26th April, 2001

MINUTES OF CONVOCATION

Thursday, 26th April, 2001
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Banack, Bindman, Braithwaite, Boyd, Campion, Carey, Carpenter-Gunn, Cass, Chahbar, Cherniak, Copeland, Cronk, Crowe, Curtis, Diamond, E. Ducharme, T. Ducharme, Elliott, Epstein, Feinstein, Finkelstein, Hunter, Jarvis, Krishna, Lalonde, Lamont, Laskin, Lawrence, MacKenzie, Manes, Martin, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Rodgers, Ross, Ruby, Simpson, Swaye, Topp and Wright.

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The reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer congratulated Mr. Brendan O'Brien on his 92nd birthday and Mr. Marshall Crowe on his 80th birthday.

The Treasurer reported on his travels and meetings over the past month including another of many meetings with the law school deans on the subject of professional responsibility.

The Treasurer conveyed to Convocation the gratitude of each of the LL.D. recipients for honouring them at the Special Calls in February.

The Treasurer extended sympathies to the family, colleagues and friends of Mr. David Hogben who passed away at the end of February. Mr. Hogben was a distinguished member who practised in Barrie for 30 years and worked tirelessly in community affairs.

The Treasurer also extended sympathies to the family and friends of Justice Peter Tobias, a retired Justice of the Ontario Superior Court and a former Bencher who passed away on April 24th, 2001. Justice Tobias was called to the Bar in 1959 and practised in Huntsville. He was a lecturer of the Bar Admission Course, Chair of the Ontario Law School Appeal Board and a part-time Crown Attorney in the district of Muskoka and Parry Sound. The Treasurer said that Justice Tobias was regarded as a role model to the profession.

REPORT OF THE DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 26th, 2001:

Wayne Anthony Anirud	Bar Admission Course
Sarah Caroline Bell	Bar Admission Course
Vito Domenico Cairone	Bar Admission Course
Corbin Francis Cawkell	Bar Admission Course
Sylvie Hedwidge Camille Clermont	Bar Admission Course
Sotere Corsianos	Bar Admission Course
Fannie Dimitriadis	Bar Admission Course
Jennifer Lynn Friesen	Bar Admission Course
Jo-Anne Fullum-Kosowan	Bar Admission Course
Craig Stuart Haynes	Bar Admission Course
Shirley Joyce Virginia Henry	Bar Admission Course
Pernille Mintje Kathleen Ironside	Bar Admission Course
McShane Devlin Jones	Bar Admission Course
Kanga David Kalisa	Bar Admission Course
Junaid Kayani	Bar Admission Course
Nika Ketis	Bar Admission Course
Zeina Nassar	Bar Admission Course
Karen Elizabeth Northey	Bar Admission Course
Andrew Paul Perrin	Bar Admission Course
Jonathan Lyon Rosenstein	Bar Admission Course
Andrew Eugene Roth	Bar Admission Course
Marla Candice Serota	Bar Admission Course
Linda Tang	Bar Admission Course
Karen Melanie Weisbaum	Bar Admission Course

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

B.1.4. The following candidates have completed successfully the Transfer Examination or Phase Three of the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 26th, 2001:

Masood Ahmed	Province of Nova Scotia
Naseem Bawa	Province of British Columbia
Edward Charles Conway	Province of Newfoundland
Benoît Marc Duchesne	Province of Québec
Patrick Myles Gaffney	Province of British Columbia
Varinder Kumar Gaur	Province of Alberta
Neil Casper Herle	Province of Alberta
Thomas Joseph Hudak	Province of Nova Scotia
Monika Lozinska	Province of Nova Scotia
Andre Popadynec	Province of New Brunswick
Michael Stuart Richards	Province of British Columbia
Robert Grant Scheifele	Province of Alberta
James Arthur Edward Stebbing	Province of Alberta

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

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

Adam Miles Givertz	New York Shearman & Sterling

B.2.2. His application is complete and he has filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 26th day of April, 2001

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

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and Convocation and called to the Bar and the degree of Barrister-at-Law was conferred upon each of them. They were then presented by Mr. Lamont to Mr. Justice Romain W. M. Pitt to sign the Rolls and take the necessary oaths.

Wayne Anthony Anirud	Bar Admission Course
Sarah Caroline Bell	Bar Admission Course
Vito Domenico Cairone	Bar Admission Course
Corbin Francis Cawkell	Bar Admission Course
Sylvie Hedwidge Camille Clermont	Bar Admission Course
Sotere Corsianos	Bar Admission Course
Fannie Dimitriadis	Bar Admission Course
Jennifer Lynn Friesen	Bar Admission Course
Jo-Anne Fullum-Kosowan	Bar Admission Course
Craig Stuart Haynes	Bar Admission Course
Shirley Joyce Virginia Henry	Bar Admission Course
Pernille Mintje Kathleen Ironside	Bar Admission Course
McShane Devlin Jones	Bar Admission Course
Kanga David Kalisa	Bar Admission Course
Junaid Kayani	Bar Admission Course
Nika Ketis	Bar Admission Course
Zeina Nassar	Bar Admission Course
Karen Elizabeth Northey	Bar Admission Course
Andrew Paul Perrin	Bar Admission Course
Jonathan Lyon Rosenstein	Bar Admission Course
Andrew Eugene Roth	Bar Admission Course
Marla Candice Serota	Bar Admission Course
Linda Tang	Bar Admission Course
Karen Melanie Weisbaum	Bar Admission Course
Masood Ahmed	Transfer, Nova Scotia
Naseem Bawa	Transfer, British Columbia
Edward Charles Conway	Transfer, Newfoundland
Benoît Marc Duchesne	Transfer, Quebec
Patrick Myles Gaffney	Transfer, British Columbia
Varinder Kumar Gaur	Transfer, Alberta
Neil Casper Herle	Transfer, Alberta
Thomas Joseph Hudak	Transfer, Nova Scotia
Monika Lozinska	Transfer, Nova Scotia
Andre Popadynec	Transfer, New Brunswick
Michael Stuart Richards	Transfer, British Columbia
Robert Grant Scheifele	Transfer, Alberta
James Arthur Edward Stebbing	Transfer, Alberta

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DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Krishna, seconded by Mr. Swaye that the Draft Minutes of Convocation for March 22nd, 2001 be approved.

Carried

(see Draft Minutes in Convocation file)

MOTION - CONTINUUM OF LEGAL EDUCATION TASK FORCE

It was moved by Messrs. MacKenzie and Manes and seconded by Ms Ross and Mr. Swaye -

THAT the following Benchers be appointed as members of the Law Society Task Force on the Continuum of Legal Education:

Edward Ducharme, Chair
George Hunter
Gregory Mulligan
Vern Krishna
Barbara Laskin
Niels Ortved

AND THAT the following terms of reference be adopted for the Task Force:

1. The Law Society Task Force on the Continuum of Legal Education (the "Task Force") was established by Convocation on January 25, 2001.

2. The Task Force will report to Convocation in one year from the date it is populated. In addition to its final report the Task Force will provide at least one interim report to Convocation on its progress. If the Task Force proposes a change to its Terms of Reference it will seek Convocation's approval.

3. The Task Force will,

   a. define the goals of the co-ordinated continuum of legal education it has been established to develop, keeping in mind,
      i. its one year time line for analysis and reporting;
      ii. the Law Society's particular focus on professionalism, professional responsibility and ethics, and competence; and
      iii. the Law Society's recently adopted approach to post-call competence and the design of the competence model, once approved by Convocation;

   b. review,
      i. the current structure of legal education, including the goals of each stage;
      ii. the current roles of each "partner" in each stage of the structure;
      iii. the links between and among stages; and
      iv. any gaps in the continuum that exist between and among stages and in the structure overall;

   c. consider the impact that a rapidly changing social, technological, and legal environment is having on the legal profession and the implications for the current structure of legal education;

d. consider and propose practical and manageable mechanisms for developing a more co-ordinated approach to legal education, addressing,

i. how each stage of the educational structure can most effectively set the stage for the next one;

ii. the allocation of responsibility for aspects of the continuum to particular "partners" in the context of a collective commitment to the continuum;

iii. goals for each stage of the continuum; and

iv. measurement tools for evaluating the effectiveness of the continuum; and

e. provide a report to Convocation with its proposal and projected budget implications to the Law Society of its recommendations.

4. The Task Force will develop a budget respecting its work and provide this to Convocation by September 2001.

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Mr. Krishna presented the Report of the Finance and Audit Committee for Convocation's approval.

Finance and Audit Committee
April 12, 2001

Report to Convocation

Purpose of Report: Decision
Information

Prepared by the Finance Department
Andrew Cawse (947-3982)

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on April 12, 2001. Committee members in attendance were: Krishna V. (c), Crowe M. (vc), Swaye G. (vc), Chahbar A., Epstein S., Murphy D., Puccini H., White D., Wilson R., Wright B.. Also in attendance was Scheffe K. from Arthur Andersen and Murray R.. Staff in attendance were Tysall W., Strom M., Allen C., Grady F., White R., Cawse A..

2. The Committee is reporting on the following matters:
Decision
- Law Society Annual Financial Statements for the year ended December 31, 2000
- Appointment of Auditor
- Investment Policy

Information

- Management Letter and Audit Engagement Letter for 2000 (in camera)
- Investment Compliance Reports
- Professional Liability Insurance

FOR DECISION

GENERAL FUND ANNUAL FINANCIAL STATEMENTS

3. The Committee reviewed the audited financial statements for the General Fund for the year ended December 31, 2000 attached from page 9. The fund has received an unqualified audit opinion. Significant changes from previous years in values and disclosure as summarised in the Management Discussion and Analysis (page 6) were discussed, as well as the analysis of fund balances (page 8) and building operating costs (page 73). Mr. Herb Willer, from the auditors Arthur Andersen LLP, will be present to assist Convocation in reviewing the financial statements.

LAWYERS FUND FOR CLIENT COMPENSATION ANNUAL FINANCIAL STATEMENTS

4. The Committee reviewed the audited financial statements for the Compensation Fund for the year ended December 31, 2000 attached from page 22. The fund has received an unqualified audit opinion. Significant changes from previous years in values and disclosure as summarised in the Management Discussion and Analysis (page 21) were discussed. Mr. Herb Willer, from the auditors Arthur Andersen LLP, will be present to assist Convocation in reviewing the financial statements. A memorandum from the actuary, Mr. Craig Allen from LPIC, supporting the unpaid claims liability is attached at page 28.

ERRORS AND OMISSIONS INSURANCE FUND ANNUAL FINANCIAL STATEMENTS

5. The Committee reviewed the audited combined financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 2000 attached from page 32 . The fund has received an unqualified audit opinion. Significant changes from previous years in values and disclosure as summarised in the Management Discussion and Analysis (page 30) were discussed.

6. It is recommended that the General Fund, Compensation Fund and Errors and Omissions Insurance Fund audited financial statements for the year ended December 31, 2000 be approved by Convocation.

APPOINTMENT OF AUDITOR

7. The existing auditor, Arthur Andersen LLP, has audited the financial statements for the last four years. The fee for audit work has not changed significantly over this time. The Committee recommends to Convocation that Arthur Andersen LLP be reappointed auditor for the year ended December 31, 2001.

Information

- Management Letter and Audit Engagement Letter for 2000 (in camera)
- Investment Compliance Reports
- Professional Liability Insurance

FOR DECISION

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PROFESSIONAL LIABILITY INSURANCE

14. A memorandum on the issue of additional professional liability insurance coverage is attached at page 74. The Committee agreed that total coverage be increased from $11 million to $26 million with premiums increasing by approximately $66,000 for the extra coverage. Funding for this unbudgeted amount will come from other operational savings in the Unrestricted Fund.

General Fund
Notes to Financial Statements
For the year ended December 31, 2000

(Stated in whole dollars except where indicated)

1. Description of Fund

The Law Society of Upper Canada (the "Society") was founded in 1797 and was incorporated in 1822 with the enactment of the *Law Society Act.* The Society exists to govern the legal profession in the public interest. This is achieved by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct and 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. This mandate is carried out by the governing body of the Society which is known as *Convocation.*

The *Law Society Amendment Act,1998* received royal assent in December 1998 and came into force on February 1, 1999. This Act makes substantive and important amendments to the *Law Society Act,* including a restructuring scheme of professional governance based on the authority in the statute. The *Law Society Amendment Act, 1998,* authorizes the Society to make regulations, by-laws and rules of practice and procedure as a means of governing all proceedings described in the Act.

The Society is not subject to income or capital taxes because it is a not-for-profit corporation.
These financial statements represent the financial position of operations of the Law Society of Upper Canada - General Fund, which includes certain internally restricted funds, and do not purport to represent all assets and liabilities under the control of the Society.

Separate financial statements have been prepared for the following related entities:

Lawyers Fund for Client Compensation

The Society maintains the Lawyers Fund for Client Compensation pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The Lawyers Fund for Client Compensation is financed by members' annual fees and investment income. The Lawyers Fund for Client Compensation reimburses the Society for certain administrative expenses, totalling in 2000 $1,568,971 (1999 - $1,331,750).

Errors & Omissions Insurance Fund and Lawyers' Professional Indemnity Company

The Society provides professional liability insurance to the legal profession through the Errors and Omissions Insurance Fund (the "E&O Fund") and the Lawyers' Professional Indemnity Company ("LPIC"). The E&O Fund was originally set up in the Society's accounts to record insurance claims and expenses and related levies and their investment. Prior to July 1, 1990 the Errors and Omissions Insurance program was underwritten by various insurance carriers. LPIC took over underwriting the program commencing July 1, 1990. LPIC is a wholly owned subsidiary of the Society that was incorporated in 1990 and licensed to provide lawyer's professional liability and title insurance.

Law Society Foundation

The Law Society Foundation ("LSF") was incorporated by Letters Patent in October 1962. The LSF is a registered charity under the terms of the *Income Tax Act* and as such, is exempt from income taxes. The objects of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to law students in Ontario, restore and preserve land and buildings of historical significance to Canada's legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada's legal heritage, to maintain a collection of gifts of books and other written material for use by educational institutions in Canada and to receive donations and maintain a fund for the relief of poverty by providing meals to persons in need.

The Law Foundation of Ontario

The Law Foundation of Ontario was created to receive interest accruing on monies held in lawyers' mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. During 2000 the Law Foundation of Ontario contributed to the General Fund of the Society $1,300,000 (1999 - $1,062,900) for the operation of the bar admission course and $1,030,000 (1999 - $895,000) for library programs.

2. Significant Accounting Policies

Fund Accounting

The Society follows the restricted fund method of accounting.

The *Unrestricted Fund* accounts for the Society's programme delivery and administrative activities. This fund reports unrestricted resources. All acquisitions, amortization and other expenditures relating to capital assets are reported in the *Invested in Capital Assets Fund.*

The *Osgoode Hall Capital Fund* reports funds that have been internally restricted by Convocation for the purposes of undertaking capital projects at Osgoode Hall and other Society facilities. On an annual basis, capital works are identified and appropriate funding is raised through a levy on the membership.

The *County Library Fund* accounts for funds raised on behalf of the 48 County and District Law Libraries. These funds are internally restricted for use by these Law Libraries to carry out their annual operations and any special projects approved by Convocation. In 2000, a corporation was established to administer the distribution of these funds and to develop policy, priorities, guidelines and standards for the delivery of county law library services across Ontario. Operations of this corporation will commence in 2001.

The *Technology Enhanced Learning Fund* reports resources set aside for development and implementation of assistive technology for the Bar Admission Course. This fund was established in 1999 with a capital grant of $775,000 received from the Law Foundation of Ontario. This fund is internally restricted by Convocation.

The *Working Capital Reserve Fund w*as created in January 2000 when Convocation directed that this fund replace the Insurance Levy Waiver Fund, and set it aside to ensure the continuous funding of the Law Society's operations. On an annual basis, funds which are not used to meet current obligations are to be transferred and accumulated in this reserve until such time that the balance reaches $3,500,000. The fund is internally restricted by Convocation.

The *Technology Fund* reports funds that have been internally restricted by Convocation for the purposes of undertaking technological capital acquisitions. On an annual basis, technological acquisitions and improvements are identified and appropriate funding is raised through a levy on the membership.

The Society administers two *Endowment Funds*. The Law Society Trust has been established in accordance with the terms of the endowment so that the Society can award prizes, bursaries and gifts to deserving students in the Bar Admission Course. The J. Shirley Denison Fund has been established to provide relief and assistance to members and former members who find themselves in difficult financial circumstances. Contributions for endowment are recognized as revenue in the Endowment Fund. For 2000 no funds were contributed for endowment purposes. Increases to the fund balances are reflective of interest income only.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy. Short-term investments are stated at the lower of cost and market value. Investment income, except income earned on resources held for endowment, is retained in and reported by the Unrestricted Fund.

Capital assets

Land, buildings, major building improvements, furniture, equipment and computer hardware and software are presented at cost net of accumulated amortization and grants. Amortization is charged to expense on a straight-line basis over the estimated useful lives of the assets commencing in the year following acquisition as follows:

Buildings	30 years
Building improvements	3 to 10 years
Furniture, equipment and computer hardware and software	3 to 5 years

Revenue Recognition

Restricted contributions related to the general operations are recognized as revenue of the General Fund in the year in which the related expenses are incurred. All other restricted contributions are recognized as revenue of the appropriate restricted fund.

Unrestricted contributions are recognized as revenue of the Unrestricted Fund in the year received or receivable if the amount can be reasonably estimated and collection is reasonably assured.

Collections

The Society owns a collection of legal research and reference material as well as a collection of portraits and sculptures. The cost of additions to the collections is expensed as incurred. No value is recorded in these financial statements for donated items.

Volunteer services

The work of the Society is dependent on the voluntary services of the elected Benchers and other members of the profession. These services are received gratuitously, therefore, no value has been included in these financial statements.

Financial instruments

The estimated fair values of cash and short-term investments, accounts receivable, prepaid expenses, accounts payable, accrued liabilities and deferred revenue approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

Measurement Uncertainty

The preparation of the financial statements in accordance with Canadian Generally Accepted Accounting Principles requires management to make estimates and assumptions that affect the reported amount of assets and liabilities and disclosure of contingencies at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

3. Capital Assets

As at December 31, 2000	Cost $000's	Accumulated Amortization $000's	Net $000's
Land and buildings	28,779	14,369	14,410
Building improvements	1,771	1,149	622
Furniture, equipment and computer hardware and software	8,083	5,389	2,694
	38,633	20,907	17,726

As at December 31, 2000	Cost $000's	Accumulated Amortization $000's	Net $000's

As at December 31, 1999	Cost $000's	Accumulated Amortization $000's	Net $000's
Land and buildings	28,575	13,716	14,859
Building improvements	2,321	1,522	799
Furniture, equipment and computer hardware and software	7,542	4,706	2,836
	38,438	19,944	18,494

4. Membership Fees

Membership fees are levied for the operation of the Society and for the Lawyers Fund for Client Compensation as well as the following restricted funds: County Libraries, Osgoode Hall Capital and Technology. Membership fees are recorded when billed. The restricted funds are collected and accumulated in special purpose funds and reported on the Balance Sheet under the Liabilities and Fund Balances Section. The Lawyers Fund for Client Compensation completes its own set of financial statements.

5. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. The plan covers employees of the Society and the Lawyers Fund for Client Compensation. The Society matches its employees' contributions to the plan. The Society's pension expense [excluding the Lawyers Fund for Client Compensation] for the year ended December 31, 2000 amounted to $555,395 (December 31, 1999 - $537,243)

6. Commitments

The Society is committed to monthly lease payments for property and computer facilities under leases having various terms up to the end of 2010. In addition, the Society is committed to a minimum monthly payment to 2003 for its contracted printing and mailroom services Aggregate monthly payments over the next five years and beyond in total are estimated as follows:

Year	$000's
2001	1,458
2002	1,134
2003	314
2004	336
2005	351
2006 & beyond	1,786
Total	5,379

7. Contingent Liabilities

Favourable judgement with respect to three claims made against the Society as a result of an alleged copyright infringement was made in 1999. The plaintiffs have appealed and the Society has cross appealed. At this point in time, the only financial exposure to the Society is for legal costs of the plaintiff in the event that the Society is not successful on appeal. No provision has been included in the financial statements.

There is one claim which was reported in 1991 where the damages sought are $13,000,000. The Society's lawyer brought an Application for Summary Judgement and the action was dismissed as disclosing no cause for action. The counsel for the plaintiff has launched an appeal and if successful will proceed with an Application for Certification as a Class Action. The Society will resist this application. No provision has been included in the financial statements.

In addition, a number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims. Management is of the opinion that based on the information presently available, it is unlikely that any liability, to the extent not covered by insurance, would be material to the Society's financial position.

8. Comparative Financial Statements

Certain amounts in the comparative financial statements have been reclassified to conform to the current year's presentation.

Finance Department
Memorandum

TO: Chair and Members of the Finance and Audit Committee

FROM: Wendy Tysall

DATE: March 29, 2001

RE: Investment Policy

OVERVIEW

In November 2000, Convocation approved a Long Term Investment Policy for the Law Society (attached from page 51). The Policy was initiated as part of the strategy to diversify investments and to utilise the services of an external Investment Counsellor and Portfolio Manager. As contemplated, we have been able to negotiate favourable terms by participating in LPIC's relationship with Perigee Investment Counsel Inc., who will be Investment Counsellor and Portfolio Manager. This gives the Law Society professional investment management at very low cost because of the size of the LPIC companion portfolios.

