party shall make a motion to the panel for an order adjourning the hearing, or the remaining part of the hearing, to a future date.

Adjournments by Tribunals Office

13.02 The Tribunals Office may grant a request for an adjournment of a hearing of a motion where,

(a) all parties and all non-party participants who have been permitted to participate in the hearing consent to the adjournment; and

(b) the parties and the non-party participants notify the Tribunals Office in writing of their consent.

Adjournments: Considerations

13.03 In considering whether to grant an adjournment, a panelist or a panel, as the case may be, may consider,

(a) prejudice to a person;

(b) the timing of the request or motion for the adjournment;

(c) the number of prior requests and motions for an adjournment;

(d) the number of adjournments already granted;

(e) the public interest;

(f) the costs of an adjournment;

(g) the availability of witnesses;

(h) the efforts made to avoid the adjournment;

(i) the requirement for a fair hearing;

(j) the fulfilment of the Society's statutory mandate; and

(k) any other relevant factor.

RULE 14

LANGUAGE OF HEARING

Hearing in English

14.01 (1) Subject to rule 14.03, a hearing shall be conducted in the English language.

Evidence to be interpreted into English

(2) Subject to rule 14.03, evidence given at a hearing in a language other than the English language shall be interpreted into the English language.

Documents to be in English

(3) Subject to subrule 14.02 (2) and rule 14.03, a document filed with the Tribunals Office, or received by a panel, under these Rules shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator.

Requiring hearing in French

14.02 (1) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be heard by panelists who speak French by filing with the Tribunals Office a requisition (Form 14A) within thirty days after he or she is deemed to have been served with the originating process:

1. A licensing proceeding.

2. A restoration proceeding.

3. A conduct proceeding.

4. A capacity proceeding.

5. A competence proceeding.

6. A non-compliance proceeding.

Same

(2) The subject of the proceeding who speaks French may require that every hearing in the following proceedings be heard by panelists who speak French by filing with the Tribunals Office the originating process in the French language:

1. A reinstatement proceeding.

2. A terms dispute proceeding.

Hearing in French

14.03 Where the subject of the proceeding has required that every hearing in the proceeding be heard by panelists who speak French,

(a) evidence given and submissions made in a hearing in the English or French language shall be received, recorded and transcribed in the language in which they are given or made;

(b) a document filed with the Tribunals Office, or received by a panel, under these Rules may be in the French language and need not be accompanied by a translation of the document into the English language;

(c) on the request of the subject of the proceeding who speaks French but not French and English, the panel presiding at a hearing shall cause anything given orally at the hearing in a language other than the French language to be interpreted into the French language;

(d) on the request of the subject of the proceeding who speaks French but not French and English, the Tribunals Office or the panel presiding at a hearing may cause any document filed with the Tribunals Office, or received by the panel, in the English language to be translated into the French language; and

(e) on the request of the subject of the proceeding, the Tribunals Office shall cause an endorsement, a decision, an order or reasons for a decision or an order written in the English language to be translated into the French language.

RULE 15

FORM OF HEARING

Oral hearing

15.01 Subject to rules 15.02 and 15.03, a hearing shall be held as an oral hearing with the parties, non-party participants, if any, and their representatives, if any, appearing in person.

Electronic hearing

Motions

15.02 (1) The following motions may, without a motion or an order being made, be heard as an electronic hearing:

1. A motion on consent.

2. A motion for an adjournment.

Order for electronic hearing

(2) On the motion of a party, or on a panel's own motion, an order may be made that a hearing or a part of a hearing be held as an electronic hearing.

Matters to consider in making order

(3) In deciding whether to order that a hearing be held as an electronic hearing, a panel may consider,

(a) the suitability of an electronic hearing to the subject matter of the hearing;

(b) the nature of the evidence to be called at the hearing and whether credibility is in issue;

(c) whether the matters in dispute in the hearing are questions of law;

(d) the convenience of the parties;

(e) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;

(f) the avoidance of delay or unnecessary length;

(g) the fairness of the process;

(h) public accessibility to the hearing;

(i) the fulfilment of the Society's statutory mandate; and

(j) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

Conduct of electronic hearing

(4) An electronic hearing shall be conducted by telephone or other electronic means and all the parties and all the non-party participants who have been permitted to participate in

the hearing and the panel must be able to hear one another and any witnesses throughout the hearing.

Arrangements for electronic hearing

(5) Where a hearing is to be held as an electronic hearing, the Tribunals Office shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Written hearing

15.03 (1) Subject to subrule (3) and subrules 15.02 (1) and (2), the following hearings shall be held as a written hearing:

1. The hearing of a motion for an order that a hearing be held as an electronic hearing.

Written hearing of motions

(2) The following motions may be heard as a written hearing:

1. A motion on consent.

2. A motion for an adjournment.

Order for oral hearing

(3) On the motion of a party, or on a panel's own motion, an order may be made that a hearing mentioned in subrule (1) be held as an oral hearing.

Conduct of written hearing

(4) A written hearing shall be conducted by the exchange of documents and all the parties and all the non-party participants who have been permitted to participate in the hearing are entitled to receive every document that the panel receives in the hearing.

Arrangements for written hearing

(5) Where a hearing is to be held as a written hearing, the Tribunals Office shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

Motion under Rule 20

No notice required

15.04 The notice requirement in subrule 15.02 (5) and in subrule 15.03 (5) does not apply in the case of a hearing of a motion for an order mentioned in rule 19.01.

RULE 16

LOCATION OF HEARING

Location of Hearings

16.01 (1) Subject to subrules (2) and (3), every hearing shall be held at the offices of the Society in Toronto.

(2) Where all parties consent to a hearing being held at a place other than the offices of the Society in Toronto, the hearing shall be held at that place.

(3) On the motion of a party, an order may be made that a hearing be held at a place other than the offices of the Society in Toronto.

(4) In deciding whether to order that a hearing be held at a place other than the offices of the Society in Toronto, a panel may consider,

(a) the convenience of the parties;

(b) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;

(c) the avoidance of delay or unnecessary length;

(d) the fairness of the process;

(e) public accessibility to the hearing;

(f) the fulfilment of the Society's statutory mandate; and

(g) any other matter relevant in order to secure the just and expeditious determination of the subject matter of the hearing or of the proceeding in which the hearing is being held.

(5) An order that a hearing be held at a place other than the offices of the Society in Toronto shall be made only after consultation with the Tribunals Office.

RULE 17

ACCESS TO HEARING

Hearing to be public

17.01 Subject to rule 17.02, every hearing in a proceeding shall be open to the public.

Hearing in the absence of the public

17.02 On the motion of a party, an order may be made that a hearing or a part of a hearing in a proceeding shall be held in the absence of the public where,

(a) matters involving public security may be disclosed;

(b) it is necessary to maintain the confidentiality of a privileged document or communication;

(c) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(d) in the case of a hearing or a part of a hearing that is to be held as an electronic hearing, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public.

Attendance at hearing held in the absence of the public

17.03 Where a hearing or a part of a hearing is held in the absence of the public, unless otherwise ordered by the Hearing Panel, the hearing may be attended by,

(a) subject to rule 22.01, any witness the nature of whose testimony gave rise to the order that the hearing or the part of the hearing be held in the absence of the public;

(b) the parties and their representatives;

(c) the non-party participants who have been permitted to participate in the hearing or the part of the hearing and their representatives; and

(d) such other persons as the panel considers appropriate.

Non-disclosure of information: hearing held in the absence of the public

17.04 (1) Subject to subrule (2), where a hearing or a part of a hearing is held in the absence of the public, no person shall disclose, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing that is held in the absence of the public,

(a) any information disclosed in the hearing or the part of the hearing that is held in the absence of the public; and

(b) if and as specified by the panel, the panel's reasons for a decision or an order arising from the hearing or the part of the hearing that is held in the absence of the public, other than the panel's reasons for an order that a subsequent hearing or a part of the subsequent hearing be held in the absence of the public.

Order for disclosure: hearing held in the absence of the public

(2) On the motion of a person, an order may be made permitting a person to disclose any information mentioned in subrule (1).

Order for non-disclosure: hearing open to the public

17.05 On the motion of a party, or on a panel's own motion, if any of clauses 17.02 (a), (b) and (c) apply, an order may be made prohibiting a person who attends at or participates in a hearing or a part of a hearing that is open to the public from disclosing, except to his, her or its representative or to another person who attends at or participates in the hearing or the part of the hearing, any information disclosed in the hearing or the part of the hearing.

Review of order

17.06 If an order is made in respect of any matter dealt with in this Rule, on the motion of a person, the Hearing Panel may review all or a part of the order and may confirm, vary, suspend or cancel the order.

RULE 18

DISCLOSURE

Obligations of the Society

18.01 (1) In a proceeding, the Society, as a party, shall make such disclosure to the subject of the proceeding as is required by law and, without limiting the generality of the foregoing, the Society shall provide to the subject of the proceeding, not later than ten days before the hearing on the merits of the proceeding,

(a) a copy of every document upon which the Society intends to rely as evidence and the opportunity to examine any other relevant document;

(b) a signed witness statement for every witness or, where there is no signed witness statement for a witness, a summary of the anticipated oral evidence of the witness; and

(c) a list of witnesses that the Society intends to call.

Obligations of subject of the proceeding

(2) In a licensing proceeding, a restoration proceeding, a reinstatement proceeding or a terms dispute proceeding, the subject of the proceeding shall provide to the Society, not later than ten days before the hearing on the merits of the proceeding,

(a) a copy of every document upon which the subject of the proceeding intends to rely as evidence;

(b) for every witness upon whose oral evidence the subject of the proceeding intends to rely, a signed witness statement or, where there is no signed witness

statement for a witness, a summary of the anticipated oral evidence of the witness; and

(c) a list of witnesses that the subject of the proceeding intends to call.

Summary of evidence

(3) A summary of the oral evidence of a witness shall be in writing and shall contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness may be contacted.

Expert Reports

18.02 Every party and non-party participant shall provide to every other party and non-party participant,

(a) not later than ninety days before the hearing on the merits of a proceeding,

(i) a list of the expert witnesses that the person intends to call,

(ii) a copy of the curriculum vitae of every expert witness included in the list mentioned in subclause (i), and

(iii) an initial copy of the written report of every expert witness included in the list mentioned in subclause (i) if the person intends to rely on the report; and

(b) not later than thirty days before the hearing on the merits of a proceeding, a final copy of the written report mentioned in subclause (a) (iii).

Failure to disclose: consequences

Evidence may not be introduced

18.03 Evidence that is not disclosed as required under rule 18.01 or 18.02 may not be introduced as evidence in a proceeding, except with leave of the panel.

RULE 18.1

ADMISSIONS

Interpretation

18.1.01 In this Rule, "authenticity" includes the fact that,

(a) a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been;

(b) a document that is said to be a copy is a true copy of the original; and

(c) where the document is a copy of a letter, telegram or telecommunication, the original was sent as it purports to have been sent and received by the person to whom it is addressed.

Request to admit fact or document

18.1.02 (1) In a proceeding, a party may, at any time but not later than thirty days before the hearing on the merits of the proceeding, request any other party to admit, for the purposes of the proceeding only, the truth of a fact or the authenticity of a document.

Form of request to admit

(2) A request to admit shall be in Form 18.1A.

Service of request to admit

(3) A party making a request to admit to another party shall serve on that other party,

(a) the request to admit; and

(b) a copy of any document mentioned in the request to admit, unless a copy is already in the possession of that other party.

Response to request to admit

18.1.03 (1) A party on whom a request to admit is served shall respond to it within twenty days after it is served by serving on the requesting party a response to the request to admit.

Form and content of response

(2) A response to a request to admit shall be in Form 18.1B and shall,

(a) admit the truth of a fact or the authenticity of a document mentioned in the request to admit;

(b) specifically deny the truth of a fact or the authenticity of a document mentioned in the request to admit; or

(c) refuse to admit the truth of a fact or the authenticity of a document mentioned in the request to admit and set out the reason for the refusal.

Effect of request to admit

Deemed admission where no response

18.1.04 (1) Where a party on whom a request to admit is served fails to serve a response as required by subrule 18.1.03 (1), the party shall be deemed, for the purposes of the proceeding only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Deemed admission where insufficient response

(2) Subject to subrule (3), where a party on whom a request to admit is served serves a response as required by subrule 18.1.03 (1) but does not comply with subrule 18.1.03 (2) in respect of a fact or a document mentioned in the request to admit, the party shall be deemed, for the purposes of the proceeding only, to admit the truth of that fact or the authenticity of that document.

Deemed admission where non-attendance at or non-participation in hearing

(3) Where a party on whom a request to admit is served does not attend at or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party shall be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

Costs on denial or refusal to admit

18.1.05 Where a party denies or refuses to admit the truth of a fact or the authenticity of a document after receiving a request to admit, and the fact or document is subsequently proved at a hearing in the proceeding, the Hearing Panel may take the denial or refusal into account in exercising its discretion respecting costs under section 49.28 of the Law Society Act and rule 23.01.

Withdrawal of admission

18.1.06 (1) On the motion of a party who admits or is deemed to admit the truth of a fact or the authenticity of a document, an order may be made withdrawing the admission.

Time for bringing motion

(2) A motion under this rule shall be made,

(a) prior to the hearing on the merits of the proceeding; or

(b) at any time, with leave of the Hearing Panel.

RULE 19

SUSPENSION OR RESTRICTION ORDER

Authority to make

19.01 On the motion of the Society, the Hearing Panel may make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

General

19.02 (1) Subject to this Rule, Rule 12 applies with necessary modifications to a motion for an order mentioned in rule 19.01.

Authorization required in certain circumstances

(2) The Society shall obtain the authorization of the Proceedings Authorization Committee to make a motion for an order mentioned in rule 19.01 if the motion relates to a proceeding that has not been commenced or if the motion is being made in a proceeding where the Hearing Panel has not commenced a hearing on the merits of the proceeding.

Making the motion

19.03 A motion for an order mentioned in rule 19.01 shall be made by notice of motion (Form 12A).

Society's obligations

Service of motion record

19.04 (1) The Society shall serve a motion record on the licensee at least three days before the hearing of the motion.

Method of service

(2) The motion record shall be served in accordance with subrule 9.01 (1) as if it were an originating process.

Dispensing with service

(3) On the motion of the Society, an order may be made dispensing with service of the motion record where,

(a) the circumstances render the service of the motion record impracticable or unnecessary; or

(b) the delay necessary to effect service might entail serious consequences.

Service of factum and book of authorities

(4) Where the motion record has been served, the Society shall serve its factum and book of authorities, if any, on the licensee at least three days before the hearing of the motion.

Filing documents with Tribunals Office

(5) Where the motion record has been served, the Society shall file with the Tribunals Office, with proof of service, not later than 4 p.m. on the day before the hearing of the motion, any documents served on the licensee under this rule.

Filing documents with panel

(6) Where an order has been made dispensing with service of the motion record, the Society shall file a motion record, a factum and a book of authorities, if any, with the panel in the hearing of the motion.

Licensee's obligations

Service of motion record, factum and book of authorities

19.05 (1) Where a motion record has been served under rule 19.04, the licensee shall serve on the Society, not later than 2 p.m. on the day before the hearing of the motion, his or her motion record, if any, his or her factum, if any, and his or her book of authorities, if any.

Filing documents with Tribunals Office

(2) The licensee shall file with the Tribunals Office, with proof of service, not later than 4 p.m. on the day before the hearing of the motion, any document served on the Society under this rule.

What is admissible in evidence

19.06 (1) Despite rules 22.02, 22.06 and 22.06.1, and subject to subrule (2), the following may be admitted as evidence and may be acted on at the hearing of a motion for an order mentioned in rule 19.01, whether or not given or proven under oath or affirmation or admissible as evidence in a court:

1. Any oral testimony that is relevant to the subject-matter of the hearing.

2. Any document or other thing that is relevant to the subject-matter of the hearing.

What is inadmissible in evidence

(2) Unless permitted by the Act, nothing shall be admitted in evidence at the hearing,

(a) that would be inadmissible in a court by reason of any privilege under the law of evidence; or

(b) that is inadmissible under any statute.

Adjournment of hearing for service of motion record

19.07 Where it appears to the panel that the motion record ought to have been served on the licensee, the panel shall adjourn the hearing of the motion and direct that the notice of motion be served on the licensee.

Order

19.08 (1) A panel making an order mentioned in rule 19.01 shall specify in the order that the order shall be in effect until the earliest of the following:

1. The panel varies or cancels the order on the basis of fresh evidence or a material change in circumstances that is brought by the Society or licensee to the panel within thirty days of service of the order on the licensee.

2. The panel presiding at the hearing on the merits of the proceeding to which the motion relates, prior to disposing of the proceeding, varies or cancels the order.

3. The panel presiding at the hearing on the merits of the proceeding to which the motion relates disposes of the proceeding.

(2) Where an order was made dispensing with service of the motion record, the Society shall serve on the licensee any order made by the panel and a copy of the motion record and all other documents used in the hearing of the motion.

(3) On the motion of the Society, an order may be made dispensing with compliance with a requirement mentioned in subrule (2).

RULE 20

PRE-HEARING CONFERENCES

Purpose of pre-hearing conference

20.01 (1) The purpose of a pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

(2) Without limiting the generality of subrule (1), in a pre-hearing conference, the panelist or other person conducting the pre-hearing conference may discuss with the parties,

(a) the identification, limitation or simplification of the issues in the proceeding;

(b) the identification and limitation of evidence and witnesses;

(c) the possibility of settlement of any or all of the issues in the proceeding; and

(d) the possibility of the parties entering into an agreed statement of facts with respect to all or part of the facts in issue in the proceeding.

Pre-hearing conference to be conducted

20.02 A pre-hearing conference shall be conducted in a proceeding where,

(a) one party to the proceeding estimates that the hearing on the merits of the proceeding will be longer than two days;

(b) a panelist or panel directs the parties to a proceeding to attend at a pre-hearing conference; or

(c) the parties agree to attend at a pre-hearing conference.

Who presides at pre-hearing conference

20.03 A pre-hearing conference shall be conducted by a panelist or another person assigned by the chair of the Hearing Panel.

Timing of pre-hearing conferences

20.04 All pre-hearing conferences in a proceeding shall be conducted prior to the hearing on the merits of the proceeding.

Method of conducting pre-hearing conference

20.05 (1) Subject to subrule (2), a pre-hearing conference shall be conducted in person.

Pre-hearing conference by telephone conference

(2) A pre-hearing conference may be conducted by telephone conference,

(a) if the parties consent; or

(b) the panelist or other person conducting the pre-hearing conference permits it.

Scheduling of pre-hearing conference: by panelist

20.06 (1) Subject to subrule (2), a panelist shall schedule every pre-hearing conference at a proceeding management conference.

Scheduling of pre-hearing conference: by Tribunals Office

(2) The Tribunals Office may schedule a pre-hearing conference where,

(a) the parties agree on the date and time of the pre-hearing conference; and

(b) the parties notify the Tribunals Office in writing of their agreement.

Endorsement

(3) An endorsement of every scheduled pre-hearing conference shall be made on the originating process by the panelist, if the pre-hearing conference is scheduled by a panelist, or by the Tribunals Office, if the hearing is scheduled by the Tribunals Office.

Notice of pre-hearing conference

(4) The Tribunals Office shall send to all parties a notice of the date and time of every pre-hearing conference in the proceeding, including the name of the panelist or other person conducting the pre-hearing conference.

Notice not required

(5) Subrule (4) does not apply if,

(a) a panel directs the parties to a proceeding to attend at a pre-hearing conference,

(b) a member of the panel that gave the direction will conduct the pre-hearing conference, and

(c) the pre-hearing conference will be conducted immediately after the direction has been given.

Preparation for pre-hearing conference

20.07 (1) The Law Society shall prepare a pre-hearing conference memorandum and provide a copy of the memorandum to the other parties and to the panelist or other person conducting the pre-hearing conference at least seven days before the pre-hearing conference.

Non-application of subrule (1)

(2) Subrule (1) does not apply if,

(a) a panel directs the parties to a proceeding to attend at a pre-hearing conference,

(b) a member of the panel that gave the direction will conduct the pre-hearing conference, and

(c) the pre-hearing conference will be conducted immediately after the direction has been given.

Attendance at pre-hearing conference

20.08 Unless otherwise directed by the panelist or other person conducting the pre-hearing conference, all parties to the proceeding, or their representatives, are required to attend at or participate in the pre-hearing conference.

Results of pre-hearing conference

20.09 (1) At the conclusion of the pre-hearing conference, the panelist or other person conducting the pre-hearing conference shall endorse on the originating process,

(a) who attended at or participated in, and who did not attend at or participate in, the pre-hearing conference; and

(b) any agreement reached.

(2) Any agreement reached at the pre-hearing conference, as endorsed on the originating process, is binding on the parties.

No disclosure to panel

20.10 (1) No communication shall be made to the panel presiding at the hearing on the merits of the proceeding or at the hearing of a motion in the proceeding with respect to any statement made at the pre-hearing conference, except as disclosed in the endorsement made under rule 20.09.

Pre-hearing conference panelist cannot preside at hearing

(2) A panelist conducting a pre-hearing conference in a proceeding may preside at the hearing on the merits of the proceeding only with the consent of the parties.

RULE 21

CONDUCT OF HEARING

Consent to hearing by one panelist

21.01 For the purposes of paragraph 2 of subsection 2 (1) of Ontario Regulation 167/07, the parties to a conduct proceeding may consent to having one panelist preside at the hearing on the merits of the proceeding by filing a consent (Form 21A),

(a) with the Tribunals Office, as early as possible but not later than three days before the hearing on the merits of the proceeding; or

(b) with the panelist, immediately prior to the commencement of the hearing on the merits of the proceeding.

Transcripts

Production of transcript

21.02 (1) The Tribunals Office shall cause every oral and electronic hearing to be recorded by a reporting service to permit the production of a transcript of the hearing.

Ordering transcript

(2) A person wishing to have a copy of the transcript of a hearing shall order it from the reporting service that recorded the hearing.

Costs of transcript

(3) The costs of acquiring a transcript of a hearing shall be borne solely by the person wishing to have a copy of the transcript of the hearing.

Requirement to file transcript

(4) The first party to obtain a transcript of a hearing shall file a copy of the transcript with the Tribunals Office.

Interpreter

21.03 (1) Subject to subrule (2), where a witness does not understand the language or languages in which an examination at a hearing is to be conducted,

(a) the person calling the witness shall provide an interpreter; or

(b) if the interpretation is to be from English to French or from French to English, the Tribunals Office shall provide an interpreter.

Notice to Tribunals Office

(2) A person intending to call a witness who will require interpretation from English to French or from French to English shall notify the Tribunals Office of the witness' requirement for an interpreter as early as possible and, in any event, not later than five days before the hearing at which the witness will be examined.

Order to provide interpreter

(3) On the motion of a party or non-party participant or on a panel's own motion, an order may be made requiring a person other than the person mentioned in subrule (1) to provide an interpreter.

Interpreter to be competent

(4) An interpreter shall be competent and independent.

Interpreter to take oath or affirmation

(5) Where an interpreter is required under subrule (1), before the witness is called, the interpreter shall take an oath or make an affirmation to interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and the witness' answers.

Special Needs

21.05 A party or a non-party participant shall notify the Tribunals Office as early as possible of any special needs of the party or the non-party participant or his, her or its witnesses.

Limitation on examination of witness

21.06 A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

RULE 22

EVIDENCE

Exclusion of witness

22.01 (1) Subject to subrule (2), on the motion of a party, an order may be made excluding a witness from a hearing until the witness is called to give evidence.

Order not to apply to party or witness instructing representative of party

(2) An order under subrule (1) may not be made in respect of a party or a witness whose presence is essential to instruct the representative of the person calling the witness, but an order may be made requiring any such party or witness to give evidence before other witnesses are called to give evidence on behalf of the party or the person calling the witness.

No communication with excluded witness

(3) Subject to subrule (4), where an order is made excluding a witness from a hearing, there shall be no communication to the witness of any evidence given during the witness' absence from the hearing until after the witness has been called to give evidence and has given evidence.

Order permitting communication with excluded witness

(4) On the motion of the person calling a witness who has been excluded from a hearing, an order may be made permitting communication to the witness of any evidence given during the witness' absence from the hearing.