Finance Department staff met with LPIC, Perigee and James P. Marshall, Investment Advisors to implement the relationship. Certain changes to the Investment Policy were suggested in response to Perigee's constructive comments, and to assist compatibility with Perigee's policies, particularly their pooled funds. These changes to the Investment Policy are detailed below. The primary changes have the effect of expanding the range of potential securities in which Perigee can invest. The slight increase in risk profile is offset by being a participant in Perigee's large investment pools, the reduction in transaction costs, enhanced flexibility in declining markets, and shorter durations for fixed income securities.

DESCRIPTION AND REASON FOR CHANGES

A discussion on the non-cosmetic changes to the Investment Policy is set out below.

Page 47, Section 4 First Paragraph

Originally read: "The primary objective is to preserve and enhance the real capital base of the Portfolio. *This is measured by obtaining a total rate of return in excess of the Canadian Consumer Price Index plus 3% over the long term. The long term will exceed a four year moving average.*"

The section in italics has been removed as being redundant and confusing with the benchmarks detailed later in Section 4, which measure rates of return against comparable funds and indices.

Page 48, Section 4 Last Paragraph

Originally read: "To outperform a static benchmark portfolio (consisting of the benchmark of the asset mix ranges noted below) i.e. a portfolio consisting of 87% of the Scotia Capital *Universe* Bond Index total return..."

The word in italics has been changed to "Short Term". The proposed Scotia Capital Short Term Bond Index is more congruent with our required duration for Bond Investments and is less volatile than the longer term Universe Index.

Page 48, Section 5, Asset Mix Table

The asset mix table sets parameters for the various asset classes in the Portfolio, divided between short term income investments, bonds and North American equities. The parameters define the Law Society's comfort level with various risks, and assists the Manager in competing with the benchmarks established in the Objectives section of the policy.

The benchmark for the Cash and Short Term portion of the asset mix was previously set at 10% (half way between the minimum of 0% and the maximum of 20%). This benchmark has now been set at 0% (was 10%). The reduction is suggested because:

- the stepped nature of the maturities in the portfolio means funds will mature on a periodic basis;
- the asset mix table and the performance benchmarks should use the same benchmarks;
- the Law Society has a separate short term fund;
- it is envisaged that the long term funds would be drawn upon in very limited circumstances..

This change has the effect of increasing the benchmark for bonds from 77% to 87%, with no change in the Total Fixed Income and Total Equity benchmarks.

Page 49, Section 5iii)
Originally read: "The emphasis within the Bond Portfolio will be on quality, with a minimum rating "A" or better..." The rating is now "BBB". This is to avoid the necessity of having to immediately sell a security which has been downgraded if not appropriate. No more than 10% of the market value of the Portfolio shall be invested in bonds rated "BBB". This is also compatible with LPIC's policy and Perigee's pooled fund rating if we were to utilise the fund. The use of Perigee's pooled fund moderates capital risk due to its significant size compared to the Law Society's portfolio. The Rating System for the Dominion Bond Rating Service is attached. The rating "BBB" is described as "adequate investment quality".

Page 49, Section 5vi)
The maximum that may be invested in provincial bonds has been increased from 50% to 60%. This is compatible with Perigee's pooled fund if we were to utilise the fund. These securities are ultimately insured at the federal level.

Page 50, Section 6
Sections dealing with Standards of Professional Conduct and Conflict of Interest have been inserted to comply with prudent business practice.

Wendy Tysall
Chief Financial Officer

Attachments:
Page 43 DBRS Bond and Long Term Debt Ratings
Page 45 Proposed Long Term Investment Policy
Page 53 Existing Long Term Investment Policy

Lawyers Fund for Client Compensation
Notes to Financial Statements
For the year ended December 31, 2000

(Stated in whole dollars except where indicated)

1. Description of Fund

The Lawyers Fund for Client Compensation (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The fund is financed by members' annual fees and investment income.

The Fund is not subject to income or capital taxes because it is a fund of the Society, a not-for-profit corporation.

Certain services are provided by the General Fund of the Society to the Fund. The cost of these services is included in administrative expenses. The charges for the year amount to $1,568,971 (1999 - $1,331,750).

2. Significant Accounting Policies

Fund Accounting

The Fund follows the restricted fund method of accounting. The Fund accounts for the programme delivery, administration and payment of grants from the Fund. The Fund is restricted in use by the Law Society Act.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy. Short-term investments are stated at the lower of cost and market value.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of government and corporate bonds. Only if a loss in the value of an investment is other than a temporary decline, is the investment written down to recognize the loss.

Grants

Pursuant to section 51(5) of the Law Society Act, the payment of grants from the Fund is at the discretion of Convocation, the governing body of the Society. Grants paid are subject to a $100,000 limit per applicant. A reserve for unpaid grants is recorded as a liability on the balance sheet. This reserve represents an estimate of the present value of grants to be paid for unprocessed claims and the associated administrative costs, as determined by an actuary. The related grant expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries.

Financial instruments

The estimated fair values of cash and short-term investments, interest and other receivables and accounts payable and accrued liabilities approximate their carrying amounts in the financial statements due to the relatively short period to maturity of these instruments.

5. Measurement Uncertainty

The valuation of unpaid grants anticipates the combined outcomes of events that are yet to occur. There is uncertainty inherent in any such estimations and therefore a limitation upon the accuracy of these valuations. Future loss emergence may deviate from these estimates. No provision has been made for otherwise unforeseen changes to the legal or economic environment in which claims are settled, nor for causes of loss which are not already reflected in the historical data. Management believes that the techniques employed and assumptions made are appropriate and the conclusions reached are reasonable given the information currently available. Estimates of unpaid grants are reviewed at least annually by an actuary and, as adjustments become necessary, they are reflected in current operations.

Finance Department
Memorandum

TO: Chair and Members of the Finance and Audit Committee

FROM: Wendy Tysall

DATE: March 29, 2001

RE: Professional Liability Insurance

This memorandum on professional liability insurance introduces two questions:

6. Does the Law Society need professional liability insurance?
7. If the Law Society needs professional liability insurance, how much coverage is required?

6 Does the Law Society need professional liability insurance?

Professional liability insurance covers claims made as a result of error, omission or negligence in the performance (or lack thereof) of professional services for others. The existing cover will pay damages and settlement expenses which the Law Society may become legally obligated to pay arising out of a claim, providing the liability of the Law Society is a result of the exercise of rights / discharge of duties under the *Law Society Act.*

Historically the Law Society has purchased limited coverage because of the protection offered by the *Law Society Act.* Part 1, Section 9 of the Act addresses the liability of benchers, officers and employees:

> "No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society, or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power."

This question has been brought into focus because of developments in an action which the Law Society has disclosed as a contingent liability in the 1999 and 2000 annual financial statements. Relevant developments in the action are that the Ontario Court (General Division) agreed with the Law Society's argument that the investigation function of regulatory entities such as the Law Society have a discretionary and quasi-judicial nature. Therefore inadequacies in the investigation function does not mean damages, so long as the Law Society acted in a bona fide manner. The Law Society also has discretion to balance the interests of individuals with the broader public interest.

The Ontario Court of Appeal dismissed the plaintiff's appeal of the General Division decision, however the Supreme Court has agreed to consider the matter.

The Supreme Court's action has raised concern that the Law Society may be exposed to more professional liability risk than we have historically contemplated.

In addition there is some uncertainty as to whether all participants in the governance process are included under the provisions of the *Law Society Act*. For instance non-bencher members of advisory committees, working groups etc may fall outside the Act's protection. The current policy provides coverage for the Law Society, subsidiaries, affiliates, officers, employees, and committee members. Coverage also extends to "...elected, appointed or otherwise designated members of the Law Society as benchers...".
As set out below, additional coverage is relatively inexpensive.

6 If the Law Society needs professional liability insurance, how much coverage is required?

The action described above was initiated by transactions in 1989 and 1990. Since that time, and unrelated to the action, professional liability insurance coverage has been increased, first by $5,000,000 then to $10,000,000 in 1996. Factors leading to the historic and suggested increases in cover are the increasing value of underlying transactions, the increasing prevalence for restitution actions, and the increasing prevalence of class action suits. LPIC has its own coverage of $25 million.

	Summary of Existing Coverage	Cover	Annual Cost
a)	Liability limit (LPIC)	$1,000,000	$1,000
b)	Excess layer (Primary Zurich)	$10,000,000	$81,000
	Sub-total	$11,000,000	$82,000
	Additional Coverage Contemplated		
c)	Additional excess layer	$10,000,000	$46,000
d)	Additional excess layer	$5,000,000	Approx. $20,000

Sundry points on the existing coverage are:
- the deductible is $10,000;
- the policies are Claims Made policies;
- no claims have been made against the excess layers to date.

The Law Society does not have separate Directors and Officers insurance. In practical terms this form of insurance would cover egregious acts and implications arising from bankruptcy.

The success of a large claim similar to that described in the contingent liability note could lead to an extraordinary annual member levy exceeding $500 per member. The additional coverage contemplated would add approximately $3 to the member levy. It appears to be prudent business practice to increase the professional liability insurance coverage. Funding for this unbudgeted amount will come from other operational savings in the Unrestricted Fund.

The recommendation of staff is to immediately increase Professional Liability Insurance coverage from $11 million to between $21 million and $26 million.

Wendy Tysall
Chief Financial Officer

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

(1) Copy of the Management Discussion and Analysis re: General Fund, Analysis of General Fund Assets and Fund Balance, Auditors' Report and Financial Statements. (pages 6 - 13)

(2) Copy of the Management Discussion and Analysis re: Lawyers Fund for Client Compensation, Auditors' Report and Financial Statements. (pages 21 - 25)

(3) Copy of a Memorandum from the Lawyers' Professional Indemnity Company to Ms. Wendy Tysall, Ray White, Fred Grady, Heather Werry and Malcolm Heins from Mr. Craig Allen dated January 29, 2001 re: Unpaid Claims Liability, December 31, 2000, Lawyers' Fund for Client Compensation. (pages 28 - 29)

(4) Copy of the Management Discussion and Analysis re: Errors and Omissions Insurance Fund, Actuary's Report for Combined Financial Statements at 31 December 2000 and Financial Statements. (pages 30 - 40)

(5) Copy of DBRS Bond and Long Term Debt Ratings, Proposed Long Term Investment Policy and Existing Long Term Investment Policy. (pages 43 - 60)

(6) Copy of The Investment Compliance Reports for the quarter ended March 31, 2001 for the General Fund and the Lawyers Fund for Client Compensation. (pages 77 - 81)

Re: Audited Financial Statements for the General Fund for the Year Ended December 31, 2000

It was moved by Mr. Krishna, seconded by Mr. Crowe that the audited financial statements for the General Fund for the year ended December 31, 2000 be approved.

Carried

Re: Audited Financial Statements for the Compensation Fund for the Year Ended December 31, 2000

It was moved by Mr. Krishna, seconded by Mr. Crowe that the audited financial statements for the Compensation Fund for the year ended December 31, 2000 be approved.

Carried

Re: Audited Combined Financial Statements for the Errors and Omissions Insurance Fund for the Year Ended December 31, 2000

It was moved by Mr. Krishna, seconded by Mr. Crowe that the audited combined financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 2000 be approved.

Carried

LPIC 2000 ANNUAL REPORT

Copies of the Professional Indemnity Company's Annual Report for 2000 were distributed to the Benchers.

Mr. Murray presented the Lawyers Professional Indemnity Company's Annual Report and introduced the new President, Ms. Michelle Strom to Convocation.

The Treasurer and Benchers welcomed Ms. Strom who briefly addressed Convocation.

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Re: Appointment of Auditor

It was moved by Mr. Krishna, seconded by Mr. Crowe that Arthur Andersen LLP be reappointed auditor for the year ended December 31, 2001.

Carried

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RESUMPTION OF THE REPORT OF THE FINANCE AND AUDIT COMMITTEE

Re: Investment Policy

It was moved by Mr. Krishna, seconded by Mr. Crowe that the revised Long Term Investment Policy as set out on pages 41 to 60 of the Report be approved.

Carried

Re: Professional Liability Insurance

It was moved by Mr. Krishna, seconded by Mr. Crowe that professional liability insurance coverage be increased from $11 million to $26 million.

Carried

MOTION - AMENDMENTS TO BY-LAWS

MOVED BY Gavin MacKenzie

SECONDED BY Julian Porter

THE LAW SOCIETY OF UPPER CANADA

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

THAT the by-laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on April 26, 2001 be amended as follows:

BY-LAW 4
[OFFICE OF SECRETARY]

1. Section 3 of By-Law 4 [Office of Secretary] is deleted and the following substituted:

Delegation of powers and duties of Secretary: Senior Counsel, Discipline

3. (1) An officer or employee of the Society who holds the office of Senior Counsel, Discipline may, in the absence of the Secretary, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2, 49.3, 51, 59.6 and 59.9 of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;

(c) sections 4 to 6 of By-Law 17;

(d) subsection 4 (2) of By-Law 19;

(e) By-Law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding;

(f) By-Laws 20 and 31; and

(g) the rules of practice and procedure.

Delegation of powers and duties of Secretary: Discipline Counsel

(2) An officer or employee of the Society who holds the office of Discipline Counsel may, in the absence of the Secretary and the Senior Counsel, Discipline, and subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) sections 35, 40, 49.2, 49.3, 51, 59.6 and 59.9 of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a conduct or capacity order;

(c) sections 4 to 6 of By-Law 17;

(d) subsection 4 (2) of By-Law 19;

(e) By-Law 21 as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the conduct of a member, group of members or student member, a referral to the Committee of a matter respecting the capacity of a member or student member, a request to the Committee to withdraw an application for a conduct or capacity order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of an audit, an investigation, a search or seizure related to an investigation, a conduct proceeding or a capacity proceeding;

(f) By-Laws 20 and 31; and

(g) the rules of practice and procedure.

Delegation of powers and duties of Secretary: Director, Policy Secretariat

(3) An officer or employee of the Society who holds the office of Director, Policy Secretariat may, subject to such terms and conditions as may be imposed by the Secretary, exercise the powers and perform the duties of the Secretary under By-Laws 6, 8 and 10.

Delegation of powers and duties of Secretary: Director, Client Service Centre

(4) An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under sections 46, 47 and 49 of the Act.

Delegation of powers and duties of Secretary: Chief Financial Officer

(5) An officer or employee of the Society who holds the office of Chief Financial Officer may, in the absence of the Director, Client Service Centre and the Secretary, exercise the powers and perform the duties of the Secretary under sections 46, 47 and 49 of the Act.

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

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

a) les articles 35, 40, 49.2, 49.3, 51, 59.6 et 59.9 de la Loi;

b) l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance en matière de conduite ou de capacité;

c) les articles 4 à 6 du règlement administratif n° 17;

d) le paragraphe 4 (2) du règlement administratif n° 19;

e) le règlement administratif n° 21, dans la mesure où il vise le renvoi au Comité d'autorisation des instances d'une affaire relative à la conduite d'un membre, d'un groupe de membres ou d'un membre étudiant, le renvoi au Comité d'une affaire relative à la capacité d'un membre ou d'un membre étudiant, la demande, présentée au Comité, de retrait d'une requête visant à obtenir une ordonnance en matière de conduite ou de capacité, ou la requête présentée au Comité pour qu'il établisse si le

Barreau devrait présenter une requête en vue d'obtenir une ordonnance prévue à l'article 49.13 de la Loi à l'égard de renseignements qui viennent à la connaissance d'un conseiller, dirigeant, employé, mandataire ou représentant du Barreau par suite d'une vérification, d'une enquête, d'une perquisition ou d'une saisie liée à une enquête ou à une instance en matière de conduite ou de capacité;

f) les règlements administratifs n^{os} 20 et 31;

g) les règles de pratique et de procédure.

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

(2) La personne qui occupe la charge d'avocat du service de la discipline peut exercer les pouvoirs et les fonctions que les dispositions suivantes attribuent au ou à la secrétaire, en son absence et en l'absence de l'avocat principal ou de l'avocate principale du service de la discipline, et sous réserve des conditions que le ou la secrétaire impose :

a) les articles 35, 40, 49.2, 49.3, 51, 59.6 et 59.9 de la Loi;

b) l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance en matière de conduite ou de capacité;

c) les articles 4 à 6 du règlement administratif n° 17;

d) le paragraphe 4 (2) du règlement administratif n° 19;

e) le règlement administratif n° 21, dans la mesure où il vise le renvoi au Comité d'autorisation des instances d'une affaire relative à la conduite d'un membre, d'un groupe de membres ou d'un membre étudiant, le renvoi au Comité d'une affaire relative à la capacité d'un membre ou d'un membre étudiant, la demande, présentée au Comité, de retrait d'une requête visant à obtenir une ordonnance en matière de conduite ou de capacité, ou la requête présentée au Comité pour qu'il établisse si le Barreau devrait présenter une requête en vue d'obtenir une ordonnance prévue à l'article 49.13 de la Loi à l'égard de renseignements qui viennent à la connaissance d'un conseiller, dirigeant, employé, mandataire ou représentant du Barreau par suite d'une vérification, d'une enquête, d'une perquisition ou d'une saisie liée à une enquête ou à une instance en matière de conduite ou de capacité;

f) les règlements administratifs n^{os} 20 et 31;

g) les règles de pratique et de procédure.

Délégation des pouvoirs et fonctions du secrétaire au directeur du Secrétariat des politiques

(3) La personne qui occupe la charge de directeur du Secrétariat des politiques peut exercer les pouvoirs et fonctions que les règlements administratifs n^{os} 6, 8 et 10 attribuent au ou à la secrétaire, sous réserve des conditions qu'il ou elle impose.

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

(4) La personne qui occupe la charge de directeur du service à la clientèle peut exercer les pouvoirs et fonctions que les articles 46, 47 et 49 de la Loi attribuent au ou à la secrétaire.

Délégation des pouvoirs et fonctions du secrétaire au directeur des finances

(5) La personne qui occupe la charge de directeur des finances peut, en l'absence du directeur ou de la directrice du service à la clientèle et du ou de la secrétaire, exercer les pouvoirs et les fonctions que les articles 46, 47 et 49 de la Loi attribuent à ce dernier ou à cette dernière.

BY-LAW 5
[ELECTION OF BENCHERS]

2. Section 1 of By-Law 5 [Election of Benchers] is amended by adding the following:

"Elections Officer" means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

« responsable des élections» La personne que le directeur général ou la directrice générale charge d'appliquer le présent règlement administratif.

3. The By-Law is further amended by striking out "Secretary/secrétaire" wherever it occurs and substituting "Elections Officer/responsable des élections" in the following provisions:

1. Section 5.
2. Subsections 11 (2) and (3).
3. Section 13.
4. Section 15.
5. Subsection 20 (1).
6. Subsection 21 (1).
7. Section 22.
8. Section 23.
9. Subsections 24 (1), (2), (4), (5) and (6).
10. Section 25.
11. Section 26.
12. Subsections 27 (2) to (4).
13. Section 28.
14. Subsections 31 (1) and (2).
15. Section 33.
16. Section 36.
17. Subsection 45 (4).
18. Subsections 48 (1) and (2).

3.1 The By-Law is further amended by striking out "the office of the Secretary/aux bureaux du ou de la secrétaire" wherever it occurs and substituting "the office of the Elections Officer at Osgoode Hall/aux bureaux du ou de la responsable des élections, à Osgoode Hall," in the following provisions:

1. Subsection 21 (2).
2. Section 30.
3. Subsections 43 (1) and (2).

3.2 The English version of the By-Law is further amended by striking out "the office of the Secretary" wherever it occurs and substituting "the office of the Elections Officer at Osgoode Hall" in the following provisions:

1. Subsection 10 (6).
2. Subsection 12 (2).

3.3 The French version of the By-Law is further amended by adding ",à Osgoode Hall," after "bureaux" in the following provisions:

1. Subsection 10 (6).
2. Subsection 12 (2).

BY-LAW 11
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

4. Subsection 4 (2) of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is amended by striking out "the Society/au Barreau" in the second line and substituting "an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of section 4/à la personne que le directeur général ou la directrice générale charge d'appliquer les dispositions de l'article 4".

5. Subsection 6 (3) of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" and substituting "an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of so doing/la personne que le directeur général ou la directrice générale charge de ce faire".

BY-LAW 14
[RESIGNATION]

6. By-Law 14 [Resignation] is amended by adding the following:

Interpretation: "Society official"
0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »
0.1 La définition qui suit s'applique au présent règlement.

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

7. The By-Law is further amended by striking out "Secretary/au ou à la secrétaire" wherever it occurs and substituting "Society/au Barreau" in the following provisions:

1. Subsection 1 (1).
2. Subsection 2 (1).

8. Subsection 2 (1.1) of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" in the first line and substituting "a Society official/un ou une responsable du Barreau".

9. Subsection 3 (1) of the By-Law is amended by striking out "The Secretary/secrétaire" at the beginning and substituting "A Society official/responsable du Barreau".

9.1 Subsection 3 (1) of the English version of the By-Law is further amended by striking out "Secretary" in the second line and substituting "official".

10. Subsection 4 (1) of the By-Law is amended by,

(a) striking out "Secretary/secrétaire" in the marginal note and substituting "Society official/responsable du Barreau";

(b) striking out "the Secretary/le ou la secrétaire" wherever it occurs in the passage immediately preceding clause (a) and substituting "a Society official/un ou une responsable du Barreau"; and

(c) striking out "Secretary/secrétaire" wherever it appears in clauses (a) and (b) and substituting "official/responsable".

10.1 Subsection 4 (1) of the English version of the By-Law ia amended by adding "held" before "in trust" in the last line in sub-clause (a) (i).