Rules of evidence

22.02 Subject to this Rule, at a hearing, the rules of evidence applicable in civil proceedings apply.

Evidence by affidavit: hearing on the merits of a proceeding

22.03 (1) At the hearing on the merits of a proceeding, the evidence of a witness or proof of a particular fact or document may be given by affidavit, subject to the Hearing Panel ordering otherwise.

Cross-Examination

(2) Where the evidence of a witness or proof of a particular fact or document is given by affidavit, if a party adverse to the party tendering the affidavit evidence wishes to cross-examine the deponent,

(a) the deponent shall attend at the hearing on the merits of the proceeding for the purposes of cross-examination; or

(b) the deponent shall attend before an official examiner for the purposes of cross-examination and the transcript of the cross-examination may be admitted in evidence at the hearing on the merits of the proceeding.

(3) A cross-examination conducted under clause (2) (b) shall be conducted in accordance with the Rules of Civil Procedure applicable to oral examinations and, where necessary, the parties may seek direction from the panel.

Agreed facts

22.04 At a hearing on the merits of a proceeding, the panel may receive and act on any facts agreed to by the parties without further proof or evidence.

Admissibility of evidence from former proceeding

Interpretation

22.05 (1) In this rule, "previously admitted evidence" means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside Ontario, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted.

When may be admitted

(2) At a hearing on the merits of a proceeding, previously admitted evidence may be admitted if,

(a) the parties to the proceeding consent to its admission; or

(b) (i) the panel is satisfied that there is a reasonably accurate transcript of the previous hearing,

(ii) the previously admitted evidence is relevant to the current proceeding,

(iii) the party against whose interest the evidence is sought to be admitted was or is a party to the other proceeding or was a witness at the previous hearing,

(iv) if the party against whose interest the evidence is sought to be admitted was not a witness at the previous hearing, the party had the opportunity to cross-examine the witness at the previous hearing, and

(v) a material issue in the other proceeding is substantially similar to a material issue in the current proceeding.

Proof of prior conviction or discharge

22.06 (1) Proof that a person has, in proceedings before a court in Canada, been convicted or discharged of an offence is proof, in the absence of evidence to the contrary, that the offence was committed by the person if,

(a) no appeal of the conviction or discharge was taken and the time for an appeal has expired; or

(b) an appeal of the conviction or discharge was taken but was dismissed or abandoned and no further appeal is available.

(2) Subrule (1) applies whether or not the convicted or discharged person is a party to the proceeding.

(3) For the purposes of subrule (1), a certificate of conviction or discharge, purporting to be signed by the officer having custody of the records of the court at which the person was convicted or discharged, or by the deputy of the officer, is sufficient evidence of the conviction or discharge of that person.

Proof of prior facts

22.06.1 Specific findings of fact contained in the reasons for judgment or reasons for sentence of a court in Canada are proof, in the absence of evidence to the contrary, of the facts so found if,

(a) no appeal of the judgment or sentence was taken and the time for an appeal has expired; or

(b) an appeal of the judgment or sentence was taken but was dismissed or abandoned and no further appeal was taken.

Transcript of proceeding

22.07 At a hearing, a transcript of a hearing before any other adjudicative body may be admitted as evidence.

Taking official notice of facts

22.08 The Hearing Panel may,

(a) take notice of facts that may be judicially noticed; and

(b) take notice of any generally accepted technical facts, information or opinions within its specialized knowledge.

Documentary evidence

22.09 At a hearing, a party or a non-party participant tendering a document as evidence shall provide,

(a) a copy of the document to every other party and non-party participant; and

(b) four copies of the document to the panel, where the panel consists of three panelists, or two copies of the document to the panel, where the panel consists of one panelist.

Copies

22.10 Where the panel is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Summonses

22.11 (1) The Hearing Panel may, by summons, require any person, including a party,

(a) to give evidence on oath or affirmation at a hearing; and

(b) to produce in evidence at a hearing specified documents and things.

Form of summons

(2) A summons shall be in Form 22A.

Signing of summons

(3) A summons may be signed by the Senior Counsel and Manager, Tribunals Office.

Summons may be issued in blank

(4) On the request of a person, the Tribunals Office shall issue to the person a blank summons and the person may complete the summons and insert the name of the witness to be summoned.

Service of summons

(5) Subject to subrule (7), the person who obtains a summons shall serve the summons on the witness to be summoned.

Attendance money

(6) Subject to subrule (7), the person who obtains a summons shall pay or tender to the witness to be summoned, at the same time that the person serves the summons on the witness, attendance money calculated in accordance with Tariff A under the Rules of Civil Procedure.

Service and attendance money not required

(7) If a witness is in attendance at a hearing, a person who obtains a summons is not required to serve the summons on the witness or to pay or tender to the witness attendance money in order to call the witness at the hearing.

Certain information not admissible

22.12 Despite any rule, information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause 19 (1) (a) of By-Law 11 shall not be used and is inadmissible in a hearing.

RULE 23

COSTS

Costs

Costs against the Society

23.01 (1) Costs may only be awarded against the Society,

(a) in a licensing, conduct, capacity, competence or non-compliance proceeding,

(i) where the proceeding was unwarranted; or

(ii) where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default; and

(b) in a proceeding not mentioned in clause (a), where the Society caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against the subject of a proceeding

(2) Costs may be awarded against the subject of a proceeding,

(a) where a determination adverse to the subject of the proceeding was made; or

(b) where the subject of the proceeding caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Costs against a non-party participant

(3) Costs may be awarded against a non-party participant where the non-party participant caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default.

Security for costs

Application

23.02 (1) This rule applies to the following proceedings:

1. A licensing proceeding, if the subject of the proceeding was previously licensed to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario.

2. A restoration proceeding.

3. A reinstatement proceeding.

4. A terms dispute proceeding.

Where available

(2) On the motion of the Society, an order may be made for security for costs as is just where it appears that,

(a) the subject of the proceeding has an order against him or her for costs in the same or another proceeding under the Act that remain unpaid in whole or in part; or

(b) in the case of a reinstatement or terms dispute proceeding, there is good reason to believe that the proceeding is without merit and the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made; or

(c) in the case of a licensing or restoration proceeding, there is good reason to believe that the subject of the proceeding has insufficient assets in Ontario to pay an order for costs against him or her if an order were to be made.

Effect of order

(3) Subject to subrule (4), the subject of the proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding.

Order permitting taking of step

(4) On the motion of a party, or on a panel's own motion, an order may be made permitting the subject of the proceeding to take a step in the proceeding.

Default of subject of the proceeding

(5) Where the subject of the proceeding defaults in giving the security required by an order for security for costs, on the motion of the Society, an order may be made dismissing the proceeding.

RULE 24

DECISIONS, ORDERS AND REASONS

Decisions

Effective date

24.01 (1) A decision is effective from the date on which it is made.

Endorsement

(2) An endorsement of every decision shall be made by the chair of the panel,

(a) on the originating process; or

(b) on a separate sheet of paper that is attached to the originating process.

Where written reasons delivered

(3) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Orders

Orders issued by panel of one panelist

24.02 (1) A panel consisting of one panelist shall not make an order revoking a licensee's licence or permitting a licensee to surrender his or her licence.

Order for fine

(2) If a panel makes an order imposing a fine on the subject of the proceeding, the panel shall specify in the order,

(a) the principal sum; and

(b) if interest is payable, the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Order for costs

(3) If a panel makes an order for costs, the panel shall specify in the order,

(a) the principal sum; and

(b) the rate of interest, which shall be the postjudgment interest rate within the meaning of the *Courts of Justice Act* in effect on the effective date of the order, and the date from which it is to be calculated.

Effective date

(4) An order is effective from the date on which it is made, unless it provides otherwise.

Endorsement

(5) An endorsement of every order shall be made by the chair of the panel making it,

(a) on the originating process or a separate sheet of paper that is attached to the originating process; or

(b) if the order relates to a motion, on the motion record or a separate sheet of paper that is attached to the motion record.

Where written reasons delivered

(6) Where written reasons are delivered, the endorsement may consist of a reference to the reasons.

Formal order or decision and order

Preparation of draft formal order or decision and order

24.03 (1) Any party affected by an order or decision and order may prepare a draft of the formal order or formal decision and order.

Form of formal order and decision and order

(2) A formal order shall be in Form 24A and a formal decision and order shall be in Form 24B.

Signing of formal order and decision and order

(3) A party that has prepared a draft of a formal order or decision and order may submit it to the panel that made the order or decision and order at the end of the hearing.

(4) The panel shall review all drafts submitted under subrule (3) and the chair of the panel shall, with or without amending it, sign one of the drafts.

(5) Where a formal order or decision and order is not prepared by any party, it shall be prepared by the Tribunals Office and the chair of the panel that made the order or decision and order shall sign it.

Written reasons

Where required

24.04 A panel shall give written reasons for,

(a) its decision and order in a capacity proceeding; and

(b) its order or decision and order if,

(i) an oral request for written reasons is made by a party immediately after the order is made, or

(ii) a written request for written reasons is made by a party to the Tribunals Office within sixty days after the order is made.

Correction of errors

24.05 The Tribunals Office or the panel may at any time correct a typographical error, error of calculation or similar minor error made in a decision, an order, a formal decision and order, a formal order or reasons of a panel.

Notice of decisions

24.06 (1) The Tribunals Office shall send to each party or to the representative of each party,

(a) who participated in a proceeding,

(i) a copy of the formal decision and order,

(ii) a copy of the written reasons, if any, for the decision, order or decision and order, and

(iii) a copy of a corrected decision, corrected order, corrected formal decision and order or corrected reasons; or

(b) who participated in a motion in a proceeding,

(i) a copy of the formal order,

(ii) a copy of the written reasons, if any, for the order, and

(iv) a copy of a corrected order, corrected formal order or corrected reasons.

Method of sending notice

(2) A document required to be sent under subrule (1) shall be sent by,

(a) regular lettermail to the last address of the party or the party's representative known to the Tribunal's Office;

(b) hand delivery to the Society; or

(b) with the prior consent of the recipient,

(i) by fax to the last fax number of the party or the party's representative known to the Tribunal's Office, or

(ii) by e-mail to the last e-mail address of the party or the party's representative known to the Tribunal's Office.

Same

(2.1) If a document required to be sent under subrule (1) is being sent to a licensee, a reference in subrule (2) to the last address, fax number or e-mail address known to the Tribunal's Office shall be read as a reference to the last address, fax number or e-mail address

contained in the register that the Society is required to establish and maintain under section 27.1 of the Act.

Use of mail

(3) If a copy of a document is sent by regular lettermail, it shall be deemed to be received on the fifth day after mailing.

Use of fax or e-mail

(4) If a copy of a document is faxed or e-mailed, it shall be deemed to be received on the day following the day it is faxed or e-mailed.

RULE 25

RECORD OF PROCEEDING

Requirement to compile record

25.01 (1) The Tribunals Office shall compile a record of every proceeding.

Contents of record

(2) A record of a proceeding shall contain the following:

1. Every document filed with the Tribunals Office under these Rules in respect of the proceeding or a step in the proceeding.

2. Every document received by a panel under these Rules in respect of the proceeding or a step in the proceeding.

3. The notice of a hearing on the merits of a proceeding.

4. The endorsement of the decision and order in the proceeding and of the order in a motion in the proceeding.

5. The formal decision and order in the proceeding and the formal order in a motion in the proceeding.

6. The reasons, if any, for the decision or order in the proceeding and for the order in a motion in the proceeding.

7. The transcript of a hearing in the proceeding or in a motion in the proceeding that is obtained by the Tribunals Office.

Record is public record

(3) Subject to subrule (4), the record of a proceeding is a public record.

Documents not available for public inspection

(4) A document or a part of a document contained in the record of a proceeding that contains information that may not be disclosed under rule 17.04 or 17.05 is not available for public inspection.

RULE 26

REPRIMANDS

Time for administration

26.01 (1) A reprimand shall not be administered before the time for serving a notice of appeal has expired unless the parties have waived their rights of appeal.

Who may administer

(2) A reprimand may be administered by any panelist comprising the panel that ordered the reprimand.

Administration in hearing

(3) Subject to subrule (4), a reprimand shall be administered at a hearing that is open to the public.

Administration in writing

(4) A reprimand may be administered in writing.

(5) The document containing a written reprimand shall be considered to be part of the record of the proceeding in which the reprimand was ordered.

PUBLICATION OF WITHDRAWALS OF NOTICES OF APPLICATION

MOTION

9. That Convocation direct that withdrawals of notices of application should be published on the Law Society website under "Tribunal Decisions," but no other steps should be taken to retroactively remove previously published interim orders or reasons in the withdrawn proceeding.

10. That where a matter is withdrawn, Hearing Panels be encouraged to endorse the Notice of Application "at the request of the Law Society the matter is withdrawn" and that formal orders withdrawing a notice of application no longer be issued.

Background

11. In March 2008 Convocation approved a motion that Hearing Panel dismissals of Law Society applications should be published in the same manner as other Hearing Panel decisions.

12. The Committee was requested to consider whether withdrawals of notices of application should also be published in the same manner as other Hearing Panel decisions and

whether interim orders that may have been made and published in a proceeding that is ultimately withdrawn should be removed from publication.

13. The Committee reviewed the current process for publishing notification of upcoming hearings, orders and reasons for decisions. This is set out at APPENDIX 2.

14. The Committee considered whether there is any reason in principle to differentiate between dismissals and withdrawals for the purposes of publication. In its view, the Law Society's commitment to transparent processes necessitates treating withdrawals in the same way as dismissals for the purposes of publication. This is particularly true given that Notices of Application are published on the Law Society's website and it is important for the public to be able to determine the outcome of a proceeding.

15. Unlike a dismissal, which requires a Hearing Panel order, a withdrawal is in the discretion of the prosecution. When the prosecution determines that a withdrawal is appropriate during the course of the hearing it is customary for discipline counsel to indicate to the panel that it wishes to withdraw the proceeding. Accordingly in the Committee's view, this disposition should be reflected by an endorsement on the notice of application that at the request of the Law Society the matter is withdrawn. A formal order is neither necessary nor appropriate.

16. The Committee has considered how to address the circumstance in which an interim order or interim reasons have been published in a proceeding that is subsequently withdrawn. In such circumstances the interim orders or reasons would have been published on the Law Society's "Tribunal Decisions" website, or CanLII and Quicklaw.

17. It has been suggested to the Committee that it is unfair for a previously published interim order or reasons to continue to be accessible once the main proceeding has been withdrawn. To address this it has been suggested that either no interim orders or reasons should be published until the ultimate resolution of the case or that the interim orders or reasons should be removed from publication once the withdrawal has occurred.

18. The Committee is of the view that it is not in the public interest to delay the publication of interim orders or reasons in a proceeding until the conclusion of the hearing. Such an approach would be highly inappropriate, particularly where an interim order for suspension had been made.

19. The Committee is further of the view that to remove previously published orders or reasons upon withdrawal is an impractical option. This is because the Law Society does not control either CanLII or Quicklaw publication and accordingly could not guarantee consistent approaches to the issue. Moreover, it is not uncommon in proceedings for only certain particulars to be withdrawn, while the balance of an application proceeds to hearing, and it would not be feasible to track these withdrawals on a consistent basis. The Committee is of the view that the more appropriate approach is to publish withdrawals on the Law Society website as a "disposition" of the Notice of Application.

APPENDIX 2

MEMORANDUM

To: Tribunals Committee
FROM: GRACE KNAKOWSKI,
SR. COUNSEL & MANAGER, TRIBUNALS OFFICE
DATE: APRIL 28, 2008
RE: PUBLISHED INFORMATION

The Tribunals Office publishes notification of upcoming hearings, orders and reasons as follows.

Upcoming Hearings
Upcoming public hearings are published on the Law Society's website under "Current Hearings." Particulars from the notice of application or hearing and other details regarding the type of proceeding and stage of hearing are also published. Endorsements are not published. The website is designed to notify the public of those matters currently being heard and when.

Upcoming public hearings are published approximately four weeks in advance of the scheduled hearing date. Information that has been replaced by more current information is not archived. The website is updated in real time, often daily, as changes to hearing dates and particulars occur.

Orders
With the exception of withdrawn applications, all final orders from conduct, capacity, competence, reinstatement, restoration and licensing applications (heard orally), as well as interlocutory suspension orders, are summarized and published on the Law Society's website under "Tribunal Decisions." Interim and motion orders are also published if they affect the licensee's status or pertain to costs. Results of adjournment requests, withdrawal or removal of counsel and other such "housekeeping orders" are not published, but are available to the public on request. Publication of orders occurs once service is deemed effective on both parties. Orders are not published on the Canadian Legal Information Institute (CanLII) or Quicklaw.

Reasons
In general, all reasons of the tribunals are published on CanLII and Quicklaw, unless there is an order or statutory requirement to not publish. Publication occurs after the reasons are delivered to the parties, typically within one to two weeks. Reasons are not published on the Law Society's website, but a link is provided to CanLII's website.

FOR INFORMATION
TRIBUNAL QUARTERLY STATISTICS FOR FIRST QUARTER 2008

20. The Tribunal's Office quarterly statistics for the first quarter of 2008 are set out at APPENDIX 3 for Convocation's information.

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

A copy of the Tribunal Quarterly Statistics for First Quarter 2008.

(pages 79 – 95)

Re: Consultation Process for Proposed New Rules of Practice and Procedure

It was moved by Mr. Sandler, seconded by Mr. Banack, that –

Convocation authorize the Tribunals Committee to consult with the profession in stages on the proposed new Rules of Practice and Procedure set out at Appendix 1 as follows:

a. To first seek input from a number of lawyers who appear regularly before Law Society Hearing Panels and incorporate any additional changes the Committee considers appropriate.

b. To then seek input from legal organizations and the profession at large.

That input and written comments be accepted until September 2, 2008 after which time the Committee will provide revised rules to Convocation for its consideration.

Carried

Re: Publication of Withdrawal of Notices of Application

It was moved by Mr. Sandler, seconded by Mr. Banack, that –

Convocation direct that withdrawals of notices of application should be published on the Law Society website under "Tribunal Decisions," but no other steps should be taken to retroactively remove previously published interim orders or reasons in the withdrawn proceeding.

That where a matter is withdrawn, Hearing Panels be encouraged to endorse the Notice of Application "at the request of the Law Society the matter is withdrawn" and that formal orders withdrawing a notice of application no longer be issued.

Carried

Item for Information

- Tribunal Quarterly Statistics for First Quarter 2008

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Report.

Report to Convocation
May 22nd, 2008

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tom Heintzman
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

TABLE OF CONTENTS

COMMITTEE PROCESS

1. The Committee met on May 8th, 2008. Committee members present were Paul Dray (Chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh, Tom Heintzman, Brian Lawrie (by telephone), Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Terry Knott, Zeynep Onen, Naomi Bussin, Roy Thomas, Elliot Spears, Sybila Valdivieso, Sheena Weir, Lisa Mallia, Jim Varro and Julia Bass.

FOR DECISION

MOTION TO IMPLEMENT PREVIOUSLY APPROVED POLICY CHANGES

Motion
1. That Convocation approve the amendments to By-law 4 at Appendix 1.

Background

2. This motion implements two policy changes previously approved by Convocation:

   a. the 'equivalency' provision for Justices of the Peace applying for paralegal licences, approved by Convocation on March 27th, 2008. The purpose of this provision is to permit a Justice of the Peace who has three continuous years of service to apply for a paralegal licence without obtaining a paralegal college diploma. Applicants using this provision would still have to fulfill all the other requirements, i.e. passing the licensing examination, being of good character, obtaining insurance etc., and
   b. the exemption for Pro Bono Students Canada, approved by Convocation on February 21st 2008. (For ease of reference, a memorandum describing this group is attached at Appendix 2).

Appendix 1

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 4
[LICENSING]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 22, 2008

MOVED BY

SECONDED BY

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008 and April 24, 2008, be further amended as follows:

BY-LAW 4
[LICENSING]

1. Section 12 of By-Law 4 is revoked and the following substituted:

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

   i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

   ii. a field placement of a least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

13. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

2. Subsection 30 (1) of By-Law 4 is amended by adding the following:

Student *pro bono* programs
3.1 An individual who,

i. is enrolled in a degree program at an accredited law school,

ii. provides the legal services through programs established by Pro Bono Students Canada, and

iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.

Appendix 2

PRO BONO STUDENTS CANADA:

From the classroom to the community and back

WHO WE ARE:

- In 1996, the University of Toronto Faculty of Law (U of T) launched Pro Bono Students Canada (PBSC) to cultivate the *pro bono* ethic in law students and to serve communities in need.
- Today, every law school in Ontario and Canada has a PBSC program, and the PBSC National Office is housed by the U of T, where it receives strategic support and the guidance of senior staff and faculty.
- Each year, PBSC programs engage approximately 2,000 law students who contribute more than 120,000 hours to enhancing access to justice.
- Over the last 12 years, over 11,000 law students have graduated from our programs.

OUR GOALS:

- Our main goals are two-fold:
  (1) To enable law students to develop their legal skills and broaden their educational experience by engaging in *pro bono* philosophy and practice; and
  (2) To provide critical *pro bono* services and increase access to justice for public interest organizations and communities in need.

OUR PROGRAMS:

- We involve law student volunteers in our programs in a range of ways, including:
  (1) Serving the unmet legal needs of public interest organizations, legal clinics and community groups through: researching pending legislation, legal issues and current policy questions; drafting policies for organizations and manuals for their clients; conducting public legal education workshops; and helping organizations provide legal information and support to communities; and
  (2) Assisting in-court (duty) counsel and advice lawyers at Ontario courthouses to respond to the increasing numbers of unrepresented clients who need help completing court forms and navigating the legal system, thereby supporting the administration of justice while learning about public interest practice and legal aid lawyering.
- Law student Coordinators are hired at every law school and trained by the PBSC National Office to manage PBSC projects and oversee volunteers.
- Volunteers are trained prior to participating in PBSC projects to ensure that they have the legal, management and professional skills to accomplish their work, and they submit regular progress reports about and evaluations of their projects upon completion.
- *Whenever students are involved in providing legal information to communities or at courthouses, we require that they work under the direction of a lawyer supervisor.*

OUR PARTNERS:

- At every Ontario law school, faculty and senior administrative staff are key partners in hiring student Coordinators and supporting and supervising their management of PBSC programs and projects.
- Our principal funder, The Law Foundation of Ontario, our law firm partner, McCarthy Tétrault LLP, and Legal Aid Ontario provide funding for our 8 Ontario offices and support for our programs.

· Our projects involve a vast network of partners across the province – like the Ministry of the Attorney General, Pro Bono Law Ontario, the City of Toronto, and many more – who work with PBSC programs and students and approach us with requests for assistance with new projects and initiatives every day.

FOR INFORMATION

PROPOSED WORDING CHANGES TO BY-LAWS 7.1 AND 8

3. The Committee approved the report on proposed minor amendments to By-laws 7.1 and 8 submitted by the Professional Regulation Committee. The motion on this issue is being moved by the Professional Regulation Committee on behalf of both committees.

Re: Amendments to By-Laws 7.1 and 8

It was moved by Mr. Dray, seconded by Mr. Lawrie, that Convocation approve the amendments to By-law 4 distributed under separate cover.

Carried

BY-LAW 4

[LICENSING]

THAT By-Law 4 [Licensing], made by Convocation on May 1, 2007 and amended on May 25, 2007, June 28, 2007, September 20, 2007, January 24, 2008 and April 24, 2008, be further amended as follows:

1. Section 12 of By-Law 4 is revoked and the following substituted:

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,

i. 18 courses, the majority of which provided instruction on legal services that a licensee who holds a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and

ii. a field placement of a least 120 hours.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Exemption from education requirement

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of

Exigences préalables à la délivrance d'un permis de catégorie P1 : Demande reçue après le 31 octobre 2007 et avant le 1er juillet 2010

12. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie P1 à l'intention d'un requérant ou d'une requérante qui demande le permis après le 31 octobre 2007, mais avant le 1er juillet 2010 :

1. Le requérant ou la requérante doit, dans les trois (3) ans précédant sa demande de permis, avoir obtenu un diplôme décerné dans le cadre d'un programme de services juridiques en Ontario qui était alors agréé par le ministère de la Formation, des Collèges et Universités, et qui comprenait,

i. dix-huit cours, dont la plupart assuraient une formation sur les services juridiques que les titulaires de permis de catégorie P1 sont autorisés à fournir et dont un cours portait sur la responsabilité et la déontologie professionnelles,

ii. un stage pratique d'au moins 120 heures.