11. Subsection 4 (1.1) of the By-Law is amended by striking out "Secretary/secrétaire" in the first line and substituting "Society official/responsable du Barreau".

12. Subsection 4 (2) of the By-Law is amended by,

(a) striking out "Secretary/secrétaire" in the marginal note and substituting "Society official/responsable du Barreau"; and

(b) striking out "The Secretary/secrétaire" in the first line and substituting "A Society official/responsable du Barreau".

13. Subsection 4 (3) of the By-Law is amended by striking out "Secretary/secrétaire" wherever it occurs in clauses (a) and (b) and substituting "official/responsable".

13.1 Subsection 4 (3) of the English version of the By-Law is amended by,

(a) striking out "the Secretary" in the first line and substituting "a Society official"; and

(b) adding "the" before "application" in the first line.

14. Section 5 of the By-Law is amended by,

(a) striking out "the Secretary" the first time it occurs in the first line and substituting "a Society official"; and

(b) striking out "Secretary" the second time it occurs in the first line and wherever it occurs in the last line and substituting "official".

14.1 Section 5 of the French version of the By-Law is amended by,

(a) striking out "secrétaire" the first time it occurs in the section and substituting "responsable du Barreau"; and

(b) striking out "secrétaire" the second time it occurs in the section and substituting "responsable".

BY-LAW 15
[ANNUAL FEE]

15. By-Law 15 [Annual Fee] is amended by adding the following:

Interpretation: "Society official"
0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »
0.1 La définition qui suit s'applique au présent règlement.

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

16. Subsection 3 (4) of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" at the end and substituting "a Society official/un ou une responsable du Barreau".
17. Subsection 4 (3) of the By-Law is amended by striking out "The Secretary/Le ou la secrétaire" at the beginning and substituting "A Society official/Un ou une responsable du Barreau".

17.1 Subsection 4 (3) of the English version of the By-Law is further amended by striking out "Secretary" in the second and last lines and substituting "official".

18. Subsection 4 (4) of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" at the end and substituting "a Society official/un ou une responsable du Barreau".

BY-LAW 17
[FILING REQUIREMENTS]

19. By-Law 17 [Filing Requirements] is amended by adding the following:

Interpretation: "Society official"
0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »
0.1 La définition qui suit s'applique au présent règlement.

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

20. Section 1 of the English version of the By-Law is amended by striking out "Secretary" wherever it occurs and substituting "Society".

20.1 Section 1 of the French version of the By-Law is amended by,

(a) striking out "secrétaire" in the second line and substituting "le Barreau"; and

(b) striking out "auprès de cette personne" in the second and third lines and substituting "auprès de lui".

21. Subsection 2 (4) of the By-Law is amended by striking out "The Secretary/Le ou la secrétaire" at the beginning and substituting "A Society official/Un ou une responsable du Barreau".

22. Subsection 2 (6) of the By-law is amended by striking out "the Secretary/secrétaire" in the first line and substituting "a Society official/responsable du Barreau".

22.1 Subsection 2 (6) of the English version of the By-Law is amended by striking out "Secretary" wherever it occurs in the subsection other than in the first line and substituting "official".

23. Subsection 2 (7) of the English version of the By-Law is amended by,

(a) striking out "The Secretary" at the beginning and substituting "A Society official"; and

(b) striking out "Secretary" wherever it occurs in the second and last lines and substituting "official".

23.1 Subsection 2 (7) of the French version of the By-Law is amended by striking out "secrétaire" wherever it occurs and substituting "responsable du Barreau".

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

24. Subsection 4 (2) of the English version of By-Law 19 [Handling of Money and Other Property] is amended by adding "or, in the absence of the Secretary and all persons authorized to exercise the powers and perform the duties of the Secretary under this By-Law, the Chief Executive Officer" at the end.

24.1 Subsection 4 (2) of the French version of the By-Law is amended by striking out "du secrétaire" at the end and substituting "du ou de la secrétaire ou, en son absence et en l'absence de toutes les personnes autorisées à exercer ses pouvoirs et ses fonctions en vertu du présent règlement administratif, avec celle du directeur général ou de la directrice générale".

BY-LAW 20
[REVIEW OF COMPLAINTS]

25. Subsection 3 (1) of By-Law 20 [Review of Complaints] is amended by adding "or, in the absence of the Secretary and all persons authorized to exercise the powers and perform the duties of the Secretary under this By-Law, the Chief Executive Officer/ou, en son absence et en l'absence de toutes les personnes autorisées à exercer ses pouvoirs et ses fonctions en vertu du présent règlement administratif, au directeur général ou à la directrice générale" after "the Secretary/au ou à la secrétaire" in the second line.

26. Subsection 3 (2) of the By-Law is amended by adding "or the Chief Executive Officer ou le directeur général ou la directrice générale/" after "the Secretary/secrétaire" in the second line.

BY-LAW 22
[APPEARANCE AS COUNSEL IN SPECIFIC PROCEEDING]

27. By-Law 22 [Appearance as Counsel in Specific Proceeding] is amended by adding the following:

Interpretation: "Society official"
0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »
0.1 La définition qui suit s'applique au présent règlement.

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

28. Subsection 2 (3) of the By-Law is amended by,

(a) striking out "Secretary/le secrétaire" in the marginal note and substituting "Society official/un responsable du Barreau";

(b) striking out "the Secretary/le ou la secrétaire" in the second line and substituting "a Society official/un ou une responsable du Barreau"; and

(c) striking out "Secretary/secrétaire" wherever it occurs in clauses (a) and (b) and substituting "official/responsable".

29. Subsection 2 (4) of the By-Law is amended by striking out "Secretary/secrétaire" in the marginal note and substituting "Society official/responsable du Barreau".

29.1 Subsection 2 (4) of the English version of the By-Law is further amended by,

(a) striking out "the Secretary" the first time it occurs in the second line and substituting "a Society official"; and

(b) striking out "Secretary" the second time it occurs in the second line and substituting "official".

29.2 Subsection 2 (4) of the French version of the By-Law is further amended by striking out "le ou la secrétaire" in the first line and substituting "un ou une responsable du Barreau".

30. Subsection 2 (5) of the By-Law is amended by striking out "The Secretary/secrétaire" at the beginning and substituting "A Society official/responsable du Barreau".

30.1 Subsection 2 (5) of the English version of the By-Law is amended by striking out "Secretary" in the last line and substituting "official".

31. Subsection 2 (6) of the By-Law is amended by striking out "the Secretary/au ou à la secrétaire" wherever it occurs and substituting "a Society official/à un ou à une responsable du Barreau".

32. Subsection 2 (7) of the By-Law is amended by,

(a) striking out "the Secretary/secrétaire" in the first line and substituting "a Society official/responsable du Barreau"; and

(b) striking out "Secretary/au secrétaire" wherever it occurs in the third and last lines and substituting "official/au ou à la responsable".

BY-LAW 24
[PROFESSIONAL COMPETENCE]

33. Section 2 of By-Law 24 [Professional Competence] is deleted and the following substituted:

Delegation of powers and duties of Secretary: Director, Professional Development and Competence

2. (1) An officer or employee of the Society who holds the office of Director, Professional Development and Competence may exercise the powers and perform the duties of the Secretary under,

(a) subsections 42 (3), (4), (5), (6) and (8) of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a professional competence order;

(c) section 49.2 of the Act;

(d) By-Law 21, as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the professional competence of a member, a request to the Committee to withdraw an application for a professional competence order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of a review, a search or seizure related to a review or a professional competence proceeding; and

(e) this By-Law.

Delegation of powers and duties of Secretary: Chief Executive Officer

(2) An officer or employee of the Society who holds the office of Chief Executive Officer may, in the absence of the Director, Professional Development and Competence and the Secretary, exercise the powers and perform the duties of the Secretary under,

(a) subsections 42 (3), (4), (5), (6) and (8) of the Act;

(b) section 45 of the Act, as it relates to an order made for failure to comply with a professional competence order;

(c) section 49.2 of the Act;

(d) By-Law 21, as it relates to a referral to the Proceedings Authorization Committee of a matter respecting the professional competence of a member, a request to the Committee to withdraw an application for a professional competence order and an application to the Committee for a determination as to whether the Society should apply for an order under section 49.13 of the Act in respect of information that comes to the knowledge of a bencher, officer, employee, agent or representative of the Society as the result of a review, a search or seizure related to a review or a professional competence proceeding; and

(e) this By-Law.

Délégation des pouvoirs et fonctions du secrétaire au directeur de du perfectionnement

2. (1) La personne qui occupe la charge de directeur du perfectionnement peut exercer les pouvoirs et les fonctions que les dispositions suivantes attribuent au ou à la secrétaire :

a) les paragraphes 42 (3), (4), (5), (6) et (8) de la Loi;

b) l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance en matière de compétence professionnelle;

c) l'article 49.2 de la Loi;

d) le règlement administratif n° 21, dans la mesure où il vise le renvoi au Comité d'autorisation des instances d'une affaire relative à la compétence professionnelle d'un membre, la demande, présentée au Comité, de retrait d'une requête visant à obtenir une ordonnance en matière de compétence professionnelle ou la requête présentée au Comité pour qu'il établisse si le Barreau devrait présenter une requête en vue d'obtenir une ordonnance prévue à l'article 49.13 de la Loi à l'égard de renseignements qui viennent à la connaissance d'un conseiller, dirigeant, employé, mandataire ou représentant du Barreau par suite d'une inspection, d'une perquisition, d'une saisie liée à une inspection ou à une instance en matière de compétence professionnelle;

e) le présent règlement administratif.

Délégation des pouvoirs et fonctions du secrétaire au directeur général

(2) La personne qui occupe la charge de directeur général peut exercer les pouvoirs et les fonctions que les dispositions suivantes attribuent au ou à la secrétaire, en son absence et en l'absence du directeur ou de la directrice de la compétence et du perfectionnement professionnels :

a) les paragraphes 42 (3), (4), (5), (6) et (8) de la Loi;

b) l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance en matière de compétence professionnelle;

c) l'article 49.2 de la Loi;

d) le règlement administratif n° 21, dans la mesure où il vise le renvoi au Comité d'autorisation des instances d'une affaire relative à la compétence professionnelle d'un membre, la demande, présentée au Comité, de retrait d'une requête visant à obtenir une ordonnance en matière de compétence professionnelle ou la requête présentée au Comité pour qu'il établisse si le Barreau devrait présenter une requête en vue d'obtenir une ordonnance prévue à l'article 49.13 de la Loi à l'égard de renseignements qui viennent à la connaissance d'un conseiller, dirigeant, employé, mandataire ou représentant du Barreau par suite d'une inspection, d'une perquisition, d'une saisie liée à une inspection ou à une instance en matière de compétence professionnelle;

e) le présent règlement administratif.

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

34. By-Law 25 [Multi-Discipline Practices] is amended by adding the following:

Interpretation: "Society official"
0.1 In this By-Law, a "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interprétation : « responsable du Barreau »
0.1 La définition qui suit s'applique au présent règlement.

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif.

35. Subsection 8 (1) of the By-Law is amended by striking out "The Secretary/Le ou la secrétaire" at the beginning and substituing "A Society official/Un ou une responsable du Barreau".

35.1 Subsection 8 (1) of the English version of the By-Law is amended by,

(a) striking out "Secretary" in the marginal note and substituting "Society official"; and

(b) striking out "Secretary" wherever it occurs in the second and third lines and substituting "official".

36. Subsection 8 (2) of the By-Law is amended by striking out "Secretary/secrétaire" in the first line and substituting "Society official/responsable du Barreau".

36.1 Subsection 8 (2) of the English version of the By-Law is amended by striking out "Secretary" in the second line and substituting "official".

37. Section 9 of the By-Law is amended by,

(a) striking out "the Secretary/secrétaire" the first time it occurs in the section and substituting "a Society official/responsable du Barreau"; and

(b) striking out "Secretary/secrétaire" the second time it occurs in the section and substituting "official/responsable".

38. Subsection 15 (1) of the By-Law is amended by striking out "Secretary/le ou la secrétaire" in the last line and substituting "Society/le Barreau".

39. Subsection 15 (2) of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" and substituting "a Society official/un ou une responsable du Barreau".

40. Subsection 15 (3) of the English version of the By-Law is amended by striking out "Secretary" wherever it occurs and substituting "Society".

40.1 Subsection 15 (3) of the French version of the By-Law is amended by,

(a) striking out "le ou la secrétaire" in the first line and substituting "le Barreau"; and

(b) striking out "auprès du ou de la secrétaire" in the second and third lines and substituting "auprès de lui".

41. Section 16 of the By-Law is amended by striking out "the Secretary/le ou la secrétaire" and substituting "a Society official/un ou une responsable du Barreau".

42. Subsection 17 (1) of the By-Law is amended by striking out "the Secretary/secrétaire" in the first line and substituting "a Society official/responsable du Barreau".

42.1 Subsection 17 (1) of the English version of the By-Law is amended by striking out "Secretary" in the second line and substituting "official".

43. Subsection 17 (2) of the By-Law is amended by striking out "the Secretary/secrétaire" in the first line and substituting "a Society official/responsable du Barreau".

44. Subsection 17 (3) of the By-Law is amended by,

(a) striking out "the Secretary/secrétaire" the first time it occurs in the subsection and substituting "a Society official/responsable du Barreau"; and

(b) striking out "Secretary/secrétaire" the second time it occurs in the subsection and substituting "official/responsable".

45. Subsection 17 (7) of the By-law is amended by deleting "the Secretary/le ou la secrétaire" in the first line and substituting "a Society official/un ou une responsable du Barreau".

BY-LAW 28
[REQUALIFICATION]

46. Section 2 of By-Law 28 [Requalification] is deleted and the following substituted:

Delegation of powers and duties of Secretary: Director, Professional Development and Competence

2. (1) An employee or officer of the Society who holds the office of Director, Professional Development and Competence may exercise the powers and perform the duties of the Secretary under section 45 of the Act, as it relates to an order for failure to comply with an order made under subsection 49.1 (1) of the Act, under section 49.1 of the Act and under this By-Law.

Delegation of powers and duties of Secretary: Chief Executive Officer

(2) An employee or officer of the Society who holds the office of Chief Executive Officer may, in the absence of the Director, Professional Development and Competence and the Secretary, exercise the powers and perform the duties of the Secretary under section 45 of the Act, as it relates to an order for failure to comply with an order made under subsection 49.1 (1) of the Act, under section 49.1 of the Act and under this By-Law.

Délégation des pouvoirs et fonctions du secrétaire au directeur du perfectionnement

2. (1) La personne qui occupe la charge de directeur du perfectionnement peut exercer les pouvoirs et les fonctions que l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance rendue en application du paragraphe 49.1 (1) de la Loi, l'article 49.1 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire.

Délégation des pouvoirs et fonctions du secrétaire au directeur général

(2) La personne qui occupe la charge de directeur général peut exercer les pouvoirs et les fonctions que l'article 45 de la Loi, dans la mesure où il vise une ordonnance prise pour inobservation d'une ordonnance rendue en application du paragraphe 49.1 (1) de la Loi, l'article 49.1 de la Loi et le présent règlement administratif attribuent au ou à la secrétaire, en son absence et en l'absence du directeur ou de la directrice de la compétence et du perfectionnement professionnels.

BY-LAW 29
[PAYMENT OF COSTS]

47. Clause 5 (2) (a) of By-Law 29 [Payment of Costs] is amended by striking out "the Secretary/le ou la secrétaire" in the first line and substituting "an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law/la personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement,".

Carried

MOTION RE: CEO

It was moved by Mr. Banack, seconded by Mr. Feinstein that it is the will of Convocation that the CEO advise Convocation at the earliest opportunity of the management steps being taken to monitor the operations of the Law Society within the existing Law Society's governance policies.

Ms. Potter moved an amendment to the Banack/Feinstein motion as follows:

That it is the will of Convocation that the CEO advise Convocation at the earliest opportunity of the management steps being taken to assist Convocation in monitoring the operations of the Law Society within the Law Society's governance policies.

The Banack/Feinstein motion as amended was accepted.

Carried

ROLL-CALL VOTE

Arnup	Against
Banack	For
Bindman	For
Braithwaite	For
Carey	For
Cherniak	Against
Copeland	Abstain
Cronk	For
Crowe	Against
Curtis	Abstain
Diamond	Abstain
E. Ducharme	Against
T. Ducharme	Against
Feinstein	For
Gottlieb	For
Hunter	Against
Krishna	For
Lalonde	Against
Laskin	Abstain
MacKenzie	For
Millar	For
Mulligan	For
Porter	Against
Potter	For
Puccini	For
Rodgers	For
Ross	For
Simpson	For
Swaye	For
Wright	For

Vote: 18 - For; 8 - Against; 4 Abstentions

AMENDMENT TO BY-LAW 6 - ELECTION OF TREASURER

It was moved by Mr. Cherniak, seconded by Mr. E. Ducharme that -

THAT By-Law 6 [Treasurer] made by Convocation on April 30, 1999 and amended by Convocation on June 25, 1999 and December 10, 1999 be further amended as follows:

1. Subsection 9 (1) of the By-Law is amended by deleting "beginning on the second Thursday in June and ending on the fourth Thursday in June/débutant le deuxième jeudi de juin et se terminant le quatrième jeudi du même mois" and substituting "beginning on the Monday in the week preceding the week in which election day occurs and ending on the day preceding election day/débutant le lundi de la semaine qui précède celle du jour de l'élection et se terminant la veille de ce jour".

2. Clause 9.1 (4) (c) of the By-Law is amended by deleting "on the fourth Thursday in June/le quatrième jeudi de juin" at the end and substituting "on the day preceding election day/la veille du jour de l'élection".

It was moved by Mr. Krishna, seconded by Mr. MacKenzie that for the Treasurer's election for the year 2001 the advanced poll be open on Committee Day, June 7th, 2001 at 12 noon and close the day before the election on June 21st at 5:00 p.m.

The matter was stood down.

REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Mr. Cherniak presented the Report of the Professional Development and Competence Committee for Convocation's approval.

Professional Development & Competence Committee
April 12, 2001

Report to Convocation

Purpose of Report: Policy - Decision Making
Information

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

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INFORMATION

APPENDICES

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on April 12, 2001. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Stephen Bindman, Kim Carpenter-Gunn, Ron Cass, Marilyn Pilkington, Judith Potter, and Bill Simpson. Staff in attendance were Malcolm Heins (CEO), Janine Miller, Sophia Sperdakos, and Paul Truster. The Treasurer attended a portion of the meeting.

2. e Committee is reporting on the following matters:

Policy - For Decision

- Amendment to By-Law 24 and Appointment of Practice Reviewers
- Amendments to Specialist Certification Experience Standards for Family Law and Environmental Law

Information

- Report on Specialist Certification Matters Finalized by the Certification Working Group on April 11, 2001 and Approved in Committee on April 12, 2001.
- L'AJEFO Response to the Competence Consultation Document - English Translation
- Time Line Guidelines for Focused Practice Review Program

POLICY - FOR DECISION

AMENDMENT TO BY-LAW 24 AND APPOINTMENT OF PRACTICE REVIEWERS

1. February 2000 the Committee recommended to Convocation the appointment of external practice reviewers under section 9 of the *Law Society Act* in order to bring reviewers within its protection. Section 9 of the *Act* reads as follows:

> *No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society, or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.*

2. Convocation accepted the Committee's recommendation and appointed the reviewers on February 22, 2001.

3. Since the Convocation appointment, some concern has been raised that section 9, on its own, may not authorize the appointment of reviewers, but rather simply afford protection to those people appointed by Convocation under other sections of the *Act* or By-laws. This view is supported by the fact that section 42 of the *Act* provides that practice reviewers are to be appointed pursuant to the By-laws. By-law 24 provides that practice reviewers are appointed by the Professional Development and Competence Committee.

4. To address this concern, an amendment to By-law 24 is proposed that will provide authority to either the PD & C Committee or to Convocation, upon the recommendation of the PD&C Committee, to appoint reviewers.

5. The advantages of this amendment are as follows:

   a. Convocation will have the authority to appoint practice reviewers and as such the protection afforded by section 9 of the *Act* will clearly apply to external practice reviewers.

   b. Until the issue of section 9 protection for all Law Society staff investigators is resolved, the Committee will continue to be in a position to appoint staff practice reviewers.

   c. The role of the Committee with respect to practice review will continue.

6. A motion with respect to the proposed amendment to By-law 24 is set out at Appendix 1 for the Committee's review.

7. In order to ensure that the practice reviewers appointed by Convocation in February 2001 are appropriately protected the Committee recommends that Convocation re-approve them pursuant to amended By-law 24, section 4.

Request to Convocation

8. Convocation is requested to consider the proposed motion to amend By-law 24 set out at Appendix 1 and, if appropriate, approve it.

9. If Convocation approves the amendment to By-law 24, it is requested to re-appoint the practice reviewers whose names it approved in February 2001 pursuant to amended By-law 24. The names of the reviewers are included in Appendix 1.

AMENDMENTS TO SPECIALIST CERTIFICATION EXPERIENCE STANDARDS FOR FAMILY LAW AND ENVIRONMENTAL LAW

The Issue

1. The certification working group and the Committee are recommending that the specialist certification experience requirements for family law and environmental law be amended to reflect the increasing use of alternate dispute resolution (including mediation, arbitration, case conferences and pre-trial conferences). Although all experience requirements will ultimately be re-evaluated as the certification program undergoes re-design as part of the competence model, it is advisable to make the proposed changes to the family law and environmental law specialties at this time.