2. Le requérant ou la requérante doit avoir réussi l'examen ou les examens d'admission applicables établis par le Barreau.

Dispense de l'exigence de formation

(2) Le requérant ou la requérante est dispensé de l'exigence prévue à l'alinéa 1 du

subsection (1) if, for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

paragraphe (1) si, pour un total d'au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d'un juge de paix en Ontario à plein temps.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

Exigences préalables à la délivrance d'un permis de catégorie P1 : Demande reçue après le 30 juin 2010

13. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

13. (1) Les exigences suivantes s'appliquent à la délivrance d'un permis de catégorie P1 à l'intention d'un requérant ou d'une requérante qui demande le permis après le 30 juin 2010 :

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.

1. Le requérant ou la requérante doit avoir obtenu un diplôme décerné dans le cadre d'un programme de services juridiques qui était alors agréé en Ontario.

2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

2. Le requérant ou la requérante doit avoir réussi l'examen ou les examens d'admission applicables établis par le Barreau dans les trois ans précédant la demande de permis.

Exemption from education requirement

Dispense de l'exigence de formation

(2) An applicant is exempt from the requirement mentioned in paragraph 1 of subsection (1) if, for an aggregate of at least 3 years, the applicant has exercised the powers and performed the duties of a justice of the peace in Ontario on a full-time basis.

(2) Un requérant ou une requérante est dispensé de l'exigence mentionnée à l'alinéa 1 du paragraphe (1) si, pour un total d'au moins 3 ans, il ou elle a assumé des fonctions et exécuté les tâches d'un juge de paix en Ontario à plein temps.

2. Subsection 30 (1) of By-Law 4 is amended by adding the following:

Student *pro bono* programs

Étudiants et étudiantes de programmes *pro bono*

3.1 An individual who,

3.1 Toute personne qui

i. is enrolled in a degree program at an accredited law school,

i. est inscrite à un programme menant à un grade dans une

	faculté de droit agréée,
ii. provides the legal services through programs established by Pro Bono Students Canada, and	ii. fournit des services juridiques par l'intermédiaire de programmes créés par *Pro Bono Students Canada*,
iii. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence.	iii. fournit des services juridiques sous la surveillance immédiate d'un ou d'une titulaire de permis de catégorie L1.

Item for Information

- Wording Changes to By-Laws 7.1 and 8

…….

IN CAMERA

…….

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

…….

IN PUBLIC

…….

MATTERS NOT REACHED

Equity and Aboriginal Issues Committee/Comité sur
l'équité et les affaires autochtones Report
- Human Rights Monitoring Group Interventions (in camera)

Committee of the Whole (in camera)

REPORTS FOR INFORMATION ONLY

Access to Justice Committee Report
- Strategic Plan of the Law Commission of Ontario for 2008 - 2012

Report to Convocation
May 22, 2008

Access to Justice Committee

Committee Members
Marion Boyd, Co-Chair
Judith Potter, Co-Chair
Paul Schabas, Vice-Chair
Paul Dray
Avvy Go
Allan Lawrence
Susan McGrath
Bonnie Tough

Purposes of Report: Information

Prepared by the Equity Initiatives Department
(Jewel Amoah - 416-947-3425)

COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on May 7, 2008. Committee members Marion Boyd (Co-Chair), Judith Potter (Co-Chair), Paul Schabas (Vice-Chair), Allan Lawrence, Susan McGrath and Bonnie Tough attended. Staff members Jewel Amoah, Julia Bass and Sheena Weir (by telephone) attended.

FOR INFORMATION

STRATEGIC PLAN OF THE LAW COMMISSION OF ONTARIO FOR 2008-2012

2. Dr. Patricia Hughes, Executive Director of the Law Commission of Ontario attended the Access to Justice Committee meeting on May 7, 2008, to present the Strategic Plan of the Law Commission for 2008-2012. Dr. Hughes described the work of the Law Commission to date, as well as plans for future work. The Strategic Plan of the Law Commission for 2008-2012 is presented at Appendix 1.

3. The Law Commission of Ontario ("LCO") was established by an Agreement among the Ministry of the Attorney General, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School and the other Ontario law school deans.

4. In November 2006, Convocation approved the Law Society's participation in the Law Commission of Ontario. The Law Society agreed to contribute $100,000 per year over the five-year period from 2007 to 2012.

5. The mandate of the LCO is to recommend law reform measures to increase the access to:
   a. enhance the legal system's relevance, effectiveness and accessibility;
   b. improve the administration of justice through the clarification and simplification of the law; and
   c. consider the effectiveness and use of technology as a means to enhance access to justice.

6. The LCO is also mandated to create critical debate about law reform and promote scholarly research.

7. The mission of the LCO is to become a leading voice in law reform. In 1964, Ontario created the first law reform commission in Canada, the Ontario Law Reform Commission ("OLRC"), which was followed by other provincial commissions and a federal commission. The current LCO differs from the OLRC in that the LCO was not established by government and has complete autonomy over its research agenda.

8. Since its launch in September 2007, the Law Commission of Ontario has been engaged in various projects, ranging from those that are narrowly focused to complex, socially oriented projects. Currently, the LCO is engaged in the following:

   a. charging fees for cashing government cheques;

b. the preferable approach to the valuation and division of pensions on marriage breakdown;
c. the development of a coherent approach to law affecting older persons and those who interact with them;
d. the development of a coherent approach to the law relating to persons with disabilities. This involves a comprehensive assessment of the ways in which the interaction of persons with disabilities with the legal system results in disadvantage.

9. Further details of the work of the LCO is available on the Commission's website at http://www.lco-cdo.org.

10. Pursuant to its agreement with its partners, as its work progresses, the LCO will prepare a budget and Annual Report for the partners to review.

Appendix 1

LAW COMMISSION OF ONTARIO
COMMISSION DU DROIT DE L'ONTARIO

LCO STRATEGIC PLAN 2008 – 2012

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I. INTRODUCTION

The LCO, launched on September 7, 2007, was established by an Agreement among the Ministry of the Attorney General, the Law Foundation of Ontario, the Law Society of Upper Canada, Osgoode Hall Law School and the other Ontario law school deans, for a period of five years.

II. GOALS TO BE ACHIEVED BY 2012

The LCO's goals for its first mandate are to complete or substantially implement eight to ten major projects and eight to ten focused projects, organize (in collaboration) three conferences, achieve recognition for the high quality of its work, achieve recognition for its consultative process and achieve widespread acceptance of its value.

III. THE LCO'S MANDATE AND UNDERLYING VALUES

The LCO's mandate is to make recommendations to improve the legal system's relevance, effectiveness and accessibility; to clarify and simplify the law; and to consider how technology might make the legal system more accessible. It is also mandated to create critical debate about law reform and promote scholarly research. The LCO's mission is to become a leading voice in law reform. Its values are independence; integrity; excellence; innovation; relevance; open-mindedness; transparency; diversity; inclusiveness; multi/interdisciplinarity; collaboration; pragmatism; efficiency and accountability.

IV. THE LCO'S APPROACH TO LAW REFORM

The evolution of law reform indicates that over time commissions have changes in nature. While law reform began in limited form in the fifteenth century, its modern manifestation did not occur until 1925 in the United States and 1934 in Britain. Ontario created the first law reform commission in Canada, the Ontario Law Reform Commission, in 1964, followed by other provincial commissions and a federal commission. The current LCO differs from the OLRC in not being established by government and in having complete autonomy over its research agenda. The LCO is premised on a vision of law reform as a creative yet pragmatic endeavour.

The LCO will undertake both narrowly focused and complex, socially oriented projects, engage in multi/interdisciplinary research and analysis and make holistic recommendations. It will collaborate with other bodies and consult with affected groups and the public generally. It will be responsive to the need to see its recommendations translated into law, but will also engage in projects that will not become part of the government's agenda, but that may have a longer term impact in a different forum.

V. THE LCO'S PROJECTS

The LCO is open to project proposals from the public, community groups, academics and legal organizations and from individuals and groups. It will accept proposals at any time, but will also issue a "call" for proposals at times when it is clear that resources will become available.

The Board of Governors approves projects, after receiving recommendations and advice from the Research Advisory Board and the Executive Director. The LCO applies a wide ranging set of criteria in determining whether it is appropriate to undertake a particular project: relevance of the proposed project to the LCO's mandate and objectives; its impact on the law and communities; and using resources efficiently.

The LCO's current projects are fees for cashing government cheques; division of pensions on marital breakdown; and the development of a coherent approach to law as it affects older persons. In addition, the LCO will carry out a pre-study for a project relating to persons with disabilities.

The staff lawyer and Executive Director will develop a plan for each project, including timelines, resources required, methods of consultation and list of interested groups, taking into account previous work in the area. The knowledge required for each project and consideration of the relevance of technology for each project will be factors in determining the nature of the research required. Narrowly focused projects will usually result only in a draft report distributed for feedback, while complex projects will also involve discussion papers, also distributed for feedback. Complex projects will begin with a pre-study to determine their parameters and will involve multi/interdisciplinary analysis and holistic recommendations.

VI. THE LCO AS A RESPONSIVE ORGANIZATION

The Board of Governors is required to submit a budget and projected expenditures to the partners. The LCO is required to report annually to the partners, but the Executive Director will also develop communication plans that include formal and informal means of communication, including in person communication. The release of the Annual Report will provide an opportunity to bring together the funding partners, the Board of Governors and the Research Advisory Board.

The LCO is committed to public consultation and communication in person, through its website, via a newsletter and through its discussion papers and draft and final reports.

VII. MEASURING SUCCESS

Measures of success include translation of recommendations into legislation; reference to research, analysis and recommendations by courts, academics and other bodies interested in law reform; quality of work produced; adoption of recommendations or frameworks by other jurisdictions; contribution to or leading dialogue on law reform; collaboration with others; number of proposals submitted to the LCO; extent the LCO is known; and extent to which it meets its own values and satisfies its own identified processes. The LCO will be externally evaluated beginning early in 2010.

VIII. OBJECTIVES AND ACTIVITIES FOR 2008

The LCO will complete its appointment of personnel, complete the two narrowly focused projects and complete the pre-study for and begin research on the older persons project, organize, likely in collaboration with a law school partner, a conference on law reform, prepare communication plans and implement its website and newsletter.

THE LAW COMMISSION OF ONTARIO: STRATEGIC PLAN, 2008-2012

I. INTRODUCTION

The Law Commission of Ontario ("the LCO") was launched on September 7, 2007, as a partnership among the Ontario Ministry of the Attorney General, the Dean of Osgoode Hall Law School, the law deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada. Officially located at Osgoode Hall Law School, the LCO is temporarily housed elsewhere at York University until Osgoode completes extensive renovations that will include space allocated to the LCO.

The LCO's mandate as articulated by the Foundation Agreement is to recommend law reform measures to increase access to and the relevance and effectiveness of the legal system, to clarify and simplify the law and to consider technology as a means of increasing access to justice. The LCO is also to stimulate debate about law and promote scholarly legal research.

The LCO's mission is to become a leading voice in law reform. Leadership includes helping to identify the parameters of law reform; encouraging debate about law reform and law reform initiatives; producing scholarly research that identifies areas of law in need of reform and providing high level analysis of the areas identified; and making holistic and multidisciplinary recommendations directed at making the law forward-looking, responsive to the needs of affected communities and comprehensive in approach.

The LCO is premised on a vision of law reform as a creative yet pragmatic endeavour. It has made a commitment to widespread consultation in selecting law reform projects and in making its recommendations. It is also committed to collaboration with other law reform bodies and other organizations engaged in law reform activities. This Strategic Plan not only describes the organization of the LCO and its objectives, but also relates it to the various perspectives on law reform that have informed law reform activities in Canada and elsewhere.

The LCO has the following goals for its first mandate: the completion or substantial completion of eight to ten major projects and eight to ten narrowly-focused projects; the organization (in collaboration) of three conferences; achieve recognition for the high quality of its work; be recognized as a leader in law reform; be recognized for its consultative process; and achieve widespread recognition of its positive contribution to the legal landscape not only in Ontario, but also nationally.

The remainder of the Strategic Plan explains the approach of the LCO to law reform and to the selection and study of projects; it identifies the values that govern the LCO's work; it suggests measures by which its performance can be measured; and it sets out the LCO's objectives for 2008.