I. Amendment to the Standards for Specialist Certification in Family Law

Background

2. The standards for specialist certification in family law currently in use were approved in Convocation in October 1989. In January 1990, minor revisions were made to provide clarification with respect to satisfying the trial experience requirement. No updates have been undertaken since then, even though the experience requirement places significant emphasis on trial work while actual family law practice has continued to shift since the early 1990s to integrate the full range of alternate dispute resolution mechanisms.

3. Although the family law experience criteria has always included ADR, the Family Law Specialty Committee has requested that the certification working group consider expanding the ADR element to,

- reflect the current nature of the family law practice; and
- clarify the practice expectations to encourage qualified family law practitioners to seek the specialist designation.

Discussion

4. On the request of the certification working group, the Family Law Specialty Committee considered the importance of trial work as a criteria for the specialist designation. It concluded, and the working group agrees that,

a. although the use of ADR methods in family law is significant and varying degrees of ADR are used throughout the province, trial work is, and will continue to be, relevant to specialist certification both as a measure of expertise and in service of the public interest. To that end, the specialist certification program should continue to assess the applicant's ability to litigate complex family law matters. It should not, however, set a minimum number of trials as this requirement might prove to be an artificial measurement tool and remove flexibility from the Family Law Specialty Committee.

b. the proposed amendments give greater weight to the various ADR methods, including arbitration, and extend the flexibility even further to ensure equitable access to specialist certification is available to lawyers regardless of geographic location and local trends. For example, an applicant with no trial experience in the five years preceding the application date may still be considered eligible for certification as a Family Law Specialist based on the complexity and outcome of the family law matters handled. In such a case, the Specialty Committee would assess the fifteen contested family law matters referred to in the standards and any other information that the applicant feels is relevant.

5. The certification working group is of the view that it would be inappropriate to maintain the *status quo* until a redesigned specialist program can replace the one currently in place since the over-emphasis on trial work, whether real or perceived, is inconsistent with the current emphasis on ADR in the administration of justice. The requirement also acts as a potential barrier to new and re-certification applications.

6. The working group accepts the Specialty Committee's rationale and recommends the proposed amendments to the Family Law Experience requirement in the Standards, as follows (added wording in italics)

Family Law Experience

5. The applicant shall have demonstrated substantial involvement in contested family law matters sufficient to demonstrate special ability. Substantial involvement may include active participation in interviewing, giving advice and opinions, preparation of pleadings, examinations before trial, interlocutory proceedings, presentation of evidence, negotiation of settlement, submission of argument, *drafting of domestic contracts, and participation in various forms of* alternate dispute resolution *(including mediation, arbitration, case conferences, or pre-trial conferences).*

6. During the five (5) years of recent experience defined in paragraph 4.ii.(a) of Practice Experience above, the applicant shall have had carriage of at least fifteen (15) contested family law matters of substance ~~in which a proceeding was commenced, some of which have proceeded to trial,~~ *all of which have been resolved by means of a formal dispute resolution process (litigation, mediation, or arbitration), some of which have proceeded to trial*; however, if none of these matters of substance ~~in which a proceeding was commenced~~ has proceeded to trial, then the applicant shall provide information to the Committee which may be helpful in assessing compliance with the criteria of substantial family law experience.

II. Amendment to the Standards for Specialist Certification in Environmental Law

Background

1. The standards for specialist certification in environmental law currently in use were approved in Convocation in November 1995. Since then, a shift in the practice of environmental law has been occurring to integrate alternate dispute resolution mechanisms, such that an update of the "environmental law experience" requirement is now appropriate.

2. The Environmental Law Specialty Committee is of the view that the shift to ADR is significant enough to potentially disqualify currently certified environmental law specialists at re-certification and pose barriers to prospective new applicants. After validating its assumptions with Ontario's environmental law specialists through a survey conducted in May 2000, the Specialty Committee has requested that the working group consider expanding the environmental law experience component in the standards to include ADR so as to,

a. reflect the current nature of environmental law practice;
b. through some re-wording, clarify practice expectations; and
c. facilitate the re-certification of existing environmental law specialists.

Discussion

3. As in the case of family law the role of ADR in environmental law has expanded significantly in recent years. The certification working group has accepted the Specialty Committee's rationale for expanding the experience requirement, as discussed above, and recommends the proposed amendment of the Environmental Law Experience requirement, set out below.

4. The certification working group is of the view that it would be inappropriate to maintain the *status quo* until a redesigned specialist program can replace the one currently in place because of the under-emphasis on ADR. The requirement also acts as a potential barrier to new and re-certification applications.

Environmental Law Experience (additional wording set out in italics)

5. The applicant shall have demonstrated broad and varied experience with a significant number of Ontario and federal environmental laws, sufficient to demonstrate special ability in the application of these laws.

6. During the five years of recent experience defined in paragraph 4.ii(a), the applicants shall have demonstrated a substantial involvement sufficient to show special ability in at least two of the following four categories of professional work:

   i. Environmental Litigation: Acting as counsel in at least 150 days of ~~environmental~~ civil or criminal proceedings, and/or quasi-criminal, quasi-judicial or administrative tribunal proceedings, *during which time environmental issues were the primary focus: including pre-trials, pre-hearings, settlement negotiations, ADR proceedings, and/or acting as a mediator or arbitrator in connection with those proceedings.*

   ii. Environmental Transactions: Acting as environmental counsel in relation to at least 20 *significant* business or commercial transactions in which environmental considerations were of substantial importance;

   iii. Environmental Opinions: Giving at least 200 substantial oral or written legal opinions, concerning the application or interpretation of environmental law;

   iv. Other: Substantial involvement in the development of the field of environmental law, including, for example:
      (a) drafting of environmental legislation and instruments;
      (b) research, publications, teaching, academic qualifications;
      (c) speeches, conference papers, presentations at continuing education programs; and
      (d) drafting of decisions as a member of a relevant tribunal.

Request to Convocation

5. Convocation is requested to consider this report and, if appropriate approve,

a) the amended wording to the Family Law experience requirements for certification set out in section I, paragraph 6, above; and

b) the amended wording to the Environmental Law experience requirements for certification set out in section II, paragraph 4, above.

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE CERTIFICATION WORKING GROUP ON APRIL 11, 2001 AND APPROVED IN COMMITTEE ON APRIL 12, 2001

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

Civil Litigation	Rodney D. Dale (of London) Mark Allan Hartman (of Toronto)
Construction Law	Anne C. McNeely (of Toronto)
Intellectual Property Law	A. David Morrow (of Ottawa) Peter E. J. Wells (of Toronto)

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

Bankruptcy & Insolvency Law	Stanley J. Kershman (of Ottawa)
Civil Litigation	Kim Carpenter-Gunn (of Hamilton) Roy C. Filion, Q.C. (of Toronto) Bernard B. Gasee (of Toronto) Daniel Monteith (of Newmarket) Timothy Pinos (of Toronto) Robert J. Reynolds (of Belleville) Ian R. Stauffer (of Ottawa) Paul Tushinski (of Toronto) Howard W. Winkler (of Toronto)
Criminal Law	J. A. Tory Colvin (of London) Douglas C Hunt, Q.C. (of Markham) Ralph B. Steinberg (of Toronto)

Family Law:	Suzette M. Blom (of Toronto) J. Kelvin Ford (of Mississauga) Terry Wayne Hainsworth (of London) Alfred A. Mamo (of London) Robert J. Montague (of Ottawa) D. Gordon F. Morton, Q.C. (of Hamilton) Gary Lorne Steinberg (of Ottawa)
Labour Law:	David I. Wakely (of Toronto)

L'AJEFO RESPONSE TO THE COMPETENCE CONSULTATION DOCUMENT

1. In March the Committee received a copy of L'AJEFO's comments on the competence Consultation Document, a copy of which was included in the Committee's Report to Convocation in March. The letter has been translated into English and is set out at Appendix 2.

TIME LINE GUIDELINES FOR PRACTICE REVIEW

1. Attached for information at Appendix 3 are the time line guidelines for focused practice reviews.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 24
[PROFESSIONAL COMPETENCE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 26, 2001

MOVED BY

SECONDED BY

THAT By-Law 24 [Professional Competence] made by Convocation on March 26, 1999 and amended by Convocation on May 28, 1999 be further amended as follows:

1. Section 4 of the By-Law is amended by adding after "Committee" in the first line "or Convocation on the recommendation of the Professional Development and Competence Committee".

LIST OF PRACTICE REVIEWERS
as of April 2, 2001

ADDINALL, Richard M.
ALLISON, Nancy L.
ARCHI, Donald A.
BALINSKY, Ronald A.
BISHOP, Glenda R. J.
CARLYLE, Susan J.
CASTLE, Mark L.
CRANE, Micheal T.
DART, Thomas C.
DAVIS, G. Ross
DAVIS, Ronald D.
DEMARAY, Jane C.
DINGLE, Q.C., Mary Lou
DIZENBACH, Carrol A.
DONIHEE, Tilton T.
DURWARD, Mark P.
EDWARDS, David L.
FUERST, Michelle K.
GAUTHIER, Gordon, F.
GOODWIN, John G.
HIGGINSON, James D.
HOWSON, Roger A.
JACKLIN, David E.
JENKINS, Jennifer J.
KELLY, Q.C., J. Robert
KERSHMAN, Stanley J.
KITELEY, Paul D.
KNIGHT, Q.C., Frederick W.
KONRAD, Larry C.
LEE, Frederick J.
LINTON, James D.
LIPSON, Norman B.
LITTLE, Q.C., James H.
LOVELL, David L.
MAKINS, John W.
MALCOLM, Wendy B.
MARSHALL Q.C., Alan T.
MCCARTNEY, Robert K.
MCCLELLAND, Glenna G.
MCCLELLAND, Ronald G.
MCDOWELL, Roderick H.
MCGEE, Heather A.
MUNN, M. Kathryn
O'GRADY, Q.C., M. James
OTTEWELL, J. Richard

PAVEY, Donovan W.
PICKELL, Norman B.
REBLE, John H.
RÉMILLARD, Peter J.
RICCI, Frank C.
ROBSON, Craig M.
SAVONE, Luigi
SHEPPARD, W. Graydon
SHOREMAN, Rosemary
SOLOMON, E. Bruce
STELMACH, Bohdan P. E.
STUTZ, William W.
THOMSON, Donald V.
TOMAS, Norman W.
TROUGHTON, Thomas W.
TROUSDALE, Anne C.
TROUSDALE, Peter J.
TURNER, Q.C., Paul D.
UREN, Thomas C.
VANDERGUST, Victor L.
WAITE, Q.C., R. Bruce
WEBBER, Q.C., Paul A.
WEXLER, Beverly E.
WILLIS, Q.C., Roland J.
WINBAUM, Daniel L.
WOOLFREY, C. Richard
ZWICKER, Milton W.

Translation from the French original APPENDIX 2

L'AJEFO

February 20, 2001

Sophia Sperdakos
Policy Advisor
Law Society

Dear Madam,

I am pleased to convey L'AJEFO's response to the Law Society consultation document entitled "Implementing the Law Society's Competence Mandate".

INTRODUCTION: WHAT IS THE MANDATE OF L'AJEFO?

Founded in 1980, L'AJEFO represents the interests of the lawyers, judges, arbitrators, mediators, legal officers, law professors and students, and other participants in the legal world, who work to promote legal services in French in Ontario. Our association aims at ensuring equal access to justice, without penalty, delay, obstacle or hesitation to use French by the judiciary, the members and the francophone population of our province.

As L'AJEFO has the mandate to monitor the legal system to ensure that French services are accessible and adequate, the competence issue is particularly important for L'AJEFO. L'AJEFO has reviewed the document and would like to offer the following comments and recommendations.

PROFESSIONAL COMPETENCE SHOULD INCLUDE THE CAPACITY TO REPRESENT THE CLIENT IN THE OFFICIAL LANGUAGE OF HIS OR HER CHOICE

The *Rules of Professional Conduct* aims at respecting the Human Rights Code of Ontario and prohibits discrimination based on race, descent, place of origin, colour, ethnic origin, citizenship, belief, sex, sexual orientation, age, criminal record, marital status, family status or handicap in the context of hiring lawyers, articling students, or any other person and in his orher professional relations with his/her colleagues or any other person. Even if language is not included in the list, the Ontario Human Rights Commission specifies that there is often a link between the place of origin of a person and other grounds for discrimination forbidden by the Human Rights Code. That is why language can be an element of complaint regarding infringement of a person's rights on the basis of one of the related grounds.

As such, if a lawyer represents a client in English when that client requested proceedings in French, the lawyer violates the Rules of Professional Conduct, which makes the lawyer incompetent. As well, in our opinion, a lawyer who criticizes a colleague because he or she proceeds in French in a file is not acting in a professional manner. It is in the Law Society's best interest to adopt measures to control lawyers' linguistic competence where they might have to render services in French.

We would like to remind you that the use of French is legally recognized in the *Criminal Code* (for all Ontario), in the *Courts of Justice Act*, that gives justiciables the right to use French in law courts (in the regions designated by law) and in the *French Language Services Act*, that gives justiciables the right to use the two official languages to communicate with the governement and to receive services from it (in the regions designated by law).

As a client may claim his or her right to use French before the courts, it is important that the Law Society demands, as a professional competence criteria for those who offer services in French, advanced knowledge of spoken and written French, and of common law legal terminology in French.

Section 41 of the Law Society Act specifies that:

A member fails to meet standards of professional competence for the purposes of this Act if,

(a) there are deficiencies in,

(i) the member's knowledge, skill or judgment,

(ii) the member's attention to the interests of clients,

(iii) the records, systems or procedures of the member's practice, or

(iv) other aspects of the member's practice; and

(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.

We can raise a reasonable doubt on the quality of the service a member offers his or her clients when he or she offers services in French that are inadequate due to a mediocre knowledge of the French language.

INTRODUCTION OF SYSTEMIC MEASURES TO MEASURE AND MONITOR COMPETENCE

The consultation document stipulates that:

"The importance of the Law Society's statutory mandate concerning competence and its commitment to an active approach cannot be overstated. To discharge its responsibilities to the public and the profession, the Law Society must introduce systemic measures for fostering, measuring, and monitoring competence and the quality of legal services."

L'AJEFO supports the Law Society's pro active approach and the introduction of systemic measures to measure and monitor professional competence. However, the importance of requiring linguistic competence of lawyers who serve the Francophone community should be stated.

ISSUES RAISED BY L'AJEFO

Many problems have been raised by L'AJEFO members concerning the offering of legal services in French. We summarize them here:

- A client requests representation in French and the lawyer who says he or she is able to offer the services in French does not necessarily have the advanced knowledge of the French language, ie, spoken and written, nor a knowledge of common law legal terminology in French.

- A client requests services in French, and certain lawyers who are not competent in French try to convince the client that proceedings in English would be better. Sending the client to a lawyer able to offer services in French should be a professional obligation.

- The lawyer who receive documents in French from the adverse party must recognize the right of the parties to proceed in French. Any form of retaliation against a colleague who proceeds in French must be forbidden.

RECOMMENDATIONS

The Law Society of Upper Canada proposes four models to evaluate professional competence. We considered each one of them in the light of the needs of the Francophone community and the issues raised by L'AJEFO members. Here are our recommendations concerning each of the models:

Model 1 : "Formulation of a Continuum of Professional Development."

This model focuses on maintaining skills and knowledge while encouraging participation in educational activities, conferences, presentations and other forms of formal or informal education. Model 1 emphasizes the adoption of a systemic approach to ensure the lawyer's progressive professional development. The model gives the profession the following:

- tools to assist in professional development (quality improvement)
- mechanisms for monitoring the progression of professional development (quality assurance).

Model 1 offers certain advantages for members of L'AJEFO

Lawyers already recognized as competent to practise and represent clients in French have a chance to improve that skill over the years.

Lawyers who are not competent to practise and represent clients in French have a chance to develop that skill.

L'AJEFO believes that this model is only adequate if it is adopted along with model 4. Model 1 allows the development of knowledge already acquired, or to acquire knowledge that leads to a specialization to practice in French. However, L'AJEFO believes that the Law Society must create a procedure to recognize competence to practice in French. This competence is a specialization, as stipulated in the model 4.

Model 2: "Random/Focused Practice Review"

This model is reactive and deals with competence when a member already was the subject of complaints. It also proposes the adoption of random reviews.

L'AJEFO encourages the adoption of random reviews, or reviews when there is a complaint concerning a lawyer's competence to practice in French, when there is a complaint regarding a refusal to refer to a lawyer able to proceed in French, or when a lawyer uses retaliation measures against a colleague who proceeds in French.

However, L'AJEFO believes that this model should be adopted along with model 4 for the same reasons mentioned under Model 1.

Model 3: "Limited Licensing"

This model is founded on the assumption that a member of the profession is never able to practice in all fields of law. Thus, this model proposes the adoption of licences to practice law in certain specific fields or during a certain period of time.

L'AJEFO encourages the adoption of a program of licencing the practice of law for those who practice in French. However, the lawyers who practice in French are usually competent to practice in the two languages. A licence to practice in French should not restrict the member to practising only in French or preclude him or her from practising in English. Thus, L'AJEFO prefers model 4 in order to recognize the French language specialization.

Model 4 : "Broadly-Based Specialist Certification"

The specialist certification system allows members to receive accreditation for attaining expertise in a specific field of law. The Society could use that model to ensure an advanced knowledge of French. Moreover, this model makes it possible for clients to refer to the specialist certificate to know the lawyer's proficiency in French.

This model already exists at the Society. It is noted in the consultation document:

"It is important to recognize that, at the present time, certification of specialists in Ontario is a recognition program, not a developmental one. This means that members are certified for having already met operative standards and are periodically re-certified for maintaining them. Lawyers are not directed on a development path leading to specialization."

L'AJEFO believes that a specialist certificate in French is important and supports the adoption of such a model if it contains the following criteria:

- To receive the certificate a member must demonstrate advanced knowledge of oral and written French, and of the common law legal terminology in French.
- Members of the Law Society who received their LL.B. from the University of Ottawa French common law section, or from the University of Moncton Law School automatically receive the specialist certificate in the practice of law.
- The Society can regularly verify the linguistic competence of a member.
- The members who do not have the certificate in French have an obligation, under the Rules of Professional Conduct, to refer a client who requests representation in French to somebody who has a specialist certificate to practise in French.
- If a member has the aptitude he or she may reach a level of French that would give him or her the expertise required to receive the specialist certificate.

L'AJEFO encourages the Society to adopt such a model, but specifies that the adoption of procedures and criteria to recognize the specialization of practice in French must be done in consultation with the L'AJEFO.

CONCLUSION

L'AJEFO proposes the adoption of model 4 as a basic model to assess the linguistic competence of members of the Law Society. We propose however that L'AJEFO be consulted to determine the procedures and criteria for recognizing the linguistic competence of members. Also, L'AJEFO supports the adoption of models 1 and 2, but only to complement a model of specialist certification.

We are available to discuss those proposals with you.

You will find enclosed a copy of the February 2001, edition of our newsletter, L'Expression.*

Sincerely,

Peter Annis
President
* [not translated]

APPENDIX 3

Time Guidelines for Practice Review (PR)

Steps in the Process	Activities in Each Step	Legislative Reference	Time Frame (Guidelines only)
Entry into Practice Review	Where member enters by consent or undertaking or where authorization to be sought from Chair of PD&C, staff prepare authorizing documents. Where member is ordered into PR by conduct or capacity hearing panel or by having provided an undertaking to enter PR as a result of another regulatory investigation, staff considers nature of the review. Where CRC makes recommendation for PR, staff considers / prepares opinion. Staff considers special requirements.	Sec.42 LSA Sec. 35, 40 PD&C (Jan.2000)	up to 30 days from receipt
Authorization	Chair of PD&C considers request for authorization and makes determination. Member receives and signs consent or undertaking to enter PR.	Sec 49.4 (1) By-Law 24, sec.5	Up to 30 days from receipt of request
Initial Contact with Member	Staff reviews file, considers severity and level of issues; assesses member LSUC profile, referral source information and concerns, pattern of poor practices, special requirements; determines basic approach. Member receives PR information and basic management checklist for review. Initial interview between staff and member - explain process, role of reviewer, member encouraged to utilize self-assessment tools and begin to implement practice improvements; efforts to build consensus. Staff develops terms of reference (where appropriate with input of member).	Practice Review Reference Manual	30 -60 days (allow member time to begin making improvements)

Matching	Staff select reviewer through matching process, consider practice size/type/region, check for conflicts. Information package to reviewer and member. Special concerns/requirements noted (e.g., systems advisor, OBAP/LINK, wellness) Reviewer to schedule 1st attendance with member. Staff does follow-up call to member to encourage member to utilize this time period to begin/continue making changes and improvements.	By-Law 24, secs. 4, 6	Up to 30 days (Special needs may extend this time line) cancellation of appointments - policy issues to be considered
Review	Generally a full day attendance at member's office. PR may be completed in with 1 attendance, but may also continue with further attendances. For complex cases staff may consider requiring reviewer to submit a progress report, and attend further before submitting a Final Report.	Sec. 49.4 (2)	Range from 30 -120 days depending upon complexity, cooperation, special concerns
Final Report	Reviewer to prepare and submit the Final Report. Report includes (1) the opinion of whether the member is failing or has failed to meet standards of professional competence; and (2) the recommendations with regard to the member's practice.	By-Law 24, sec.7	Up to 30 days from final attendance

Secretary/ Proposal	Disposition Phase
	Final Report and Recommendations to Secretary - determination of whether
	a) to make recommendations but not include in Proposal for an Order; or
	b) to make recommendations and include in Proposal for an Order.
	
	Copy of report to member.
	
	Notification to member of Secretary's chosen approach.
		Secs. 42 (3), (4), (5)
		Sec. 44
		By-Law 24, secs. 8, 9
		Form 24A
			If (a) within 30 days of receipt of Report.
			
			If (b) notice of decision and Proposal for an Order within 30 days of receipt of report

Proposal /Reply	Member is sent Proposal for an Order and notifies whether in agreement. Where member does not consent Secretary must determine next steps (eg. seek authorization for competence hearing)	Sec. 42(6) By-Law 24, sec. 9 (4), (5), (6), (7), (8) Sec. 43	not later than 30 days after the date specified on the notice to the member unless extension granted
Order	Secretary shall provide to the elected bencher the Final Report and member's reply; the Proposal and member's reply to Proposal Bencher may, - refuse to make an Order, only upon meeting with member and Secretary - make an Order with modification, only upon meeting with member and Secretary - sign the Order as is without any meeting. - Secretary must provide reasonable notice of any meeting.	Sec. 42 (6), (7), (8) By-Law 24, secs. 10-15	within 30 days

Re: Amendment to By-Law 24 and Appointment of Practice Reviewers

It was moved by Mr. Cherniak, seconded by Mr. Banack that the following By-Law 24 be adopted:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 24
[PROFESSIONAL COMPETENCE]

THAT By-Law 24 [Professional Competence] made by Convocation on March 26, 1999 and amended by Convocation on May 28, 1999 be further amended as follows:

1. Section 4 of the English version of the By-Law is amended by adding after "Committee" in the first line "or Convocation on the recommendation of the Professional Development and Competence Committee".

2. Section 4 of the French version of the By-Law is amended by adding "ou le Conseil, sur la recommandation de ce comité," after "compétence" in the first line.

Carried

It was moved by Mr. Cherniak, seconded by Mr. Banack that the practice reviewers approved in February 2001 and whose names are set out at pages 12 and 13 in Appendix 1 be re-appointed.

Carried

Re: Amendments to Specialist Certification Experience Standards for Family Law and Environmental Law

It was moved by Ms. Curtis, seconded by Ms. Ross that the proposed amendments to the Family Law Experience requirement in the Standards be referred back to the speciality working group for consultation with the Family Law bar.

Carried

It was moved by Mr. Cherniak, seconded by Mr. Banack that the proposed amendments to the Environmental Law Experience requirements for Certification set out in section II, paragraph 4 of the Report be approved.

Carried

MULTI-DISCIPLINARY PRACTICE TASK FORCE - IMPLEMENTATION PHASE

Mr. Cherniak presented the Report of the Multi-Disciplinary Practice Task Force for information only.

Report to Convocation
April 26, 2001*

Multi-Disciplinary Practice Task Force
Implementation Phase

Purpose of Report: Decision

Prepared by the
Multi-Disciplinary Practice Task Force

* For debate at May 24, 2001 Convocation

TABLE OF CONTENTS

I. INTRODUCTION

1. In November 2000, Convocation adopted the report of the Multi-Disciplinary Practice Task Force ("the Task Force"), which includes recommendations for a regulatory scheme for affiliated law firms.[1] Convocation directed that Task Force design the regulatory scheme to implement the policy decision.

2. This report includes the Task Force's proposals for the regulatory scheme, comprised of a new by-law and amendments to the *Rules of Professional Conduct* ("the Rules"). The new by-law appears in its entirety in the motion to make the by-law at page 21, and Rule amendments appear in their entirety at Appendix A.

3. This report is being distributed to individuals who and organizations that responded to the Task Force's report prior to November Convocation, with an invitation to comment on the regulatory scheme. The Task Force will prepare for May 2001 Convocation supplementary material, as may be required, incorporating any comments received.

4. The Task Force requests that at its May 2001 meeting, Convocation approve the scheme by adopting the by-law and amending the Rules.

II. BACKGROUND

5. The Task Force's justification for a specific regulatory scheme for affiliated law firms was expressed in the following way in its policy report:

> The regulatory issues that arise from the nature of the affiliation between a law firm and a firm of non-lawyers, in the Task Force's view, require a response from the Law Society in keeping with its mandate to govern the profession in the public interest.
>
> Permitting this form of legal practice by lawyers unassisted by specific instruction or guidance from the Society, in the Task Force's view, is not a reasonable or responsible approach to the issue. There is a potential risk to the independence of legal advice free of conflicting interests. The client should be informed about these facts so that the client can choose appropriate counsel. That, in the Task Force's view, warrants a regulatory response that seeks to preserve the fundamental nature of legal advice to clients.
>
> To that end, the affiliated law firm's structure and arrangements with the non-lawyer firm must be transparent to the Society as regulator and, to the extent necessary, to clients, to ensure that clients receive legal services in keeping with the profession's core values. The Task Force believes that the surest way to promote that transparency and ensure its integrity is for the Society to adopt provisions that sufficiently address the issues and monitor compliance with those provisions.

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[1]The Task Force's mandate was to "deal with the issue of a captive law firm model, to study, amongst other things, the questions of control, trading style, management, conflicts of interest and related matters as recommended" (Law Society of Upper Canada Transcript of Convocation, September 25, 1998, page 218).

6. The Task Force's report contained a series of recommendations upon which the proposals for the regulatory scheme are based. The recommendations are:

[That]

a. the affiliated law firm be defined in the following terms:

> A law firm has an affiliation with a non-lawyer firm where the firms regularly join together for the joint promotion and delivery of respective services to the public.

b. affiliated law firms must be owned and controlled by lawyers,

c. as a matter of assuring control, lawyers in affiliated law firms, as a condition of practice, should be required to disclose fully and completely to the Law Society
   i. all financial arrangements that exist between the affiliated law firm and its partners and the non-lawyer firm with which they are affiliated, and
   ii. all agreements and other arrangements that exist between the law firm and the non-lawyer firm with which it is affiliated including those dealing with the management and control of the affiliated law firm,

d. lawyers in affiliated law firms should be required to make disclosure to clients who retain the affiliated law firm and the non-lawyer firm for the joint provision of services or who are the subject of referral for services between the firms of any arrangements, including those described above in c., that may affect the independence of the lawyer's representation, to permit an informed decision by the client about the retainer,

e. to facilitate the above, an appropriate application process should be designed whereby information necessary for the Society's review of the arrangements described may be obtained,

f. the non-lawyer firm should not be permitted to share in the law firm's profits or revenues, either directly or indirectly through excessive inter-firm charges, for example, by charging, inter-firm, expenses that do not reflect their fair market value,

g. an affiliated law firm should be required to establish a system to search for conflicts in both the affiliated law firm and the non-lawyer firm and should be required to deal with conflicts as if both firms were one, applying to conflicts situations the obligations applicable to law firms,

h. the conflicts search regime should, when appropriate, extend to searches for conflicts in firms affiliated with the law firm that practice outside Canada in circumstances where separate national firms or offices of the non-lawyer firm are treated economically as if they were one firm,

i. the affiliated law firm should be required to carry on its practice entirely within its own separate premises and maintain its documents, records and files, including all electronic data, entirely separate and apart from the files, documents, records and electronic data of the affiliated firm,

j. lawyers in affiliated law firms should be required to obtain the informed written consent of the client in any matter where joint services are offered by the affiliated firms after the client has been advised of the possible prejudice or loss of solicitor and client privilege to the working together of both firms on the same matters in respect of which legal advice will be sought and obtained by the client, or where non-lawyer staff of the non-lawyer firm also provide services, including support services, in the affiliated law firm,

k. in circumstances in which lawyers move between the affiliated law firm and the non-lawyer firm in providing legal advice to clients on one hand and professional consulting services on the other, these lawyers should be required to disclose to clients, before being retained, their role in the firms, provide an explanation of when solicitor and client privilege may or may not attach, and give the client an opportunity to make an informed choice with respect to counsel,

l. an affiliated law firm should be required to observe and comply with the current rule of professional conduct on firm names in order to ensure that the public is not misled into believing that non-lawyers are practising or are entitled to practise law,

m. a comprehensive review should be undertaken of and, if required, appropriate amendments or additions should be made to the Society's *Rules of Professional Conduct* and relevant by-laws, to address the obligations and responsibilities outlined above as a matter of implementing the regulatory scheme proposed by the Task Force for the affiliated law firm.

III. PARTICULARS OF THE REGULATORY SCHEME

A. BY-LAW AND RULES

7. The Task Force considered the form the regulatory provisions should take and consulted the Society's legislation and research counsel, Elliot Spears, in this respect. After those discussions, the Task Force concluded the following:

a. A separate by-law, as opposed to amending By-Law 25 on Multi-Discipline Practices, should be drafted. By-Law 25 deals with non-lawyers' services with lawyers in a law practice, whereas the scheme for affiliated law firms governs the joint services and promotion of services of lawyers and other service providers. The Task Force felt that it was simpler to prepare a new by-law to deal with this type of arrangement.

b. The following should be included in a by-law:

- the definition of an affiliated law firm
- the fact of the ownership and control of the affiliated law firm by lawyers
- the requirement for disclosure of specific information to the Law Society
- the requirement for separate premises for the affiliated law firm
- the requirement to observe certain rules, etc. governing affiliated law firms
- the triggering of a self-reporting requirement upon becoming an affiliated law firm

c. The following matters should be dealt with in the Rules:

- conflicts of interest
- fee and profit sharing
- advertising

The Task Force felt that if an existing rule relates to the subject matter of a recommendation, it should be used, keeping the primary regulatory provisions in the by-law.

8. Based on the above, the proposed new by-law incorporates recommendations a., b., c., e., and i., and the amendments to the Rules cover recommendations d., f., g., h., j., k., l., and m. The Rule amendments also include definitions relevant to an affiliation.

9. In connection with the proposed Rule amendments, the Task Force sought the drafting expertise of Paul Perell, a lawyer with Weir Foulds in Toronto, who assisted the Task Force on the Review of the Rules of Professional Conduct ("Rules Task Force"). The Task Force also received advice on the rule amendments from Gavin MacKenzie, who co-chaired the Rules Task Force. The Task Force thanks Mr. Perell and Mr. MacKenzie for their insight and helpful direction.

B. PARTICULARS OF THE BY-LAW

Section 1

Interpretation: "affiliated entity"

1. (1) In this By-Law, "affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario.

Interpretation: "affiliation"

(2) For the purposes of this By-Law, a member or group of members affiliates with an affiliated entity when the member or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the legal services of the member or group and the non-legal services of the affiliated entity.

10. Subsection 1(1) includes a definition of "affiliated entity", which is the non-lawyer component of the affiliation, that is designed to exclude lawyers practising law outside Ontario. Otherwise, interprovincial and international law firms that include Ontario lawyers would unintentionally be caught by the by-law. Subsection1(2) incorporates the definition of "affiliated law firm" in recommendation a. of the policy report.

Section 2

Ownership of practice, *etc.*

2. A member who or a group of members that affiliates with an affiliated entity shall alone or together with other persons authorized to practise law in or outside Ontario

(a) own the practice through which the member or group delivers legal services to the public or comply with By-Law 25;

(b) maintain control over the practice through which the member or group delivers legal services to the public; and

(c) carry on the practice through which the member or group delivers legal services to the public, other than those that are delivered jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the legal services of the member or group.

11. Paragraph 2(a) requires compliance with By-Law 25, as applicable. This is necessary as the affiliated law firm may be a partnership of lawyers and non-lawyers under By-Law 25 where ownership is shared among them. That by-law includes requirements for effective control by the lawyer of the non-lawyer's services in the firm and for supervision of non-lawyers.

12. Paragraph 2(c) permits the lawyer and non-lawyer to provide their joint services at the premises of the affiliated entity or the law firm to facilitate work on client matters. However, the practice of law of the affiliated law firm must be carried out at an office separate from that of the affiliated entity.

Sections 3 through 5

Report to Society

3. (1) A member who or a group of members that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be in Form 00A and shall include the following information:

1. The financial arrangements that exist between the member or group of members and the affiliated entity.

2. The arrangements that exist between the member or group of members and the affiliated entity with respect to,

i. the ownership, control and management of the practice through which the member or group delivers legal services to the public,

ii. the member's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity, and

iii. the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a member or group of members gives notice under subsection (1), the member or group shall file with the Society a copy of so much of any agreement between the member or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

4. (1) A member who or a group of members that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Form 00B

(2) The report required under subsection (1) shall be in Form 00B.

Due date

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member or group of members is submitting a report.

Joint and several responsibility

(4) Every member in a group of members is responsible jointly with the other members of the group and severally for submitting the report required under subsection (1).

Period of default

(5) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 4 (1) of this By-Law is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(6) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 4 (1) of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 00B in force at the time the member is filing the report.

Change of Information

5. (1) A member who or a group of members that affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the member or group under section 3 or section 4; and

(b) any change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2), shall include copies of the parts of the agreement or document that have changed.

13. In the Task Force's view, the best way to facilitate the Society's review and monitoring of affiliated law firms' regulatory compliance is through prescribed forms pursuant to the by-law that will capture

- information identifying the law firm and the affiliated entity (e.g., name, location, contact information)
- information on the types of services provided by the lawyers and the non-lawyers in the affiliation
- information about the financial arrangements between the law practice and the affiliated entity
- information on the arrangements in place to assure lawyers' ownership and control of the law practice, and compliance with obligations relating to conflicts and confidentiality

Through the forms, the Society will receive in a standardized format information required to assess lawyers' compliance with their obligations under the by-law.

14. Forms A and B under the by-law are the notice of affiliation and annual report respectively. The particular information required to be filed pursuant to the by-law is described in each form.

15. Form A is filed when a lawyer and an affiliated entity affiliate under the by-law. While the written notice must be filed with the Society, unlike the scheme in By-Law 25, the Society does not grant approval for the affiliation based on the notice. The Task Force did not believe that a licensing scheme was necessary for this type of relationship.

16. Form B requests much of the information a lawyer provides through Form A, but Form B need not be filed if no changes have occurred in the information previously provided in Form A. The filing deadline for the annual report is that applicable to other forms prescribed in the Society's by-laws.

17. To ensure that the Society has the most current information about an affiliation, Section 5 of the by-law requires that the lawyer provide to the Society information about any changes to the relationship between the lawyer and the affiliated entity as described in sections 3 and 4 as those changes occur. This information would include changes to any of the agreements relevant to the affiliation described in subsection 3(2). Although written notice is required under section 5, the Task Force decided that a prescribed form was not required for this purpose.

18. As with other information the Society requires its members to provide for a specific purpose, the information gathered through Forms A and B is confidential to the Society.

C. PARTICULARS OF THE RULE AMENDMENTS

Rule Amendments Flowing From Specific Recommendations

Rule 1.02 - Definition of "affiliation" and "affiliated entity"

19. As noted above, the by-law includes a definition of "affiliated entity" and a section interpreting "affiliation". It is proposed that similar definitions appear in the rules for clarity's sake. The following amendment is proposed:

> "affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario
>
> "affiliation" means the joining on a regular basis of a lawyer or group of lawyers with an affiliated entity in the delivery or promotion and delivery of the legal services of the lawyer or group of lawyers and the non-legal services of the affiliated entity

Rule 2.04 - Avoidance of Conflicts of Interest

20. The rule on conflicts of interest requires amendment to address
- disclosure to the client about affiliated law firm services and how the joint delivery of services by the affiliated firms may affect solicitor and client privilege and confidentiality of client information
- the requirement for conflicts searches in the affiliated law firm and the non-law firm
- the "cross-over" lawyer situation[2]

---

2 This was described in the Task Force's policy report as follows:

> Another issue bearing on the question of privilege arises when lawyers move between the law firm and the non-lawyer firm, for example, a professional services entity, in providing legal advice to clients on one hand and professional consulting services on the other, for instance, in the tax area. ...Prohibiting this activity would require that clear lines be drawn between the practice of law by the law firm and the practice of the non-lawyer firm. ...The other way of resolving the issue is through disclosure, requiring the client to receive a caution about the activity. ...The Task Force was of the view that prohibiting the movement of lawyers between the affiliated law firm and the non-law firm was not practicable, and notwithstanding the risks described above, would be an unnecessarily strict regulatory requirement. The Task Force believes that the disclosure...should serve to provide clients with the information they need to decide the manner in which they wish to receive advice from lawyers who move between the firms.

21. With respect to the last item above, the Task Force acknowledges that a lawyer's independence is intimately connected with the realm of conflicts of interest. The Task Force confirms its view that the independence of the lawyer's legal advice may be affected as a result of his or her dual status as a partner or associate in an affiliated law firm and as a partner in a non-law firm in the affiliation. The Rules should include a requirement for disclosure to law firm clients on how the "outside interest" of the lawyer as partner in the non-law firm bears on the legal retainer. These issues were addressed in paragraphs 72 and 73 of the policy report in the following way:

> The *Rules of Professional Conduct* include a provision in rule 6.04 on Outside Interests and the Practice of Law. The rule requires lawyers to maintain independent judgment related to legal services notwithstanding involvement in other ventures or businesses. This rule only permits a financial or economic interest if it does not impair the lawyer's independence. The Task Force considered the law relating to fiduciary duties in this context which would require disclosure to the client of such influences. Rule 6.04 currently does not require disclosure to the client.
>
> The Task Force felt that such relationships should be disclosed at the time of retaining the affiliated law firm to clients whose work crosses over both firms, and that rule 6.04 should be amended accordingly. The disclosure document itself should disclose fully to clients the law firm's relationship with the non-lawyer firm, the "connections" between the two firms, the fact of the separation for regulatory purposes, and any other participation of the lawyers in the non-lawyer firm, as partners and as service providers, as the case may be.

22. After considering options with respect to rule amendments, the Task Force concluded that including the disclosure requirement in the rule on conflicts of interest, rather than amending rule 6.04, was the appropriate way to deal with the issue.

23. Recommendations d., g., h., j. and k. from the Task Force's report are the basis for the following additions to rule 2.04:

> Affiliations Between Lawyers and Affiliated Entities
>
> 2.04 (10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client
>
> (a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer's office,
>
> (b) the lawyer's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,

(c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer's representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and

(d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer's representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client's consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practicing in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest as if the lawyer's practice and the practice of the affiliated entity were one. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to paragraph (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

24. The Task Force acknowledges that the definition of affiliation captures more than law firms and non-law firms who by design operate under comprehensive arrangements for the joint delivery of legal and non-legal services. Convocation, however, agreed that the definition proposed by the Task Force was appropriate. While the conflicts search requirement may appear to be an onerous obligation for the less "formal" affiliations that fall within the definition, the Task Force determined that the focus should be on the underlying professional conduct issues and that the regulatory scheme must apply to all types of affiliations as defined to be consistent with the principles in the policy report.

25. The requirement in subsection (10.3) above essentially permits affiliated law firms to design their own systems for searching conflicts and to make the required disclosure to clients. In this way, the Society avoids prescribing the details of compliance and give firms flexibility in designing a facility that will meet the requirement for their particular structure.

Rule 2.08(9) - Division of Fees

26. The Task Force proposes that new commentary be added at the end of rule 2.08, which contains the general prohibition on fee and profit sharing between lawyers and non-lawyers, to address issues arising from financial arrangements between the affiliated firms. Recommendation f. is the basis for the amendment.

27. When the Task Force reviewed rule 2.08(9), it noticed that on a plain reading of the rule, profit sharing between lawyers in an interprovincial law firm or in an international law partnership would be prohibited. The rule reads:

> (9) A lawyer shall not
>
> (a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or
>
> (b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

The phrase "person who is not a lawyer" would include lawyers who are members of other Canadian law societies or authorized to practice law outside Canada. The Task Force doubts that this prohibition was intended, and it appears to be observed in the breach in both circumstances.

28. The issue of international partnerships of Ontario and non-Ontario (non-Canadian) lawyers has been examined by the Federation of Law Societies, but a protocol or suggested practice in respect of profit sharing or other issues has yet to be formulated.

29. The Task Force decided to refer this matter to the Professional Regulation Committee for consideration and understands that it will be bringing the matter to Convocation for the policy discussion on Ontario lawyers sharing profits with non-Canadian lawyers.[3]

30. In the event that Convocation agrees with the suggested amendments to rule 2.08(10), the new commentary discussed above would follow this subrule, and would read as follows:

> Commentary
>
> An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08(9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

31. In the event that Convocation does not wish to amend rule 2.08(10) as proposed, the Task Force proposes that new commentary dealing with the affiliated law firm issue as it relates to rule 2.08(9) be added after that rule, as follows:

---

[3]If Convocation agrees that the exception should be included in the rule, the Task Force suggests the following amendments to rule 2.08(9):

> Exception for Multi-discipline Practices and Interprovincial and International Law Firms
>
> (10) Subrule (9) does not apply to
>
> (a) multi-discipline practices of lawyer and non-lawyer partners where the partnership agreement provides for the sharing of fees, cash flows or ~~and~~ profits among members of the firm, and
>
> (b) sharing of fees, cash flows or profits by lawyers who are
>
> (i) members of an interprovincial law firm, or
>
> (ii) members of a law partnership of Ontario and non-Canadian lawyers who otherwise comply with this rule.

Commentary

Subrule (9) applies in circumstances where a lawyer is affiliated with an affiliated entity. In such circumstances, the affiliated entity is not permitted to share in the lawyer's revenues, profits or cash flows, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses that do not reflect their fair market value.

Rule Amendments Required for Harmonization with the Regulatory Scheme

32. A review of the Rules, pursuant to recommendation m. of the policy report[4], was completed by the Task Force to ensure that the Rules adequately address affiliated law firm structure issues. As a result, the Task Force is proposing that the following amendments be made to the Rules.