II. GOALS TO BE ACHIEVED BY 2012

- Completion or substantial implementation of eight to ten major projects and eight to ten more narrowly focused projects: this number recognizes that it will not be until 2009 that the LCO is likely to produce any substantial work on the initial large projects and it is also recognizes that, while it continues to select narrowly focused projects, the majority of its work is likely to be in relation to large projects;
- Organization of three conferences or symposia: these are likely to be organized in conjunction with Ontario law faculties and other partners;
- Achieve recognition for the high quality of its discussion papers and reports: this includes the quality of the analysis and the feasibility of the recommendations;
- Acknowledgement as a leader in law reform: this means that its partners, other law commissions, the legal community and the community more generally view the LCO as playing a major role in law reform in Ontario and in Canada generally;
- Achieve recognition for its consultative processes: this refers to consultation in relation to project selection and throughout the project implementation process with affected groups and the public generally, as appropriate for the project; and
- Develop widespread acceptance of the value of the LCO to the Ontario legal system: this will include the view among identified constituencies, such as legal and community organizations, the government and the partners that the mandate of the LCO be extended.

III. THE LCO'S MANDATE AND UNDERLYING VALUES

As set out in section 2(1) of the Foundation Agreement, the LCO's purpose is

> to recommend law reform measures to:
> (a) Enhance the legal system's relevance, effectiveness and accessibility;
> (b) Improve the administration of justice through the clarification and simplification of the law; and
> (c) Consider the effectiveness and use of technology as a means to enhance access to justice.

In addition, the Foundation Agreement states that the LCO shall

> (a) Stimulate critical debate about law and promote scholarly legal research; and
> (b) Develop priority areas for study which are underserved by other research, determine ways to disseminate the information to those who need it and foster links with communities, groups and agencies.

The LCO is independent of both government and interest groups. It does not receive its agenda from the government, nor is it obliged to review matters at the request of the government. Furthermore, the government is only one of the LCO's five funders. Nevertheless, the LCO recognizes that at least one measure of success is the extent to which its recommendations are "taken up" by the government of the day. Therefore, government's interest in a proposed project is a factor in selecting among potential projects. This process is facilitated by the inclusion of the Deputy Attorney General on the Board of Governors and the inclusion of an appointee of the Ministry of the Attorney

General on the Research Advisory Board. Nevertheless, the LCO may conclude that it has other reasons to implement a project, even if the government does not evidence interest in it, since it will be difficult to identify the government's future interest in the results of complex project and consistent with the injunction to "stimulate critical debate about law and promote scholarly legal research."

The LCO will be guided by the following values in all its work:

1. *independence*: the LCO is an independent body, the recommendations of which will be determined by the results of research, including consultations with the public and experts in the area;

2. *integrity*: the LCO is committed to ethical practice and will select projects, carry out research and develop recommendations based on merit and not on the basis of pressure from any quarter;

3. *excellence*: the LCO is committed to high quality research carried out for a project, analysis, solutions and production of discussion papers and reports and in its employment and administrative practices;

4. *innovation*: the LCO will approach law reform with a commitment to innovation in law and the reconceptualization of legal frameworks;

5. *relevance*: the LCO will select projects and make recommendations that are relevant to Ontario society today and in the future;

6. *open-mindedness*: the LCO will be open to views from different constituencies at all stages of its projects and will be responsive to suggestions for improvement in all aspects of its operations;

7. *transparency*: the LCO will have an open process for project proposals, will explain its process for selection and will disseminate its work widely;

8. *diversity*: the LCO is committed to diversity in its selection of projects, its approach to analysis and recommendations and in its interaction with community organizations and groups;

9. *inclusiveness*: the LCO will encourage participation by interested groups and individuals, legal and non-legal, in its project selection and project implementation processes and will make every effort to seek out the views of marginalized communities when appropriate to its projects;

10. *multidisciplinarity*: the LCO's research and recommendations will be based on a multi/interdisciplinary and holistic approach;

11. *collaboration*: the LCO will collaborate with other law reform commissions and with other organizations involved in (law) reform as appropriate;

12. *pragmatism*: the LCO will advance recommendations that can be realistically implemented;

13. *efficiency*: the LCO will use its resources efficiently without endangering the high quality of its work and its approach to employees and will not duplicate work done by others or more appropriately done by others; and

14. *accountability*: the LCO will be accountable to its partners and to the public for the quality of its work and its adherence to its values.

IV. THE LCO'S APPROACH TO LAW REFORM

A. Placing the LCO in Context

Law reform as a limited activity goes back to the fifteenth century, but the modern notion of deliberative law reform began in the United States with the 1925 Law Revision Commission and in Britain with the establishment of the Law Revision Committee in 1934 which, with a break for World War II, was reestablished as the Law Reform Committee in 1952.[i] The Ontario attorney general established a Law Revision Committee in 1941 and an Advisory Committee on the Administration of Justice in 1956. The former apparently did no work, but the latter, according to Murphy, "produced a significant body of work, mostly on technical issues" and it was successful in having many of its recommendations adopted by the government.

Ontario established the first "modern" law reform commission in Canada, in 1964. The Ontario Law Reform Commission ("OLRC") was created by statute and was required to look into any issue requested by the Attorney General, but it also had the freedom to study and make

recommendations about any area it considered appropriate. Its personnel included one senior and four legal research officers and it otherwise relied on contract researchers drawn from the Ontario law schools. An advisory board, comprised of legal and non-legal members, was also established. The Ontario Law Reform Commission was abolished in 1996 after releasing a significant number of reports, a good number of which, as Hurlburt explains, influenced the development of law in Ontario and elsewhere.[ii]

A little over a decade after the abolition of the OLRC, the Law Commission of Ontario was established on June 25, 2007. In November 2006, a group of individuals, including law school deans, members of the bar, members of the already appointed Board of Governors and the Research Advisory Board of the LCO and members of the Ministry of the Attorney General met in a "Creative Symposium" to discuss issues related to establishing a law reform commission in Ontario.

The LCO is a partnership among the Ministry of the Attorney General of Ontario, the Dean of Osgoode Hall Law School, the Law Deans of Ontario, the Law Foundation of Ontario and the Law Society of Upper Canada, with funding and in-kind contributions from MAG, the LFO, the LSUC and Osgoode Hall Law School for five years, beginning January 1, 2007. The LCO is a not-for-profit unincorporated institution that finds its authority in the Foundation Agreement among the founding partners and not in statute. The Law Commission of Ontario was officially launched in a public ceremony at Osgoode Hall Law School on September 7, 2007. The LCO's Executive Director was appointed effective September 15, 2007. Its staff complement includes a full-time staff lawyer, a part-time research lawyer, the MAG LCO Counsel in Residence (seconded by the Ministry of the Attorney General), the Osgoode Hall Law School LCO Scholar in Residence (seconded by Osgoode) and the Executive Assistant.

The new Law Commission of Ontario joins sister provincial commissions in Nova Scotia, Manitoba, Saskatchewan, Alberta and British Columbia. These commissions vary in their origins, organizations and resources. The Law Reform Commission of Nova Scotia, the Manitoba Law Reform Commission and The Law Reform Commission of Saskatchewan were all created by specific provincial statute. The British Columbia Law Reform Institute was incorporated under the Provincial Society Act in 1997 and was a successor to the Law Reform Commission of British Columbia, established in 1969, from which the Ministry of the Attorney General had withdrawn funding. The Institute of Law Research and Reform was created by the Province of Alberta, the University of Alberta and the Law Society of Alberta in November 1967; it was renamed the Alberta Law Reform Institute in 1989. The Nova Scotia, Manitoba and Saskatchewan Commissions all receive funding from their provincial departments of justice and law foundations. The Alberta Institute is funded by the Department of Justice and the Alberta Law Foundation and it also receives in-kind contributions from the University of Alberta (the University of Calgary provides office space for two ALRI counsel) and the British Columbia Institute by the British Columbia Law Foundation and more recently, by the Notary and the Real Estate Foundations.

The Law Reform Commission of Canada was established by statute in 1971. It was closely tied with government and was given a legislative mandate heavily directed at maintaining currency in law, but it also was given responsibility for developing new approaches to law, a part of its mandate it took very seriously. Although slow to have recommendations acted upon by government (this did not occur until 1983 with respect to a relatively narrow question, the abolition of the immunity of federal employees' salaries from garnishment), the commission saw more recommendations translated into law during the next decade. It was abolished in 1993; revived in 1996, its funding was withdrawn again in 2006.

Internationally, law reform as a deliberate activity has been recognized in countries around the world. Commissions in England and Wales, Scotland, Ireland, Australia (federal and state), New Zealand, South Africa, various states of the United States, Hong Kong, Fiji and Tanzania are among those whose discussion papers and reports are available on the web.

B. The LCO's Approach

From an emphasis on the initial narrow, focused and often technical questions that were the concern of the first law commissions or specialized law reform bodies, law commissions evolved into bodies concerned with large social questions requiring multi/interdisciplinary and empirical research and non-legal expertise. Today law reform commissions are generally responsible for both kinds of "reform." The Report from the Creative Symposium observed that the spectrum of approaches to law reform runs from "philosophy (informative, contemplative and foundational) and politics (immediately relevant and responsive)." The LCO intends to take a creative and visionary, yet pragmatic, approach to law reform, combining qualities of both approaches.

The LCO also recognizes that law reform is not the sole purview of law reform commissions. Law is changed or "reformed" in a variety of ways. Law becomes outmoded and atrophied, not observed or enforced even though not repealed. Governments introduce and legislatures enact new laws, often explicitly replacing existing law in the process, but sometimes legislating in heretofore uncharted areas. Courts make law even as they interpret it. Law reform arises in response to many stimuli: spectacular incidents that dramatically reveal the need to develop or amend laws; scholarly articles that analyse the problems with existing law; lobbying by groups with particular interests; and societal or technological developments that warrant regulation, among others. It may be planned or responsive to immediate and unanticipated need.

Although law reform commissions constitute only one means by which law is reformed and even transformed, they do have a distinctive capacity to contribute to the process of law reform. They are able to engage in thorough analyses of difficult legal problems and propose innovative solutions that encompass recommendations in areas other than law, in addition to law. They are able to identify the advantages and disadvantages of different options, weighing them in the balance. They have more time for research than does either the government's legislative or even policy development branches or the courts. While academics have the capacity to engage in major research, they do not often have the association with government and the explicit mandate to engage in law reform that characterizes law reform commissions.

While they do not by themselves have the political or legal authority of either government/legislature or the courts, law reform commissions with reputations for excellence and pragmatism may have a "moral" authority that transcends their legal status. Law reform bodies must acknowledge practical and political realities and must couple their high quality scholarship and philosophical contribution with pragmatism in their recommendations: their recommendations must be feasible, even if not popular with a particular government. To be most effective and obtain the trust of the public, law reform commissions must be independent and non-political and must be prepared to accept challenges and deal with difficult and controversial questions.

To achieve legitimacy and maintain it, law reform commissions must take a principled approach to law reform and as a result, commissions that determine their own research agendas may undertake projects that do not necessarily accord with the agenda of the government of the day, knowing that in this instance, at least, its study and recommendations may not have an impact

until some time in the future. As suggested below, realization in legislation or even adoption by the government of its recommendations is not the only measure of success for a law commission: it also has a role in contributing to dialogue and education about reform and particular social issues.

Furthermore, a law reform body must be independent not only of government, but also of any particular interest group. Its legitimacy is grounded in the recognition that its work is independent, based on expertise and a culture that understands the process and implications of recommendations resulting from objective study of a particular problem. As the former Chairperson and the Executive Director of the New South Wales Law Reform Commission observe, "Policy analysis and development is something that law reform commissions do very well."[iii]

In short, as Murphy suggests,

> A law reform commission must operate on a different level than legislators and judges, since it has to evaluate the repercussions of reforms objectively and without undue regard to short term political considerations. The benefits of a law commission include independence, expertise, focus and continuity.[iv]

The contemporary model of law reform commissions has also been described by Adams and Hennessey of the NSW Commission as "uniquely placed to undertake detailed, principled research into areas of law…They are permanent, independent organizations, able to coordinate large research projects, engage in community consultation, and write detailed, reasoned arguments for their recommendations to government."[v]

One informed commentator, a former Chair of the Australian State of Victoria Law Reform Commission, goes so far as to suggest that underlying "[t]he creation of standing law reform bodies was that the whole idea of law reform was reconceptualised."[vi] The first Law Reform Commission of Canada, particularly in its early days, considered its mandate to be addressing broad social questions and changing attitudes, not developing "technical" recommendations. Many of its reports were, to use William Hulburt's phrase, "heavily philosophical."[vii] The later Law Commission of Canada jettisoned the usual categories of law, "categorizing" law instead as law relating to personal relationships, social relationships, economic relationships and governance relationships.

The LCO's philosophy of law reform is to undertake both focused questions when there is a particular reason for doing so and the large social issues for which law commissions are particularly suited. It will, indeed, offer in appropriate cases, the "reconceptualization of law" which Neave considered signalled the purpose of a separate law reform body. It recognizes that while law may be the primary discipline as far as law reform is concerned, it must be viewed in the context of other disciplines and expertise, such as sociology, economics and psychology and the natural sciences, for example. It will employ the most modern research tools and both qualitative and quantitative analysis, as appropriate. Its researchers will consult both academic experts and those who have had real life experiences in order to form a picture of the topic at hand from a variety of perspectives. Law commissions today are "of the world," legal and non-legal, and must, therefore, develop extensive consultation, collaboration and communication processes. A contemporary law reform commission must be concerned not only with the subjects it chooses to research, but also with its research, consultative and communicative processes.

V. THE LCO'S PROJECTS

A. Selecting the LCO's Projects

This section describes the process of the selection and approval of research projects. The research and communication processes are described in the next section.

1. Sources of Projects

The Creative Symposium held in November 2006 produced a lengthy list of possible law reform projects in "administrative justice," "civil justice," commercial law, criminal law/provincial offences, family law, guardianship and trustee law, torts and insurance law and miscellaneous topics. There was no discussion of these topics, merely a listing; however, they do represent a useful "brainstorming" of potential law reform topics of which the Research Advisory Board was aware in considering the first potential LCO projects. The Board of Governors subsequently asked Professor Lorne Sossin of the Faculty of Law at the University of Toronto to prepare a "Research Priorities" document;

Professor Sossin identified seven projects from 60 proposals for law reform from academics, community groups, government and legal organizations in a report released April 27, 2007. The Sossin Report assisted in the identification of the initial LCO projects and will continue to be helpful in the determination of future projects. Other project proposals were subsequently submitted to the LCO by individuals and groups.

In the future, the LCO will invite proposals for law reform projects, using its website and other communication vehicles to reach as many groups as possible with an interest in law reform. Members of the Board of Governors and the Research Advisory Board may also hear about possible projects. Although the LCO will issue "formal" calls for proposals, it encourages the submission of proposals at any time. Ideally, the LCO will have list of projects approved by the Board of Governors from which it can select based on availability of resources.

2. Selection of Projects

The Board of Governors approves the projects to be undertaken by the LCO, on the advice of the Research Advisory Board and the Executive Director.

The LCO's projects will potentially encompass all areas of law within provincial jurisdiction, including those overlapping with federal jurisdiction. They will affect a wide range of communities, including those defined geographically, linguistically, socially and demographically. The projects will address socially relevant justice issues and narrower questions of law, always with the objective of making the legal system more relevant, effective and accessible. In the usual course, the LCO will have on-going at least two or three narrowly focused projects and at least two complex projects. In all its work, including the selection of projects, the LCO will conform to the values articulated above in Part III.

In selecting projects, the LCO takes into account wide-ranging factors, not all of which are applicable or applicable in the same way to all potential projects. A project must conform to the LCO's mandate. Preferably, it will contribute to the LCO's broader objective of producing holistic or multidisciplinary recommendations, but some projects will not lend themselves to this kind of analysis. Many projects will address the exclusion of particular communities from effective access to the law; however, this will not be true of all projects. The LCO has

committed to using its resources effectively and to this end, will not duplicate work being done elsewhere. Where appropriate, however, it will collaborate with others working on the same or similar project. At any given time, the LCO will balance a mix of small, focused projects and large projects that will address major social questions about the law and its relationship to other disciplines, as well as a variety of areas of law.

1. Relevance to the LCO's Mandate and Objectives

a) Is the project consistent with the LCO's mandate to make recommendations to increase the relevance, effectiveness and accessibility of the legal system, to clarify and simplify the law, to consider the use of technology to enhance access to justice and to contribute to law reform scholarship?
b) How well might this project contribute to the LCO's goal to be holistic, innovative, socially conscious and pragmatic in its selection of projects, research and recommendations?

c) Is the project likely to result in feasible recommendations or to influence in a constructive fashion the dialogue on law reform in the area?

2. Impact on the Law and Communities

a) Who is likely to benefit from this project?
b) How many people will this project benefit?
c) Will this project likely have a significant impact on improving access to the law?

3. Efficient Use of Resources

a) Is this issue already being addressed by government or another institution or does it more properly fall within another institution's mandate? The LCO does not want to duplicate work being done by others or overstep the mandate of another organization.
b) Would this project provide the opportunity for collaboration with other law reform bodies or other organizations?
c) Will this project be understood by the public as a good use of the LCO's resources?
d) Will the LCO be able to complete this project within the relevant timelines and resources available?

4. Other Factors

a) Is the subject matter of this project being litigated? The LCO will not select as a project an issue that is explicitly the subject of litigation.
b) How does this project fit into the LCO's on-going mix of narrowly focused and complex projects and areas of law that are already being researched?

3. Available Resources

The LCO has an in-house research capacity of a full-time staff lawyer, who also has administrative responsibilities, and a part-time research lawyer, in addition to the Executive Director (the CEO and Chief Spokesperson for the LCO) and the Executive Assistant. It also benefits from secondments from Osgoode Hall Law School (the OHLS LCO Scholar in

Residence) and the Ministry of the Attorney General (the MAG LCO Counsel in Residence). It will also rely on contract researchers and students. Osgoode Hall Law School provides administrative and IT assistance to the LCO. The LCO researchers have access to the Osgoode and York libraries and electronic databases. The funding partners having committed to providing $1.2 million in funding and in-kind contributions annually for five years.

B. Researching a Project: The LCO's Participatory Processes and Approaches

Once a project has been approved by the Board of Governors, the Executive Director will determine when work on it should proceed, given available resources. For narrowly focused projects (expected to take less than a year to complete), the Executive Director and the Staff Lawyer will determine whether the research should be accomplished in-house or by a contract researcher, possibly with the assistance of a student. For complex projects, a member of staff will be designated "head of project." For each project, the Staff Lawyer or head of project, as appropriate, in consultation with the Executive Director, will develop a plan, including timelines, required resources, method of consultation and a list of interested groups (this list is likely to evolve as the project proceeds). Consideration of the expertise required for each project will take into account the nature of the knowledge required and the need to consider the place of technology in its analysis and recommendations. For both focused and complex projects, this preliminary stage will include at least a brief look at the work done by other law reform bodies in Canada and elsewhere, as well as by other relevant bodies. Where appropriate, the LCO will collaborate with other organizations in completing the research. The LCO will not knowingly duplicate the work of others, nor carry out projects that can be better implemented by others.

Narrowly focused projects are more likely to be primarily legal issues, but may involve other areas of expertise. In most cases, the LCO will not issue a discussion paper separate from any draft report released on these projects, although it will engage in consultation. Longer, more complex, projects will almost always attract the multi/interdisciplinary, holistic approach to which the LCO is committed. These projects are likely to take two to three years to complete. For complex projects, the Staff Lawyer or head of project will carry out a pre-study to determine the scope of the project. The pre-study will involve public consultation and consultation with experts in the area, legal and otherwise, as appropriate for the project. These longer projects will almost inevitably require expertise in disciplines other than law and this will be taken into account in designing the research team of in-house lawyers, contract researchers and students. These projects will likely make use of the multidisciplinary teams created by the Research Advisory Board, as contemplated by the Foundation Agreement. The LCO will release discussion papers for most longer projects, inviting public input and input specifically from groups evidencing an interest and/or experiential expertise in the area. After consultation, the next stage will be the release of the draft report.

C. Reporting Recommendations

For both focused and complex projects, the Board of Governors will consider draft or interim reports, possibly with recommendations or optional recommendations, prior to their release for public consultation. (From time to time, a focused project will involve consultation and a draft final, but not interim, report.) Interim reports will be posted on the LCO website and sent to groups likely to be interested in the particular issue. After consideration of the input, the draft report will be finalized or revised, usually with specific recommendations. Once approved by the Board of Governors, it will be distributed through the website and in hard copy to government

and again, to those particularly interested in the subject matter. Final reports will be available to the public.

The release of reports and of discussion papers will provide an opportunity to publicize the LCO's work, whether through press conferences, collaborative events with affected groups, the tabling of reports by the Attorney General in the Legislature or through other means. The LCO will take these opportunities to publicize, as well, its processes and approach to law reform, as appropriate.

With all reports, the Executive Director or head of project will follow up with the appropriate government body to determine the fate of the report.

1. *Current Projects*

The LCO began the following projects in 2008.

- *Charging fees for cashing government cheques:* individuals who rely on government cheques are often among the most vulnerable members of our society and they are among those least likely to have bank accounts. This raises the question of whether it is appropriate to permit institutions/commercial enterprises to charge fees or to charge unregulated fees to cash these cheques. Other jurisdictions have addressed this question (for example, Manitoba imposed maximum fees effective October 1, 2007). It is anticipated that this project can be completed by an in-house lawyer with the assistance of a student by the end of 2008. A consultation paper has been released on this project.

- *The preferable approach to the valuation and division of pensions on marriage breakdown:* there is disagreement about whether the pension should be valued as if employment were terminated at the time of marital breakdown or whether it should be valued at the time it is paid out. There are advantages and disadvantages of both approaches for the parties involved. The LCO's objective is to bring clarity to this area of law. This project will require expertise in pensions and accounting, as well as family law. The LCO may collaborate with the Ontario Expert Commissions on Pensions on this project. It is expected that building on the work done in other jurisdictions and in Ontario, this project can be completed by the end of 2008.

- *The development of a coherent approach to law affecting older persons and those who interact with them:* the scope of this study will be determined by an initial consultation with those knowledgeable in the area, but it is expected to cover a wide range of subjects of particular relevance to older adults or as they affect older adults, including powers of attorney, treatment in long term care facilities, employment issues, obligations of children for aging parents and restrictions on driving, among others. The LCO will collaborate with others on this project, including the Canadian Centre for Elder Law Studies, associated with the British Columbia Law Institute. The challenge of this project is not merely to develop an analysis and recommendations with respect to discrete topics, but to develop a coherent approach or framework that can apply to the law as it affects older persons and those who interact with them. The analysis for this project will have to consider the extent to which women and men are affected differently by aging, as well as the cultural experience of older persons. The LCO

will issue discussion papers, as well as other materials in relation to this project which is expected to take between two and three years to complete. It will require the LCO to retain contract researchers and students to complement the work carried out by the in-house staff and will involve multi/interdisciplinary analysis and holistic recommendations.

In addition, the Board of Governors has approved a fourth project in principle, *the development of a coherent approach to law affecting persons with disabilities and those who interact with them.* A pre-study will determine its scope. Although the LCO will not begin this project immediately, it will be necessary to note the overlap in issues between the older adults project and this project (in relation to care in long-term facilities and powers of attorney, for example).

VI. THE LCO AS A RESPONSIVE ORGANIZATION

A. Accountability to Our Partners

Section 18(1) of the Founding Agreement requires that the Board of Governors prepare a budget for submission to the Attorney General, Osgoode Hall Law School, the LSUC and the LFO, as well as projected expenditures for the second and third years. The Board of Governors is to obtain the approval of the partners of the budget and the projected expenditures.

Pursuant to section 19 of the Agreement, the LCO will prepare an Annual Report for its partners. The release of the Annual Report will provide an opportunity to engage our founding partners in the on-going activities of the LCO and with each other. In addition, the LCO will develop communication plans for each partner that ensure that each partner receives the information it requires in a timely way, using both formal and informal means of communication. See the Language and Translation Policy at www.lco-cdo.org.

The Executive Director will also meet annually and in appropriate cases, more often, with the law deans and students and faculty at the Ontario law schools and with the other partners to the Foundation Agreement.