Rule 3.03 - Letterhead

33. This rule should be amended by adding paragraph (l) below to permit law firms to include on letterhead notice of an affiliation with a non-law firm:

3.03 (1) Subject to subrules (2) and (3) and rule 3.05, a lawyer's letterhead and the signs identifying the office may only include

...

(l) reference to an affiliation.

Rule 3.04/3.05 - Advertising

34. Amendments should be made to the rule prohibiting lawyers' names from appearing on advertising material offering services other than legal services to permit affiliated firms' joint marketing activities. The proposal is to amend rule 3.04(3)(a) and add new commentary following that rule, as follows:

Restrictions on Advertising

3.04 (3) A lawyer shall not

(a) permit the lawyer's name to appear as solicitor, counsel, or Queen's Counsel on any advertising material offering goods, other than securities or legal publications, or services, other than legal services, to the public, except advertising material offering the services of a lawyer and an affiliated entity in an affiliation,

Commentary (New)

Where a lawyer is in an affiliation, he or she should ensure that any advertisements do not mislead the public about who is providing the legal services.

---

[4]Recommendation m. reads:

m. a comprehensive review should be undertaken of and, if required, appropriate amendments or additions should be made to the Society's *Rules of Professional Conduct* and relevant by-laws, to address the obligations and responsibilities outlined above as a matter of implementing the regulatory scheme proposed by the Task Force for the affiliated law firm.

Rule 5.01 - Supervision/Delegation

35. On the assumption that the professional services of the affiliated firms may be integrated to a degree, the Task Force determined that a new rule should address the lawyer's role in delegating work to non-lawyers in the non-law firm in connection with provision of legal services. The Task Force proposes that the following new subrule appear at the end of rule 5.01:

> Affiliations Between Lawyers and Affiliated Entities
>
> (6) A lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity's staff any tasks in connection with the provision of legal services without obtaining the client's informed consent.

IV. ISSUES RESPECTING BY-LAW 25

36. In considering the regulatory scheme for affiliated law firms, the Task Force reviewed By-Law 25 on Multi-Discipline Practices. As a result of that review, the Task Force is proposing amendments to By-Law 25 to effect the following:

- Non-Ontario Canadian lawyers are to be excluded from the operation of certain provisions in the by-law that deal with the lawyer's responsibilities for the conduct and activities of non-lawyers. This is necessary as the term "individual" in the by-law describing the non-lawyer may be interpreted to include non-Ontario Canadian lawyers in interprovincial partnerships. There was no intention to require Ontario lawyers in those partnerships to meet these obligations.
- The authority for the Society to suspend and reinstate members' rights and privileges for default in filings should be added to the by-law, in a fashion similar to that found in the new by-law on affiliations with non-lawyers

37. A separate motion, appearing in the next section of the report includes the amendments that the Task Force is requesting Convocation make to By-Law 25. Current By-Law 25 appears at Appendix B.

V. SUMMARY

38. In preparing the regulatory scheme for affiliated law firms, the Task Force was mindful of Convocation's policy direction in this respect, based on the Task Force's policy report which states:

> The Task Force urges Convocation to consider this a first but important step in the regulation of the affiliated law firm. Experience with the structure may in time require reconsideration of the position adopted by the Society for regulation of such firms. For the time being, however, the nature of the affiliation, in the Task Force's view, warrants a careful and considered approach to regulation, in keeping with the obligation of the Society to place the public interest first.

39. The Task Force believes that the proposed scheme achieves an appropriate balance between protecting the values of the profession as a matter of public interest and avoiding onerous or overly intrusive regulatory requirements that would make affiliations impractical or unattractive for lawyers. While the Task Force acknowledges that a range of affiliations will be subject to the by-law and Rules, the intricacies of compliance with the scheme will vary from firm to firm, depending on the nature of the affiliation and the degree of integration between the law firm and the non-law firm. As noted above, experience with the scheme will be instructive for the Society.

40. The Society's administrative infrastructure includes processes for review and approval of multi-discipline partnership (MDP) applications under By-Law 25, and it is expected that the handling of affiliated law firm filings will be added to those processes. As with MDPs, it is not expected that a large number of notices of affiliation will be filed with the Society initially.

41. Information about the regulatory scheme for affiliated law firms will be available on the Society's website and through the *Ontario Lawyers Gazette*. Advisory Services will also be a point of access for such information.

42. The Task Force requests Convocation's approval of this scheme.

VI. DECISION FOR CONVOCATION

43. Convocation is asked to
   a. make By-Law 00[5] entitled "Affiliations with Non-Lawyers" as proposed or amended as Convocation deems appropriate
   b. make the amendments to the *Rules of Professional Conduct* as proposed or amended as Convocation deems appropriate
   c. make the amendments to By-Law 25 as proposed or amended as Convocation deems appropriate

   Motions to make the new by-law and to amend By-Law 25 appear below. The making of the Rule amendments should reference the amendments found in Appendix A of this report.

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 3, 9, 44 and 48 of subsection 62 (0.1) of the *Law Society Act*, By-Law 00 [Affiliations with Non-Members] be made as follows:

---

[5] A by-law number will be assigned to the by-law prior to Convocation making the by-law.

BY-LAW 00

AFFILIATIONS WITH NON-MEMBERS

Interpretation: "affiliated entity"
1. (1) In this By-Law, "affiliated entity" means any person or group of persons other than a person or group of persons authorized to practise law in or outside Ontario.

Interpretation: "affiliation"
(2) For the purposes of this By-Law, a member or group of members affiliates with an affiliated entity when the member or group on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the legal services of the member or group and the non-legal services of the affiliated entity.

Ownership of practice, *etc.*
2. A member who or a group of members that affiliates with an affiliated entity shall alone or together with other persons authorized to practise law in or outside Ontario,

(a) own the practice through which the member or group delivers legal services to the public or comply with By-Law 25;

(b) maintain control over the practice through which the member or group delivers legal services to the public; and

(c) carry on the practice through which the member or group delivers legal services to the public, other than those that are delivered jointly with the non-legal services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its non-legal services, other than those that are delivered by the affiliated entity jointly with the legal services of the member or group.

Report to Society
3. (1) A member who or a group of members that agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice
(2) Notice under subsection (1) shall be in Form 00A and shall include the following information:

1. The financial arrangements that exist between the member or group of members and the affiliated entity.

2. The arrangements that exist between the member or group of members and the affiliated entity with respect to,

i. the ownership, control and management of the practice through which the member or group delivers legal services to the public,

ii. the member's or group's compliance with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity, and

iii. the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity.

Agreements

(3) At the time that a member or group of members gives notice under subsection (1), the member or group shall file with the Society a copy of so much of any agreement between the member or group and the affiliated entity, or of any other document, that addresses the matters mentioned in subsection (2) as may be required by the Society.

Filing requirements

4. (1) A member who or a group of members that affiliates with an affiliated entity shall submit to the Society for every full or part year that the affiliation continues a report in respect of the affiliation.

Form 00B

(2) The report required under subsection (1) shall be in Form 00B.

Due date

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member or group of members is submitting a report.

Joint and several responsibility

(4) Every member in a group of members is responsible jointly with the other members of the group and severally for submitting the report required under subsection (1).

Period of default

(5) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 4 (1) of this By-Law is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(6) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 4 (1) of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 00B in force at the time the member is filing the report.

Change of Information

5. (1) A member who or a group of members that affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the member or group under section 3 or section 4; and

(b) any change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the member or group and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 3 (2), shall include copies of the parts of the agreement or document that have changed.

Form 00A

Notice of Affiliation

NOTICE OF AFFILIATION

1. INFORMATION ON MEMBER OR GROUP:

Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

Telephone number: *(If the member or group practises law at more than one place, specify the telephone number of each place.)*

Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

Nature of practice of law: *(Specify the areas of law practised by the member or group and include the proportion of time devoted to each area of law.)*

2. INFORMATION ON AFFILIATED ENTITY

Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

_ Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

I *(or* WE*)* CERTIFY that the information contained in this notice is correct to the best of my *(or* our*)* knowledge.

Date: *(Signature of member or of each member of group)*

Form 00B

Annual Report on Affiliation

ANNUAL REPORT ON AFFILIATION

REPORT FOR THE YEAR *(SPECIFY CALENDAR YEAR)*
(OR REPORT FOR THE PERIOD *(SPECIFY THE PERIOD TO BE COVERED BY THE REPORT IF LESS THAN A FULL CALENDAR YEAR))*

This is the annual report of: *(Name of member of group of members)*

There has been no change in the information provided by the member *(or* the group*)* in the Notice of Affiliation dated *(specify date of Notice) (or* in the Notice of Affiliation dated *(specify date of Notice)* as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*) (or* in the last Annual Report on Affiliation submitted to the Society*) (or* in the last Annual Report on Affiliation submitted to the Society as amended by the notice*(s)* of change of information dated *(specify date(s) of notice(s))* filed under section 5 of By-Law 00*)*

(OR, if there has been a change in information, complete all the following sections:

1. INFORMATION ON MEMBER OR GROUP:

Name: *(In the case of a group, specify the name of the group (e.g., firm name, name of corporation) and the names of all members of the group.)*

Address: *(Specify the address at which the member or group practises law. If the member or group practises law at more than one place, specify the address of each place.)*

Telephone number: *(If the member or group practises law at more than one place, specify the telephone number of each place.)*

Fax number: *(If the member or group practises law at more than one place, specify the fax number of each place.)*

Contact information: *(In the case of a group, specify the name, address, telephone number and fax number of the member of the group with whom the Society should be speaking and corresponding in respect of the notice.)*

Nature of practice of law: *(Specify the areas of law practised by the member or group and include the proportion of time devoted to each area of law.)*

2. INFORMATION ON AFFILIATED ENTITY

Name: *(If the affiliated entity is not an individual, specify the name of the affiliated entity (e.g., firm name, name of corporation) and the names of all the individuals who provide non-legal services through the affiliated entity.)*

Information on delivery of services by affiliated entity:

Types of services delivered by affiliated entity:

Places of delivery of services: *(Specify the places where the affiliated entity delivers its non-legal services. Include the address, telephone number and fax number of each place.)*

3. INFORMATION ON AFFILIATION

Types of legal services that the member or group will be delivering jointly with the non-legal services of the affiliated entity:

Types of non-legal services that the affiliated entity will be delivering jointly with the legal services of the member or group:

Places of delivery of legal services: *(Specify the places where the legal services of the member or group will be delivered jointly with the non-legal services of the affiliated entity. Include the address, telephone number and fax number of each place.)*

Information on financial arrangements between the member or group and the affiliated entity: *(Provide a detailed description of the financial arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the ownership, control and management of the practice through which the member or group delivers legal services to the public: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rule, policies and guidelines on conflicts of interest in relation to clients of the member or group who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.)*

Information on arrangements between the member or group and the affiliated entity with respect to the member's or group's compliance with the Society's rules, policies and guidelines on confidentiality of information in relation to information provided to the member or any member of the group by clients who are also clients of the affiliated entity: *(Provide a detailed description of the arrangements. Attach copies of any written agreements or other documents that evidence the arrangements.))*

I *(or* WE*)* CERTIFY that the information contained in this report is correct to the best of my *(or* our*)* knowledge.

Date: *(Signature of member or of each member of group)*

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 25
[MULTI-DISCIPLINE PRACTICES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 24, 2001

MOVED BY

SECONDED BY

THAT By-Law 25 [Multi-Discipline Practices] made by Convocation on April 30, 1999 and amended by Convocation on May 28, 1999, June 25, 1999 and December 10, 1999 be further amended as follows:

1. Section 1 of By-Law 25 [Multi-Discipline Practices] is amended by adding the following:

Application of certain sections

(3) Subsection 4 (2) and sections 5, 6, 14, 15, 18 and 19 do not apply in respect of a partnership or an association that is not a corporation entered into by a member with an individual who is authorized to practise law in any province or territory of Canada outside Ontario.

2. Section 14 of the By-Law is amended by adding the following:

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 14 (1) of this By-Law is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(5) If a member's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 4 (1) of this By-Law, for the purpose of subsection 47 (2) of the Act, the member shall complete and file the report in Form 25B in force at the time the member is filing the report.

APPENDIX A

AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT*

1.02 DEFINITIONS

1.02 In these rules, unless the context requires otherwise,

"affiliated entity" means any person or group of persons other than a person or group authorized to practise law in or outside Ontario;

"affiliation" means the joining on a regular basis of a lawyer or group of lawyers with an affiliated entity in the delivery or promotion and delivery of the legal services of the lawyer or group of lawyers and the non-legal services of the affiliated entity;

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Definition

2.04 (1) In this rule

a "conflict of interest" or a "conflicting interest" means an interest

(a) that would be likely to affect adversely a lawyer's judgment on behalf of, or loyalty to, a client or prospective client, or

(b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

Commentary

Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information. For example, there would be a conflict of interest if a lawyer, or a family member, or a law partner had a personal financial interest in the client's affairs or in the matter in which the lawyer is requested to act for the client, such as a partnership interest in some joint business venture with the client.

Avoidance of Conflicts of Interest

(2) A lawyer shall not advise or represent more than one side of a dispute.

(3) A lawyer shall not act or continue to act in a matter when there is or is likely to be a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents.

Commentary

A client or the client's affairs may be seriously prejudiced unless the lawyer's judgment and freedom of action on the client's behalf are as free as possible from conflict of interest.

A lawyer should examine whether a conflict of interest exists not only from the outset but throughout the duration of a retainer because new circumstances or information may establish or reveal a conflict of interest.

As important as it is to the client that the lawyer's judgment and freedom of action on the client's behalf should not be subject to other interests, duties, or obligations, in practice this factor may not always be decisive. Instead, it may be only one of several factors that the client will weigh when deciding whether or not to give the consent referred to in the rule. Other factors might include, for example, the availability of another lawyer of comparable expertise and experience, the extra cost, delay and inconvenience involved in engaging another lawyer, and the latter's unfamiliarity with the client and the client's affairs. In some instances, each client's case may gather strength from joint representation. In the result, the client's interests may sometimes be better served by not engaging another lawyer, for example, when the client and another party to a commercial transaction are continuing clients of the same law firm but are regularly represented by different lawyers in that firm.

While this subrule does not require that a lawyer advise the client to obtain independent legal advice about the conflicting interest, in some cases, especially those in which the client is not sophisticated or is vulnerable, the lawyer should recommend such advice to ensure that the client's consent is informed, genuine, and uncoerced.

Acting Against Client

(4) A lawyer who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved in or associated with the client in that matter

(a) in the same matter,

(b) in any related matter, or

(c) save as provided by subrule (5), in any new matter, if the lawyer has obtained from the other retainer relevant confidential information

unless the client and those involved in or associated with the client consent.

Commentary

It is not improper for the lawyer to act against a client in a fresh and independent matter wholly unrelated to any work the lawyer has previously done for that person and where previously obtained confidential information is irrelevant to that matter.

(5) Where a lawyer has acted for a former client and obtained confidential information relevant to a new matter, the lawyer's partner or associate may act in the new matter against the former client if

(a) the former client consents to the lawyer's partner or associate acting, or

(b) the law firm establishes that it is in the interests of justice that it act in the new matter, having regard to all relevant circumstances, including

(i) the adequacy and timing of the measures taken to ensure that no disclosure of the former client's confidential information to the partner or associate having carriage of the new matter will occur,
(ii) the extent of prejudice to any party,
(iii) the good faith of the parties,
(iv) the availability of suitable alternative counsel, and
(v) issues affecting the public interest.

Commentary

The term "client" is defined in rule 1.02 to include a client of the law firm of which the lawyer is a partner or associate, whether or not the lawyer handles the client's work. Therefore, if a member of a law firm has obtained from a former client confidential information that is relevant to a new matter, no member of the law firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied. In its effect, subrule (5) extends with necessary modifications the rules and guidelines about conflicts arising from a lawyer transfer between law firms (rule 2.05) to the situation of a law firm acting against a former client.

Joint Retainer

(6) Before a lawyer accepts employment from more than one client in a matter or transaction, the lawyer shall advise the clients that

(a) the lawyer has been asked to act for both or all of them,

(b) no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and

(c) if a conflict develops that cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Commentary

Although this subrule does not require that, before accepting a joint retainer, a lawyer advise the client to obtain independent legal advice about the joint retainer, in some cases, especially those in which one of the clients is less sophisticated or more vulnerable than the other, the lawyer should recommend such advice to ensure that the client's consent to the joint retainer is informed, genuine, nd uncoerced.

(7) Where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

Commentary

Although all the parties concerned may consent, a lawyer should avoid acting for more than one client when it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.

(8) Where a lawyer has advised the clients as provided under subrules (6) and (7) and the parties are content that the lawyer act, the lawyer shall obtain their consent.

(9) Save as provided by subrule (10), where clients have consented to a joint retainer and an issue contentious between them or some of them arises, the lawyer shall

(a) not advise them on the contentious issue, and

(b) refer the clients to other lawyers, unless

(i) no legal advice is required, and
(ii) the clients are sophisticated,

in which case, the clients may settle the contentious issue by direct negotiation in which the lawyer does not participate.

Commentary

The rule does not prevent a lawyer from arbitrating or settling or attempting to arbitrate or settle, a dispute between two or more clients or former clients who are not under any legal disability and who wish to submit the dispute to the lawyer.

Where, after the clients have consented to a joint retainer, an issue contentious between them or some of them arises, the lawyer is not necessarily precluded from advising them on non-contentious matters

(10) Where clients consent to a joint retainer and also agree that if a contentious issue arises the lawyer may continue to advise one of them and a contentious issue does arise, the lawyer may advise the one client about the contentious matter and shall refer the other or others to another lawyer.

Affiliations Between Lawyers and Affiliated Entities

(10.1) Where there is an affiliation, before accepting a retainer to provide legal services to a client jointly with non-legal services of an affiliated entity, a lawyer shall disclose to the client

(a) any possible loss of solicitor and client privilege because of the involvement of the affiliated entity, including circumstances where a non-lawyer or non-lawyer staff of the affiliated entity provide services, including support services, in the lawyer's office,

(b) the lawyer's role in providing legal services and in providing non-legal services or in providing both legal and non-legal services, as the case may be,

(c) any financial, economic or other arrangements between the lawyer and the affiliated entity that may affect the independence of the lawyer's representation of the client, including whether the lawyer shares in the revenues, profits or cash flows of the affiliated entity; and

(d) agreements between the lawyer and the affiliated entity, such as agreements with respect to referral of clients between the lawyer and the affiliated entity, that may affect the independence of the lawyer's representation of the client.

(10.2) Where there is an affiliation, after making the disclosure as required by subrule (10.1), a lawyer shall obtain the client's consent before accepting a retainer under subrule (10.1).

(10.3) Where there is an affiliation, a lawyer shall establish a system to search for conflicts of interest of the affiliation.

Commentary

Lawyers practicing in an affiliation are required to control the practice through which they deliver legal services to the public. They are also required to address conflicts of interest as if the lawyer's practice and the practice of the affiliated entity were one. The affiliation is subject to the same conflict of interest rules as apply to lawyers and law firms. This obligation may extend to inquiries of offices of affiliated entities outside of Ontario where those offices are treated economically as part of a single affiliated entity.

In reference to paragraph (a) of subrule (10.1), see also subrule 5.01(6) on supervision and delegation.

Prohibition Against Acting for Borrower and Lender

(11) Subject to subrule (12), a lawyer or two or more lawyers practising in partnership or association shall not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.

(12) Provided that there is no violation of this rule, a lawyer may act for or otherwise represent both lender and borrower in a mortgage or loan transaction if

(a) the lawyer practises in a remote location where there are no other lawyers that either party could conveniently retain for the mortgage or loan transaction,

(b) the lender is selling real property to the borrower and the mortgage represents part of the purchase price,

(c) the lender is an institution that lends money in the ordinary course of its business,

(d) the consideration for the mortgage or loan does not exceed $50,000, or

(e) the lender and borrower are not at "arm's length" as defined in the *Income Tax Act (Canada).*

Multi-discipline Practice

(13) A lawyer in a multi-discipline practice shall ensure that non-lawyer partners and associates observe this rule for the legal practice and for any other business or professional undertaking carried on by them outside the legal practice.

Unrepresented Persons

(14) When a lawyer is dealing on a client's behalf with an unrepresented person, the lawyer shall

(a) urge the unrepresented person to obtain independent legal representation,

(b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the lawyer, and

(c) make clear to the unrepresented person that the lawyer is acting exclusively in the interests of the client and accordingly his or her comments may be partisan.

Commentary

If an unrepresented person requests the lawyer to advise or act in the matter, the lawyer should be governed by the considerations outlined in this rule about joint retainers.

2.08 FEES AND DISBURSEMENTS

Reasonable Fees and Disbursements

2.08 (1) A lawyer shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

(2) A lawyer shall not charge a client interest on an overdue account save as permitted by the *Solicitors Act* or as otherwise permitted by law.

Commentary

What is a fair and reasonable fee will depend upon such factors as

(a) the time and effort required and spent,

(b) the difficulty and importance of the matter,

(c) whether special skill or service has been required and provided,

(d) the amount involved or the value of the subject-matter,

(e) the results obtained,

(f) fees authorized by statute or regulation,

(g) special circumstances, such as the loss of other retainers, postponement of payment, uncertainty of reward, or urgency.

The fiduciary relationship between lawyer and client requires full disclosure in all financial dealings between them and prohibits the acceptance by the lawyer of any hidden fees. No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to professional employment may be taken by the lawyer from anyone other than the client without full disclosure to and the consent of the client or, where the lawyer's fees are being paid by someone other than the client, such as a legal aid agency, a borrower, or a personal representative, without the consent of such agency or other person.