B. Reaching Out: Public Participation

The LCO is committed to involving interested groups and individuals, legal and non-legal, and the public generally in the law reform process, from the project proposal to feedback on discussion papers and draft reports.

The Annual Report will be distributed to the public.

The LCO's website will provide a significant vehicle to inform the public about the progress of the LCO's projects, including the posting of consultation papers and interim and draft reports and pre-studies. It will also allow the announcement of projects, on-line discussion about projects and feedback and announcements about research opportunities at the LCO.

The website, consultation papers, interim and final reports, the Strategic Plan and annual reports will be available in English and French, to the extent resources allow.

Members of the LCO will also engage in in-person contact with a wide range of organizations and groups in Ontario, legally-related and community-based, as well as the partners to the

Foundation Agreement, both to explain the LCO's mandate and progress and to garner suggestions for law reform projects or to receive feedback on consultation papers and interim reports. Consultations will usually be in English and from time to time in French; consultations in other languages will be subject to the LCO's resources. The LCO will make every effort to provide interpretation and alternate formats for the hearing and sight impaired.

Other constituencies with which the LCO will maintain regular contact include the courts, relevant government ministries, opposition justice (and other) critics and with other organizations particularly involved in law reform, such as other Canadian law reform commissions.

The LCO will publish a thrice-yearly newsletter to be posted on the website and to be sent to partners, other law commissions and interested organizations and groups.

The LCO, with assistance from experts, will develop a communications strategy to gain the fullest realization of our commitment to interact broadly with the public, including those who might not ordinarily come into contact with a legal body.

VII. MEASURING SUCCESS

As a former President of the Law Reform Commission of Nova Scotia admitted, while evaluation of an entity's performance usually is based on the entity's mandate, "[t]he mandate or purpose of most Law Reform Commissions...is usually set out so broadly that evaluation of the performance of the Commission in any reasonably precise or specific way is very difficult…." He conceded, however, that "a general assessment is perhaps possible."[viii] However difficult, it is important to assess the performance of a law reform body, but it is equally important to recognize the range of ways in which success might be measured. The impact of the OLRC also indicates that tracking the impact of a law commission's influence requires openness: some of the OLRC's reports influenced the development of law in provinces other than Ontario, the development of proposed legislation by the Uniform Law Conference of Canada and the approach taken by courts in certain matters.[ix] Ways of measuring the performance of a law commission include the following:

- Translation of recommendations or frameworks into legislation: It must be remembered, however, that legislative responses to law reform recommendations do not always occur in the short-term. As Hurlburt points out, it was ten years before any of the first Law Commission of Canada's recommendations were reflected in legislation.[x] Indeed, it has been suggested that no jurisdiction has "effectively tackled" the issue of "how to secure governmental legislative and official attention once law reform reports are produced."[xi]
- Acknowledged impact by the judiciary on their decision-making of discussion papers, reports and/or recommendations;
- Use by academics and others of the work carried out by the LCO; in some cases, the result may be to extend the LCO's analysis in a particular area to take into account new developments, while in other cases, academics might base their own analysis on that carried out by the LCO;
- Quality of the work produced by the LCO, as indicated in articles on law reform, for example;
- Adoption by other jurisdictions of LCO analysis or recommendations;

- Contribution to the dialogue on law reform or on substantive areas of law through LCO participation in conferences or conferences organized at least in part by the LCO;
- Collaboration with other law commissions or other bodies and groups in advancing law reform;
- The number of proposals made to the LCO;[xii]
- Extent to which the LCO is known in the legal and non-legal communities and its reputation in those communities; and
- The extent to which the LCO meets its own self-professed values and satisfies its identified processes, as articulated in this Strategic Plan.

The LCO will be externally evaluated at the beginning of its third full year of operation (2010). It did not begin operations until the fall of 2007 and will require at least 18 additional months to evidence its capacity to meet its mandate and its preferred method of operation. The beginning of 2010 is an appropriate time for an external evaluation, both because it will allow the LCO to establish itself and will provide sufficient time for the evaluation prior to the time partners will be making decisions about extending funding. The review will have to take into account that realistically, many of the measures identified above will not have had time to ripen; even so, it should be possible for an external reviewer to comment at least on the quality of work produced and the LCO's adherence to its values and processes.

VIII. OBJECTIVES/ACTIVITIES FOR 2008

The LCO was launched on September 7, 2007 and the Executive Director was appointed on September 15, 2007, followed shortly by the Executive Assistant. As it neared the end of 2007, the Board of Governors had approved the LCO's initial three projects and the Executive Director had completed the process of hiring a staff lawyer, begun the on-going dialogue with the LCO partners and made contact with some community groups and legal organizations, as well as the Chief Justice of Ontario. By early 2008, the part-time Research Lawyer had been appointed; the first OHLS LCO Scholars and MAG LCO Counsel in Residence had been selected; a brochure had been developed and a new website launched; the Executive Director had been in personal contact with all the partners, at least once and had visited the Chief Justices of the Superior Court of Justice and the Ontario Court of Justice and the Associate Chief Justice of the Superior Court of Justice, as well as a number of community clinics and legal organizations; this Strategic Plan and performance measures for the Executive Director had been developed; and the Board of Governors had approved a Copyright and Attribution Policy, a Translation and Language Policy and principles of good governance in relation to its own performance. The LCO released its first consultation paper, on fees for cashing government cheques, in March 2008.

The LCO's objectives for the rest of 2008 are as follows:

Projects

- Completion of the research and consultation for the first two narrowly focused projects (fees for government cheque cashing and the valuation of pensions on marital breakdown), under the supervision of the Staff Lawyer and the MAG LCO Counsel in Residence, respectively. These two projects will use the resources of the part-time research lawyer and student researchers and it is expected that recommendations will be released by the end of 2008 or early 2009;
- Preparation of a pre-study by the Staff Lawyer and beginning of research for the project on the law and older adults. The LCO will hire contract researchers and

students to work on this project after the pre-study, including consultation with affected groups, has defined the parameters of the study. In carrying out this project, the LCO will be cognizant of the overlap with its fourth project, developing a coherent approach to the law affecting persons with disabilities, although the pre-study for that project will not begin until Fall 2008; and

- Approval by the Board of Governors, following discussion by the Research Advisory Board of proposal options, of at least two new projects by the fall of 2008 and of an "approved" list of projects for a longer period.
- The LCO will also hold a roundtable about family law in the first half of 2008, in order to identify the most urgent and/or useful areas for the LCO to investigate in family law and closely related areas.

Communication and Consultation

- Preparation of a communication plan by May 2008 for the LCO to ensure maximum visibility and public awareness, with the assistance of the Communications Manager of Osgoode Hall Law School and the Director of Communications at the Ministry of the Attorney General;
- Visit by the Executive Director and Chair of the Board of Governors to the Attorney General;
- Scheduling of visits (primarily by the Executive Director, but also by the Staff Lawyer and the Research Lawyer) to interested groups, legal and non-legal, across Ontario;
- Preparation of a newsletter for distribution to other law commissions, partners and interested groups in May, September and December 2008 (to be posted on the website); and
- Consultation with relevant groups on the first three projects, depending on the nature of the project and the stage of implementation.

Accountability

- Preparation of the Annual Report by October 2008;
- Preparation and implementation of individual communication plans for the LCO's partners by the Executive Director, to be developed by April/May 2008;
- Subsequent visits to the CEO of the Law Foundation, the CEO of the Law Society of Upper Canada and the Attorney General of Ontario;
- Second visits to the law schools beginning in the Fall of 2008; and
- Assessment of initial and projected costs of operating the LCO.

Stimulating Critical Debate about Law Reform

- Organization of a conference or symposium on law reform to be held in early 2009, most likely in collaboration with one or more of the LCO's law faculty partners, in furtherance of the LCO's objective to become a leader in law reform; and
- Presentation by the Executive Director at the Osgoode Professional Development 11th Annual Analysis of the 2007 Constitutional Cases of the Supreme Court of Canada in April 2008 and co-editorship of and submission of an article on law reform by the Executive Director to a special volume of the Osgoode Hall Law Journal dedicated to access to justice in summer 2008.

ENDNOTES

i Gavin Murphy, *Law Reform Agencies* (Department of Justice Canada, 2004): **http://www.canadajustice.ca/en/ps/inter/law_reform/index.html** [accessed December 21.07]. The history of law reform in Canada is derived primarily from this paper. For a thorough account, see William H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada* (Juriliber, 1986).
ii See note 1.
iii Justice Michael Adams and Peter Hennessy, "Law Reform Commissions: Is there a place for the principled study of criminal law issues?" The International Society for the Reform of Criminal Law 15th International Conference: Politics and Criminal Justice (Canberra, Australia, August 2001): **http://www.lawlink.nsw.gov.au/lrc.nsf/pages/ph01** [accessed December 31.07].
iv See note 1.
v See note 3.
vi Marcia Neave, "Law Reform in the 21st Century – Some Challenges for the Future" [c.2000]: **http://www.lawreform.vic.gov.au/CA256902000FE154/Lookup/Speeches_and_presentations/$file/Law_reform_in_21st_C.pdf** [accessed December 31.07].
vii See note 1.
viii William Charles, "Measuring Success in Law Reform," Commonwealth Law Conference (August 1996): **http://www.bcli.org/pages/links/clc/wcharles.htm** [accessed December 31.07].
ix See Hurlburt, note 1.
x See note 1.
xi Rt. Hon. Sir Geoffrey Palmer, President, Law Commission of New Zealand, "Law Reform and the Law Commission in New Zealand after 20 Years – we need to try a little harder," para. 4 (March 30, 2006): **http://www.lawcom.govt.nz/UploadFiles/SpeechPaper/d0c9b674-5a55-405d-9b3c-2cfd467a0d5d//Law%20Reform%20and%20the%20Law%20Commission%20in%20NZ%20after%2020%20years.pdf** [accessed January 23.08].
xii William Charles noted that a measure of public approval for the Nova Scotia Commission is the number of enquiries the Commission receives from individuals and groups who want the Commission to embark of particular law reform projects, indicating that they see the Commission "as an important instrument of change." See note 8.

Secretary's Report
- Annual General Meeting

Secretary's Report to Convocation
May 22, 2008

Annual General Meeting

Purpose of Report: Information

Prepared by: Katherine Corrick

FOR INFORMATION

LAW SOCIETY'S ANNUAL GENERAL MEETING

1. The Law Society of Upper Canada held its Annual General Meeting on May 7, 2008.

2. The following motion filed with the Secretary was carried at the meeting.

> Whereas By-Laws of the Law Society of Upper Canada (LSUC) have been changed such that the LSUC no longer has members but, instead, licensees,
>
> Whereas it is demeaning to lawyers to be treated as a class of licensee,
>
> Whereas a society by definition must have members,
>
> Whereas it was unnecessary to change the name and content of the barristers' oath or to administer substantially the same or any oath to paralegals, whose qualifications are substantially different from those of lawyers,
>
> Whereas the L1 licensees' oath makes no mention of lawyers' duty to try to ensure access to justice by all or of champerty and maintenance, and whereas the new requirement to "improve the administration of justice" is a vague and incomplete substitution, and
>
> Whereas these changes were made without consultation with the members, let alone their consent,
>
> Be it resolved that the Benchers of the Law Society of Upper Canada (LSUC) immediately take steps to amend the By-Laws of the LSUC such that lawyers are again called "lawyers" or "barristers and solicitors" and not "licensees" and lawyers who are in good standing in Ontario are again called "members."
>
> Be it further resolved that the Benchers of the Law Society of Upper Canada (LSUC)
>
> (a) immediately take steps to amend By-Law 4, section 21(1) by restoring the traditional barristers' oath and requiring that it be administered only to admittants to the bar and not in any form to paralegals, and
>
> (b) refrain from changing the traditional barristers' oath once restored unless they consult the CJO and all members of the LSUC (which is to say all lawyers in good standing in Ontario), inform the members of the views presented, and propose and permit members to propose changes at annual general meeting of the LSUC.

3. Section 42 of By-Law 2 requires that the motion be communicated to Convocation at its first regular meeting after the annual general meeting and that the motion be considered by Convocation within six months of the meeting.

4. The motion is not binding on Convocation as provided in s. 42(2) of By-Law 2.

CONVOCATION ROSE AT 1:10 P.M.

Confirmed in Convocation this 26th of June, 2008.

Treasurer