Breach of this rule and misunderstandings about fees and financial matters bring the legal profession into disrepute and reflect adversely upon the general administration of justice. A lawyer should try to avoid controversy with a client about fees and should be ready to explain the basis for the charges (especially if the client is unsophisticated or uninformed about how a fair and reasonable fee is determined). A lawyer should inform a client about his or her rights to have an account assessed under the *Solicitors Act.*

Where possible to do so, a lawyer should give the client a fair estimate of fees and disbursements, pointing out any uncertainties involved, so that the client may be able to make an informed decision. This is particularly important concerning fee charges or disbursements that the client might not reasonably be expected to anticipate. When something unusual or unforeseen occurs that may substantially affect the amount of a fee or disbursement, the lawyer should forestall misunderstandings or disputes by giving the client an immediate explanation.

It is in keeping with the best traditions of the legal profession to provide services *pro bono* and to reduce or waive a fee where there is hardship or poverty or the client or prospective client would otherwise be deprived of adequate legal advice or representation. A lawyer should provide public interest legal services and should support organizations that provide services to persons of limited means.

Contingent Fees

(3) A lawyer shall not, except as expressly permitted by law, acquire by purchase or otherwise, any interest in the subject-matter of litigation being conducted by the lawyer.

(4) A lawyer shall not enter into an arrangement with the client for a contingent fee except in accordance with the provisions of the *Solicitors Act* or in accordance with the *Class Proceedings Act, 1992*.

Statement of Account

(5) In a statement of an account delivered to a client, a lawyer shall clearly and separately detail the amounts charged as fees and as disbursements.

Joint Retainer

(6) Where a lawyer is acting for two or more clients, the lawyer shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise.

Division of Fees and Referral Fees

(7) Where the client consents, fees for a matter may be divided between lawyers who are not in the same law firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

(8) Where a lawyer refers a matter to another lawyer because of the expertise and ability of the other lawyer to handle the matter and the referral was not made because of a conflict of interest, the referring lawyer may accept and the other lawyer may pay a referral fee provided that

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client, and

(b) the client is informed and consents.

(9) A lawyer shall not

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a lawyer, or

(b) give any financial or other reward to any person who is not a lawyer for the referral of clients or client matters.

Commentary

Subrule (9) applies in circumstances where a lawyer is affiliated with an affiliated entity. In such circumstances, the affiliated entity is not permitted to share in the lawyer's revenues, profits or cash flows, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses that do not reflect their fair market value.

[the following amendment is pending Convocation's policy discussion]

Exception for Multi-discipline Practices and Interprovincial and International Law Firms

(10) Subrule (9) does not apply to

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

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

(i) members of an interprovincial law firm, or

(ii) members of a law partnership of Ontario and non-Canadian lawyers

who otherwise comply with this rule.

[if the above rule amendment is accepted, the following commentary should also be adopted in place of the new proposed commentary above following subrule (9) above]

Commentary

An affiliation is different from a multi-discipline practice established in accordance with the by-laws under the *Law Society Act*, an interprovincial law partnership or a partnership between Ontario lawyers and foreign lawyers. An affiliation is subject to subrule 2.08(9). In particular, an affiliated entity is not permitted to share in the lawyer's revenues, cash flows or profits, either directly or indirectly through excessive inter-firm charges, for example, by charging inter-firm expenses above their fair market value.

Appropriation of Funds

(11) The lawyer shall not appropriate any funds of the client held in trust or otherwise under the lawyer's control for or on account of fees except as permitted by the by-laws under the *Law Society Act*.

3.03 LETTERHEAD

Letterhead

3.03 (1) Subject to subrules (2) and (3) and rule 3.05, a lawyer's letterhead and the signs identifying the office may only include

(a) the name of the lawyer or law firm,

(b) a list of the members of any law firm, including counsel practising with the firm,

(c) the words "barrister," "barrister-at-law," "barrister and solicitor," "lawyer," "law office," "solicitor," "solicitor-at-law," or the plural, where applicable,

(d) the words "notary" or "commissioner for oaths" or both, where applicable,

(e) the words "patent and trade mark agent," where applicable,

(f) a statement that a member of the law firm is qualified to practise law in another jurisdiction,

(g) a statement that a member of the law firm is certified by the Law Society as a specialist in a specified field,

(h) the phrase "limited liability partnership" or the letters "LLP," where applicable,

(i) the phrase "multi-discipline practice" or "multi-discipline partnership" where applicable,

(j) the addresses, telephone numbers, office hours, and the languages in which the lawyer or law firm is competent and capable of conducting a practice, and

(k) a logo, and

(l) reference to an affiliation.

3.04 ADVERTISING

Advertising Services Permitted

3.04 (1) Subject to subrule (3), a lawyer or a law firm may advertise their services or fees in any medium including the use of brochures and similar documents provided that the advertising

(a) is not false or misleading,

(b) is in good taste and is not such as to bring the profession or the administration of justice into disrepute, and

3. does not compare services or charges with other lawyers or law firms.

Advertising of Fees

(2) Subject to subrule (3), a lawyer or a law firm may advertise fees charged for their services subject to the following conditions:

(a) advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged,

(b) if fees are advertised, the fact that disbursements are an additional cost shall be made clear in the advertisement,

(c) advertisements shall not use words or expressions such as "from . . .," "minimum," or " . . . and up," or the like in referring to the fees to be charged,

(d) services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising lawyer or law firm during the 30-day period following the last publication of the fee unless there are special circumstances which could not reasonably have been foreseen, the burden of proving which rests upon the lawyer.

Restrictions on Advertising

(3) A lawyer shall not

(a) permit the lawyer's name to appear as solicitor, counsel, or Queen's Counsel on any advertising material offering goods, other than securities or legal publications, or services, other than legal services, to the public, except advertising material offering the services of a lawyer and an affiliated entity in an affiliation, and

(b) while in private practice, permit the lawyer's name to appear on the letterhead of a company as being its solicitor or counsel of a business, firm or corporation, other than the designation of honorary counsel or honorary lawyer on the letterhead of a non-profit or philanthropic organization that has been approved for such purpose by the standing committee of Convocation responsible for professional conduct.

Commentary

The means by which it is sought to make legal services more readily available to the public must be consistent with the public interest and must not detract from the integrity, independence, dignity, or effectiveness of the legal profession.

Where a lawyer is in an affiliation, he or she must must ensure that any advertisements do not mislead the public about who is providing the legal services.

5.01 SUPERVISION

Application

5.01 (1) In this rule, a non-lawyer does not include a student-at-law.

Direct Supervision Required

(2) A lawyer shall assume complete professional responsibility for all business entrusted to him or her and shall directly supervise staff and assistants to whom particular tasks and functions are delegated.

Commentary

A lawyer who practises alone or operates a branch or part-time office should ensure that all matters requiring a lawyer's professional skill and judgment are dealt with by a lawyer qualified to do the work and that legal advice is not given by unauthorized persons, whether in the lawyer's name or otherwise.

Where a non-lawyer has received specialized training or education and is competent to do independent work under the general supervision of a lawyer, a lawyer may delegate work to the non-lawyer.

A lawyer may permit a non-lawyer to perform tasks delegated and supervised by a lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work. Generally, subject to the provisions of any statute, rule, or court practice in that regard, the question of what the lawyer may delegate to a non-lawyer turns on the distinction between any special knowledge of the non-lawyer and the professional and legal judgment of the lawyer, which in the public interest, must be exercised by the lawyer whenever it is required.

A lawyer may permit a non-lawyer to act only under the supervision of a member of the Society. The extent of supervision will depend on the type of legal matter, including the degree of standardization and repetitiveness of the matter, and the experience of the non-lawyer generally and with regard to the matter in question. The burden rests on the lawyer who uses a non-lawyer to educate the latter concerning the duties that may be assigned to the non-lawyer and then to supervise the manner in which such duties are carried out. A lawyer should review the non-lawyer's work at sufficiently frequent intervals to enable the lawyer to ensure its proper and timely completion.

Permissible Delegation - The following examples, which are not exhaustive, illustrate situations where it may be appropriate to delegate work to non-lawyers subject to proper supervision.

Real Estate - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex transactions relating to the sale, purchase, option, lease, or mortgaging of

land, to draft statements of account and routine documents and correspondence, and to attend to registrations, provided that the lawyer should not delegate to a non-lawyer ultimate responsibility for review of a title search report or of documents before signing, or for the review and signing of a letter of requisition, a title opinion, or reporting letter to the client.

Corporate and Commercial - A lawyer may permit a non-lawyer to attend to all matters of routine administration and to assist in more complex matters and to draft routine documents and correspondence relating to corporate, commercial, and securities matters such as drafting corporate minutes and documents pursuant to corporation statutes, security instruments, security registration documents and contracts of all kinds, closing documents and statements of account, and to attend on filings.

Wills, Trusts and Estates - A lawyer may permit a non-lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

Litigation - A lawyer may permit a non-lawyer to attend to all matters of routine administration, and to assist in more complex matters, to collect information, draft routine pleadings, correspondence and other routine documents, research legal questions, prepare memoranda, organize documents, prepare briefs, draft statements of account and attend to filings. Generally, a non-lawyer shall not attend on examinations or in court except in support of a lawyer also in attendance. Permissible exceptions include law clerks appearing on

(a) routine adjournments in provincial courts,

(b) appearances before tribunals where statutes or regulations permit non-lawyers to appear, e.g., Small Claims Court, Coroners' Inquests, as agent on summary conviction matters where so authorized by the *Criminal Code*, and the *Provincial Offences Act* and administrative tribunals governed by the *Statutory Powers Procedure Act*,

(c) routine examinations in uncontested matters such as for the purpose of obtaining routine admissions, attendance upon judgment debtor examinations and on watching briefs but not the conduct of an examination for discovery in a contested matter or a cross-examination of a witness in aid of a motion,

(d) simple without notice matters or motions for a consent order before a master, and

(e) assessments of costs.

Delegation

(3) A lawyer shall not permit a non-lawyer to

(a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer is advised before any work commences,

(b) give legal opinions,

(c) give or accept undertakings, except with the express authorization of the supervising lawyer,

(d) act finally without reference to the lawyer in matters involving professional legal judgment,

(e) be held out as a lawyer,

Commentary

A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers, public officials, or with the public generally whether within or outside the offices of the law firm of employment.

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a support role to the lawyer appearing in such proceedings,

(g) be named in association with the lawyer in any pleading, written argument, or other like document submitted to a court,

(h) be remunerated on a sliding scale related to the earnings of the lawyer, except where the non-lawyer is an employee of the lawyer,

(i) conduct negotiations with third parties, other than routine negotiations where the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken,

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose,

(k) sign correspondence containing a legal opinion, but the non-lawyer who has been specifically directed to do so by a supervising lawyer may sign correspondence of a routine administrative nature, provided that the fact the person is a non-lawyer is disclosed, and the capacity in which the person signs the correspondence is indicated,

(l) forward to a client any documents, other than routine documents, unless they have previously been reviewed by the lawyer, or

(m) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do.

Commentary

A lawyer may, in appropriate circumstances, render service with the assistance of non-lawyers of whose competence the lawyer is satisfied. Though legal tasks may be delegated to such persons, the lawyer remains responsible for all services rendered and for all written materials prepared by non-lawyers.

(4) A lawyer shall not permit a non-lawyer to

(a) provide advice to the client concerning any insurance, including title insurance, without supervision,

(b) present insurance options or information regarding premiums to the client without supervision,

(c) recommend one insurance product over another without supervision, and

(d) give legal opinions regarding the insurance coverage obtained.

Collection Letters

(5) No collection letter shall be sent out over the signature of a lawyer, unless the letter is on the lawyer's letterhead, prepared under the lawyer's supervision, and sent from the lawyer's office.

Affiliations Between Lawyers and Affiliated Entities

(6) A lawyer in an affiliation shall not delegate to the affiliated entity or the affiliated entity's staff any tasks in connection with the provision of legal services without obtaining the client's informed consent.

APPENDIX B

BY-LAW 25

Made: April 30, 1999
Amended: May 28, 1999, June 25, 1999 and December 10, 1999

MULTI-DISCIPLINE PRACTICES

Interpretation: "member"
1. (1) In this By-Law, "member" includes a partnership of members.

Interpretation: practice of law

(2) For the purposes of this By-Law, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the provision of any legal services.

Prohibition against providing services of non-member

2. A member shall not, in connection with the member's practice of law, provide to a client the services of a person who is not a member except in accordance with this By-Law.

Permitted provision of services of non-member

3. A member may, in connection with the member's practice of law, provide to a client only the services of an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law.

Partnership, etc. with non-member

4. (1) Subject to subsection (2) and subsection 6 (1), a member may enter into a partnership or association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice law for the purpose of permitting the member to provide to clients the services of the individual.

Same

(2) A member shall not enter into a partnership or an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law unless the following conditions are satisfied:

1. The individual is qualified to practise a profession, trade or occupation that supports or supplements the practice of law.

2. In the case of entering into a partnership with the individual, the individual is of good character.

3. The individual agrees with the member in writing that the member shall have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the partnership or association.

4. The individual agrees with the member in writing that, in partnership or association with the member, the individual will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

5. The individual agrees with the member in writing that, outside of his or her partnership or association with the member, the individual will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.

6. The individual agrees with the member in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the member, the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

7. In the case of entering into a partnership with the individual, the individual agrees with the member in writing to comply with the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the member has "effective control" over the individual's practise of his or her profession, trade or occupation if the member may, without the agreement of the individual, take any action necessary to ensure that the member complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Interpretation: "good character"

(4) For the purposes of subsection (2), the individual is of "good character" if there is a reasonable expectation, based on the individual's record of integrity and professionalism in the practice of his or her profession, trade or occupation and on the individual's reputation in the community, that the individual will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Responsibility for actions of non-member

5. Despite any agreement between a member and an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall be responsible for ensuring that, in respect of the individual's practice of his or her profession, trade or occupation in partnership or association with the member,

(a) the individual practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the individual complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines.

Application by member forming partnership with non-member

6. (1) Before a member enters into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law, the member shall apply to the Society for approval to enter into the partnership.

Application fee

(2) An application under subsection (1) shall be in Form 25A and shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Partnership agreement

7. At the time that a member makes an application under section 6, the member shall file with the Society a copy of so much of the agreement or agreements that will govern the member's partnership with the individual as may be required by the Society.

Consideration of application by Secretary

8. (1) The Secretary shall consider every application made under section 6, and the Secretary shall approve the member's entering into a partnership with the individual if the Secretary is satisfied that,

(a) the conditions set out in subsection 4 (2) have been satisfied; and

(b) the member has made arrangements that will enable the member to comply with sections 5, 14 , 15, 16 and 19.

Requirements not met

(2) If the Secretary is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Secretary shall notify the member who may meet the requirement or appeal to the committee of benchers appointed under section 10 if the member believes that the requirement has been met.

Time for appeal

9. An appeal under subsection 8 (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that a requirement has not been met.

Committee of benchers

10. (1) Convocation shall appoint a committee of at least three benchers to consider appeals made under subsections 8 (2) and 17 (2).

Term of office

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

Consideration of appeal: quorum

11. Three benchers who are members of the committee appointed under section 10 constitute a quorum for the purposes of considering an appeal made under subsection 8 (2) or subsection 17 (2).

Procedure: application of rules of practice and procedure

12. (1) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2) as if the consideration of the appeal were the hearing of an application under section 27 of the Act.

Procedure: *SPPA*

(2) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee appointed under section 10 of an appeal made under subsection 8 (2).

Decision of committee of benchers

13. (1) After considering an appeal made under subsection 8 (2), the committee appointed under section 10 shall,

(a) if it determines that the requirement has been met, approve the member's entering into a partnership with the individual; or

(b) if it determines that the requirement has not been met, notify the member that the requirement has not been met and that the member may not enter into a partnership with the individual.

Decisions final

(2) The decision of the committee appointed under section 10 on an appeal made under subsection 8 (2) is final.

Filing requirements: partnerships

14. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form 25B

(2) The report required under subsection (1) shall be in Form 25B.

Due dates

(3) The report required under subsection (1) shall be submitted to the Society by January 31 of the year immediately following the full or part year in respect of which the member is submitting a report.

Changes in partnership

15. (1) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall immediately notify the Secretary when,

(a) the individual is expelled from the partnership;

(b) the individual ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the *Partnerships Act*; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Secretary may require the member to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the member notifies the Secretary under subsection (1) that an agreement that governs the partnership has been amended, the member shall file with the Secretary a copy of the amended agreement.

Dissolution of partnership: breach of By-Law

16. If a member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law breaches section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, the Secretary may require the member to dissolve the partnership.

Notice to member of requirement to dissolve partnership

17. (1) If the Secretary requires a member to dissolve a partnership under subsection 15 (2) or section 16, the Secretary shall so notify the member and, subject to subsection (2), the member shall dissolve the partnership.

Appeal

(2) If the Secretary requires a member to dissolve a partnership under section 16, the member may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 10 if the member believes that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the member notifying the Secretary in writing of the appeal within thirty days after the day the Secretary notifies the member that the partnership is to be dissolved.

Procedure

(4) The rules of practice and procedure apply, with necessary modifications to the consideration by the committee appointed under section 10 of an appeal made under subsection (2) as if the consideration of the appeal were the hearing of an application under subsection 34 (1) of the Act.

Decision of committee of benchers

(5) After considering an appeal made under subsection (2), the committee appointed under section 10 shall,

(a) if it determines that there has been no breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 5, section 14, subsection 15 (1), subsection 15 (3) or section 19, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Decisions final

(6) The decision of the committee appointed under section 10 on an appeal under made subsection (2) is final.

Stay

(7) The receipt by the Secretary of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with non-member: multi-discipline practice.

18. (1) A member who, under subsection 4 (1), has entered into an association that is not a corporation with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the association as a multi-discipline practice.

Partnership with non-member: multi-discipline practice or partnership

(2) A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Insurance requirements: members

19. A member who, under subsection 4 (1), has entered into a partnership with an individual who is not a member who practises a profession, trade or occupation that supports or supplements the practice of law shall maintain through the insurer of the Society's insurance plan professional liability insurance coverage for the individual in an amount determined by Convocation from time to time.

Form 25A

Application to Enter into a Multi-Discipline Partnership

APPLICATION TO ENTER INTO A
MULTI-DISCIPLINE PARTNERSHIP

TO THE SOCIETY

The applicant named below applies *(or* The applicants named below apply*)* for approval to enter into a partnership with the individual *(or* individuals*)* named below.

1. INFORMATION ON APPLICANT*(*S*)*

Name: *(If the applicant is a partnership of members, specify the firm name and the name of each partner. If there are two or more applicants, specify the name of each applicant.)*

Address: *(Specify the address at which the applicant, or if there are two or more applicants, at which each applicant, practises law at the time of the application. If an applicant practises law at more than one place, specify the address of each place)*

Telephone number: *(If an applicant practises law at more than one place, specify the telephone number of each place.)*

Fax number*(*s*)*: *(If an applicant practises law at more than one place, specify the fax number of each place.)*

Contact information: *(If the applicant is a partnership of members, or if there are two or more applicants, specify the name, address, telephone number and fax number of the partner, or applicant, with whom the Society should be speaking and corresponding in respect of the application.)*

Nature of practice of law: *(Specify the areas of law practised by the applicant or applicants and include the proportion of time devoted to each area of law.)*

2. INFORMATION ON INDIVIDUAL*(*S*)*

Name*(*s*)*: *(If there are two or more individuals, specify the name of each individual.)*

Profession, trade or occupation to be practised by individual*(*s*)* in partnership with the applicant*(*s*)*: *(Specify the profession, trade or occupation to be practised by each individual named.)*

Qualifications:

Academic background or learning experience which qualifies the individual to practise the profession, trade or occupation: *(Specify the academic background or learning experience separately for each individual named.)*

Number of years the individual has practised the profession, trade or occupation:

Membership of the individual in professional associations and details of membership:

(Provide the following information for each individual named.)

Current:

Name of each professional association to which the individual belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belongs at the time of the application:

Year in which the individual joined each professional association to which he or she belongs at the time of the application:

Is "good character" a requirement of membership in any professional association to which the individual belongs at the time of the application: *(Specify the professional associations to which the individual belongs at the time of the application where "good character" is a requirement of membership.)*

The individual's "standing" as a member of each professional association to which he or she belongs at the time of the application:

Disciplinary action taken against the individual by each association and the reasons for the disciplinary action:

Past:

Name of each professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which individual belonged in the past but to which the individual no longer belongs at the time of the application:

Period of time during which the individual was a member of each professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Reasons why the individual ceased to be a member of a professional association to which he or she belonged in the past but to which he or she no longer belongs at the time of the application:

Was "good character" a requirement of membership in any professional association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application: *(Specify the professional associations to which the individual belonged where "good character" is a requirement of membership.)*

Disciplinary action taken against the individual by each association to which the individual belonged in the past but to which the individual no longer belongs at the time of the application, and the reasons for the disciplinary action:

Information on current practice of profession, trade or occupation:

Place of practice: *(For each individual, specify where the individual currently practises the profession, trade or occupation. Include the address, telephone number and fax number of the place.)*

Information on future practice of profession, trade or occupation:

Continuation of practice: *(For each individual, specify whether the individual will continue to practise the profession, trade or occupation outside of the proposed multi-discipline partnership.)*

Place of practice: *(For each individual, specify where the individual will practise the profession, trade or occupation outside the proposed multi-discipline partnership.)*

3. CERTIFICATE OF APPLICANT*(S)* AS TO GOOD CHARACTER OF INDIVIDUAL*(S)*

I *(or* WE*)* CERTIFY that, for the following reasons, *(name of individual(s))* is *(or* are*)* of good character:

1. ... .

2. ... .

Date: *(Signature of applicant(s))*

4. INFORMATION ON PROPOSED MULTI-DISCIPLINE PARTNERSHIP

Name: *(Specify the firm name under which the proposed multi-discipline partnership will carry on business.)*

Address: *(Specify the address of the premises from which the proposed multi-discipline partnership will carry on business.)*

Telephone number: *(Specify the telephone number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Fax number: *(Specify the fax number of the premises from which the proposed multi-discipline partnership will carry on business.)*

Type of services to be provided by individual*(s)*: *(Provide a detailed description of the type of services to be provided by each individual in the proposed multi-discipline partnership.)*

Information on required agreements between applicant*(s)* and individual*(s)*: *(Complete this section if the required agreements are not included in the partnership agreement(s).)*

Agreement that applicant*(s)* to have effective control over individual's practice of profession, trade or occupation: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the applicant(s) will have effective control over the individual's practice of his or her profession, trade or occupation in so far as the individual practises the profession, trade or occupation to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that individual will not practise profession, trade or occupation except to provide services to clients of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in partnership with the applicant(s), the individual will not practise his or her profession, trade or occupation except to provide services to clients of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Agreement that, outside proposed multi-discipline partnership, individual will practise profession, trade or occupation independently of proposed multi-discipline partnership: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, outside the proposed multi-discipline partnership, the individual will practise his or her profession, trade or occupation independently of the proposed multi-discipline partnership and from premises that are not used by the proposed multi-discipline partnership for its business purposes. Attach a copy of the written agreement.)*

Agreement to conform with Act, *etc.*: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that, in respect of the practice of his or her profession, trade or occupation in partnership with the applicant(s), the individual will conform with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's Rules of Professional Conduct and the Society's policies and guidelines. Attach a copy of the written agreement.)*

Agreement to be governed by Society's rules, policies and guidelines on conflicts of interest: *(For each individual, specify whether the individual has agreed with the applicant(s) in writing that the individual will be governed by the Society's rules, policies and guidelines on conflicts of interest in relation to clients of the proposed multi-discipline partnership who are also clients of the individual practising his or her profession, trade or occupation independently of the proposed multi-discipline partnership. Attach a copy of the written agreement.)*

Arrangements made by applicant(s) to comply with section 5: *(Specify the arrangements made by the applicant(s) to comply with section 5. If the applicant is a partnership of members, specify the names of the member partners who will be responsible for the partnership's compliance with section 5. If there are two or more applicants, specify the names of the applicants who will be responsible for the applicants' compliance with section 5.)*

Arrangements made by applicant(s) to comply with section 14: *(Specify the arrangements made by the applicant(s) to comply with section 14.)*

Arrangements made by applicant(s) to comply with section 15: *(Specify the arrangements made by the applicant(s) to comply with section 15.)*

Arrangements made by applicant(s) to comply with section 16: *(Specify the arrangements made by the applicant(s) to comply with section 16.)*

Arrangements made by applicant(s) to comply with section 19: *(Specify the arrangements made by the applicant(s) to comply with section 19.)*

I *(or* WE*)* CERTIFY that the information contained in this application is correct to the best of my *(or* our*)* knowledge.

Date: *(Signature of applicant(s))*

Form 25B

Report on Multi-Discipline Partnership

REPORT ON MULTI-DISCIPLINE PARTNERSHIP

REPORT FOR THE YEAR *(SPECIFY CALENDAR YEAR)*
(OR REPORT FOR THE PERIOD *(SPECIFY THE PERIOD TO BE COVERED BY THE REPORT IF LESS THAN A FULL CALENDAR YEAR))*

1. INFORMATION ON FIRM

Name: *(Specify the firm name under which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Address: *(Specify the address of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Telephone number: *(Specify the telephone number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

Fax number: *(Specify the fax number of the premises from which the multi-discipline partnership carried on business during the year (or other period) in respect of which this report is being submitted.)*

In any written or verbal communications to persons outside the partnership, does the multi-discipline partnership refer to itself as:

A multi-discipline practice? *(Specify yes or no.)*

A multi-discipline partnership? *(Specify yes or no.)*

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline practice:

List of communications in which the multi-discipline partnership refers to itself as a multi-discipline partnership:

2. INFORMATION ON PARTNERS WHO ARE MEMBERS

Number of partners who are members:

Names of partners who are members:

3. INFORMATION ON PARTNERS WHO ARE NOT MEMBERS

Number of partners who are not members:

Names of partners who are not members:

Profession, trade or occupation practised by partners who are not members:

Types of services provided by partners who are not members:

Qualifications of partners who are not members:

Participation in educational programs, professional training or other programs to improve professional competence: *(For each partner who is not a member, specify any educational programs, professional training or other programs to improve professional competence in which the partner participated during the year (or other period) in respect of which this report is being submitted.)*

Membership in professional associations and details of membership:

(Provide the following information for each partner who is not a member.)

Name of each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Contact information (*i.e.*, address, telephone number and fax number) for each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted:

Year in which the partner joined each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted:

Is "good character" a requirement of membership in any professional association to which the individual belonged during the year (or other period) in respect of which this report is being submitted: *(Specify the professional associations to which the partner belonged during the year (or other period) in respect of which this report is being submitted where "good character" is a requirement of membership.)*

The partner's "standing" as a member of each professional association to which he or she belonged during the year (or other period) in respect of which this report is being submitted as at the end of the year (or other period):

Disciplinary action taken against the individual by each professional association to which the partner belonged during the year (or other period) in respect of which this report is being submitted during the year (or other period), and the reasons for the disciplinary action:

Information on practice of profession, trade or occupation outside the multi-discipline partnership:

Names of partners who are not members who practise their profession, trade or occupation outside the multi-discipline partnership: *(Identify the partners who are not members who, during the year (or other period) in respect of which this report is being submitted, practised their profession, trade or occupation outside the multi-discipline partnership.)*

Types of services provided outside the multi-discipline partnership by partners who are not members: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership the types of services the partner provides outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted.)*

Place of practice: *(Specify separately for each partner who is not a member who practises his or her profession, trade or occupation outside the multi-discipline partnership, the place where the partner practised his or her profession, trade or occupation outside the multi-discipline partnership during the year (or other period) in respect of which this report is being submitted. Include the address, telephone number and fax number of the place.)*

4. INFORMATION ON COMPLIANCE WITH BY-LAW 25

Arrangements made to permit partners who are members to comply with section 5: *(Specify the arrangements in place during the year (or other period) in respect of which this report is being submitted. Specify the names of the member partners who were responsible for the member partners' compliance with section 5 during the year (or other period) in respect of which this report is being submitted.)*

Professional liability insurance coverage for partners who are not members:

(If the partners who are not members are not insured as one group, provide the following information separately for each partner who is not a member.)

Name of insurance company providing professional liability insurance coverage for partners who are not members:

Policy number:

(The following certification is to be completed by the partners who are members.)

I *(or* WE*)* CERTIFY that the information contained in this report is correct to the best of my *(or* our*)* knowledge.

Date: *(Signature of partner(s))*

.....

The Report is scheduled to be debated at the May Convocation.

REPORT OF THE EQUITY AND ABORIGINAL ISSUES COMMITTEE

Re: Bencher-Staff Relations Procedures

Mr. Copeland presented the item in the Report dealing with Bencher-Staff Relations Procedures for Convocation's approval.

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

Report to Convocation

Decision-making
Information

Prepared by the Equity Initiatives Department

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Committee met on Thursday, April 12, 2001 from 1:30 - 4:30 p.m. in Convocation Room. Committee members in attendance were Paul Copeland, Chair; Judith Potter, Vice-Chair; George Hunter, Vice-Chair; Stephen Bindman; Marshall Crowe; Leonard Braithwaite; Barbara Laskin; Jeffrey Hewitt (non-bencher); Janet Stewart (non-bencher); Sanda Rogers; Hellene Puccini. Staff present were: Charles Smith, Josée Bouchard and Sheena Weir. Guests were Raj Anand respecting Bencher-Staff Relations Procedures.

2. The Committee is reporting on the following items:

Decision-making:

- *Bencher-Staff Relations Procedures*

Information:

- *Action Plan for Policy Issues Arising from Demographic Profile of the Legal Profession*
- *Canadian Race Relations Foundation Award of Merit*

FOR CONVOCATION DECISION-MAKING

BENCHER/LSUC STAFF RELATIONS PROCEDURES

1. In response to Committee's directive adopted at its June 7, 2000 meeting, Bencher/LSUC Staff Relations Procedures have been developed to clarify the steps involved in the event there is a situation between Law Society staff and a Bencher that falls within the scope of the LSUC Workplace Harassment and Discrimination Prevention policy.

2. The Committee directed that this item be brought forward to Convocation with a request to adopt the proposed procedures. In September, the matter was sent back to the Committee in light of a memo received from Ms Elliot Spears regarding the need to ensure the procedures comply with the *Law Society Act*. The procedures were then revised and approved by the Committee at its December 7, 2000 meeting.

3. In approving the procedures, the Committee had received two legal opinions (from Ms Josée Bouchard of the Equity Initiatives Department and Mr. Andrew Pinto, chair of the Law Society's Equity Advisory Group) identifying case law supporting adoption of such procedures. The Committee also had information on the procedures other law societies and legal associations have already adopted to ensure specific mechanisms are in place to address staff complaints about elected members. These are included in Appendix "A".

4. At the Committee meeting on January 11, a point was raised that, the two legal opinions notwithstanding, the *Law Society Act* Section 49.3 satisfies the legal requirement addressed in the case law and in human rights law. A third legal opinion from a leading practitioner in human rights law was then sought from Mr Raj Anand (WeirFoulds) and is included in Appendix "A".

5. Staff were also directed to conduct research on the rationale for this proposal and to determine best practices in this area. The results of this research indicate the following:

- Respecting compliance with the *Law Society Act*, the proposed procedures ensure such is done, i.e., it is up to the Treasurer to authorize investigations or to authorize use of alternative, informal procedures;

- Respecting the overall policy issue, i.e., the implications of the procedures to the Law Society's regulatory obligations, it is imperative to note that the Law Society has already approved the Discrimination/Harassment Counsel program, OBAP and LINK where similar issues exist. The Law Society also uses mediation as part of its approach in implementing the Alternative Dispute Resolution report adopted by Convocation in the fall of 1999. In this context, it is clear that the Law Society appears to be moving consistently toward importing non-litigious, remedial practices as a way of addressing issues of professional misconduct. The proposed procedures are one other step in this direction. It is also instructive to note that other law societies and legal associations have adopted similar procedures. Further, based on the encouragement of the Law Society, numerous law firms have adopted internal harassment policies and procedures;

- Respecting best practices, several organizations have adopted mediation as well as alternative dispute resolution and informal procedures to address issues of discrimination/harassment. Some of these organizations include: the Ontario Human Rights Commission, IBM, Intel, CIGNA United Technologies Corporation. A.T.& T., Federal Express Corporation, Barnet Banks Inc., the City of Toronto, Bell Atlantic Corporation, Bank of Montreal, IBM Canada, Mobil Oil Canada and Shell Canada Ltd..

6. The Committee was also acknowledged that any staff complaint raised with the Chief Executive Officer, a directing mind of the organization, will require the CEO to act to resolve the matter. The lack of procedures as recommended will require the CEO to file a complaint against a bencher who is a member and engage any named bencher in the Law Society's complaints process. This Committee is of the view that this is not a desirable option for the organization.

7. In this context, the Committee is proposing for Convocation's adoption specific procedures to address bencher-staff interactions. The procedures are clear and simple and include:

   - notification by staff of a complaint against a bencher. This will be done consistent with the Law Society's internal procedures and the matter brought to the attention of the Equity Advisor or the CEO;
   - handling of complaint by the CEO and the Equity Advisor in context of the Law Society's Workplace Harassment and Discrimination Prevention Policy. This will require proper identification of the complaint and clarifying the process with the complainant;
   - notification of the Treasurer and request for her/his authority to handle the complaint. This will require the CEO to immediately inform the Treasurer of receipt of the complaint and seek authorization from the Treasurer for action to resolve the complaint;
   - authorization by the Treasurer of formal action, consistent with the *Law Society Act Section 49.3 for bencher members*, or informal procedures to be invoked to address the complaint;
   - compliance with due process for the resolution of a complaint either through formal or informal processes. In the event the Treasurer authorizes an informal process, the Chair of the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones will be involved; and
   - in the event any matter authorized by the Treasurer for an informal process cannot be resolved, the matter will be brought back to the Treasurer for consideration for formal action pursuant to the *Law Society Act* Section 49.3 for bencher members or, in the case of a bencher who is not a member, the Treasurer may initiate a formal investigation in accordance with the Law Society's Workplace Harassment and Discrimination Prevention Policy.

8. The detailed procedures are elaborated at Appendix "A".

The Committee requests that Convocation adopt the proposed procedures.

FOR INFORMATION

ACTION PLAN FOR POLICY ISSUES ARISING FROM DEMOGRAPHIC PROFILE OF THE LEGAL PROFESSION

9. A presentation on the report *Lawyers in Ontario: Evidence from the 1996 Census* was made by Professor Michael Ornstein (Director, Institute for Social Research, York University) at the Committee's January meeting and another presentation addressing women in the legal profession was made by Professor Susan Black of *Catalyst* at the Committee's February meeting.

10. In receiving this report at its January meeting, the Committee was presented with a number of policy issues regarding both the use of the data and the gathering of further data related to personal characteristics of students and members of the legal profession. The *Catalyst* presentation raised a number of similar issues for the Committee to consider as well.

11. A working group comprised of Stephen Bindman, Susan Switch (Equity Advisory Group), Denis Boivin (Equity Advisory Group), Jeff Hewitt (Roti io' ta'-kier) and Joy Casey (Feminist Legal Analysis Committee) was formed to consider Professor Ornstein's report as well as the *Catalyst* documents and to formulate policy issues for the Committee's consideration.

12. The working group was also requested to review its mandate on report on such to the Committee. At its meeting on March 26, the working group reviewed its mandate which is solely to priorize the policy issues for the Committee's consideration and to work with staff in selecting expertise required to implement those items . Having done this, the working group will be disbanded.

13. In this context, the working group developed action plans for the following activities which were endorsed by the Committee at its April 12 meeting and include:

a) Updating data on personal characteristics of members of the legal profession. *Action:* Working in consultation with the Communications Department, an educational campaign will be developed to indicate relevant information from the demographic profile and, as well, to inform on the steps being taken by the Law Society to increase the diversity of the legal profession.

b) Tracking students who enter the Bar Admissions Course. *Action:* This is already underway through the Bar Admission Course. However, the Committee will encourage the Admissions Committee to seek similar information from law schools.

c) Understanding of those who use the Law Society's services. *Action:* None at this time.

d) Examining obstacles to representation based on those who appear to leave the profession. *Action:* Equity Initiatives staff will meet with staff responsible for member information to determine if there is any way to address this matter. Staff will also review the methodology employed in *Transitions* to see if this report addressed this matter and, if so, how.

e) Examining the degree of income differences between groups identified in the report. *Action:* Following consultations with staff responsible for member information, if feasible a "Request for Proposals" will be developed to hire a consultant to examine this matter further using the Law Society's member data base. The purpose of this activity will be to assess the information in the data base in an attempt to identify trends on this issue, eg., those practising in large firms v. small firms and sole practice.

f) Examining the entry and re-entry of particular groups into the profession, eg., women and single parents. *Action: A* "Request for Proposals" will be developed to hire a consultant to examine the law firm policies and programs identified in the Equity Initiatives Department's best practices research.

g) Identifying the ethnocultural diversity of those included in the current data. *Action:* None at this time.

CANADIAN RACE RELATIONS' FOUNDATION AWARD OF EXCELLENCE

14. This report provides an update on the CRRF Award of Excellence on Race Relations for which the Equity Initiatives Department was a finalist.

APPENDICES
APPENDIX "A"

BENCHER / LSUC STAFF RELATIONS POLICY AND PROCEDURES

1. Convocation is asked to adopt the procedures set out below regarding Bencher-staff interactions on issues of discrimination and harassment. These procedures, consistent with current human rights law, the *Law Society Act*, and standard institutional practice, are not addressed within the *Bencher Code of Conduct*. The procedures are to be followed when an employee feels that s/he has been subjected to harassment or discrimination covered by the *LSUC Workplace Harassment and Discrimination Prevention Policy* (the "*policy*") and where such a complaint involves a Bencher.

I. RESPONSIBILITY OF THE LAW SOCIETY

General Principle

2. The Law Society of Upper Canada has an obligation to ensure that the working environment is free from comments or conduct that constitute harassment or discrimination. The Law Society may be found liable:

> where the Law Society's personal action, either directly, or indirectly infringes a protected right, or authorizes or condones, the inappropriate behaviour; or
>
> where an employee responsible for the harassment or inappropriate behaviour, or who knew of the harassment or inappropriate behaviour, or that a poisoned environment existed, but did not attempt to remedy the situation, is part of the "directing mind" of the Law Society.

3. On being made aware of inappropriate comments or conduct, a person who is part of the "directing mind" of the Law Society is required to take *immediate action* to remedy the situation.

Definition of "Directing Mind"

4. An employee or its agents may be the directing mind of a corporation. Employees with supervisory authority may be viewed as part of the Law Society's "directing mind" if they function, or are seen to function, as representatives of the Law Society. Generally speaking, an employee who performs management duties is part of the "directing mind" of the Law Society, eg., CEO and senior management.

II. CONFIDENTIALITY

5. The Law Society of Upper Canada understands that it is difficult to come forward with a complainant of harassment and recognizes a complainant's interest in keeping the matter confidential.

6. To protect the interests of the complainant, the person complained against, and any other person who may report incidents of harassment, confidentiality will be maintained throughout the investigatory process to the extent practicable and appropriate under the circumstances.

7. All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential by the Law Society of Upper Canada, except where disclosure is required by a disciplinary or other remedial process or under criminal law.

III INITIAL RESPONSE OF COMPLAINANT

Approaching the Respondent

8. An employee or employees who feel that they, or someone else, have been subjected to harassment or discrimination by a Bencher or Benchers is encouraged to bring the matter to the attention of the Bencher(s) responsible for the conduct.

Option

9. Where the complainant does not wish to bring the matter directly to the attention of the Bencher(s) responsible, or where such an approach is attempted and does not produce a satisfactory result, the complainant can address her/his concerns within the Law Society by contacting the Equity Advisor or the Chief Executive Officer. Upon receipt of a complaint, the Equity Advisor and the Chief Executive Officer must inform the Treasurer.

10. Harassment Advisors appointed under the Law Society's *Workplace Harassment and Discrimination Prevention Policy*, or any individuals acting as the "directing mind" of the Law Society, will refer any complainant who has concerns with interactions involving Benchers directly to the Equity Advisor or the Chief Executive Officer. Upon receipt of a complaint, the Equity Advisor and the Chief Executive Officer must inform the Treasurer.

IV. PROCEDURES

11. There are two procedures which can be followed in cases of discrimination or harassment involving Benchers:

a/ formal procedures in compliance with the *Law Society Act*; or
b/ informal procedures.

12. Once the Equity Advisor or the Chief Executive Officer becomes aware of a complaint against a Bencher of the Law Society of Upper Canada, he or she will immediately refer the matter to the Chair of the Equity and Aboriginal Issues Committee and to the Treasurer of the Law Society.

13. The Treasurer may:

h) choose to pursue formal procedures and, pursuant to section 49.3 of the *Law Society Act*[6], call for an investigation into a Bencher's conduct if he or she receives information suggesting that the member may have engaged in professional misconduct or conduct unbecoming a barrister or solicitor, or

i) choose to pursue informal procedures and proceed under the Law Society's *Workplace Harassment Complaints Procedures Covering Bencher/LSUC Staff Relations*.

V. FORMAL PROCEDURES: AUTHORIZATION OF INVESTIGATION UNDER *THE LAW SOCIETY ACT*

14. The Treasurer may exercise his or her authority under section 49.3 of the *Law Society Act* to require an investigation to be conducted into the bencher's conduct.

VI. INFORMAL PROCEDURES

15. The Treasurer may choose to pursue the complaint through an informal process.

i) Discussion of Complaint with Equity Advisor and Chief Executive Officer

16. The Treasurer can direct the complaint of harassment or discrimination involving Benchers for discussion with the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the Chief Executive Officer. The Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO will meet with the complainant to explain the *policy* and advise the complainant of:

the availability of counselling and other support services provided by the Law Society

the right to be accompanied by a person of choice at any stage of the process when the complainant is required or entitled to be present

the right to withdraw from any further action in connection with the complaint at any stage

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[6] *Law Society Act*, R.S.O. 1990, c. L.8.

the fact that even if she or he withdraws the complaint, the Equity Advisor and the CEO may have a responsibility to continue to investigate the complaint

other avenues of recourse available to the complainant such as the right to file a complaint with the Ontario Human Rights Commission

ii. Outcome of the Meeting with the Equity Advisor and the CEO

No Further Action

17. Where, after discussing the matter, the complainant and the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO agree that the conduct in question does not constitute harassment or discrimination as defined in the *policy*, no further action will be taken.

Discussion with Respondent

18. Where the complainant brings information alleging harassment or discrimination to the Chair of the Equity and Aboriginal Issues Committee, the CEO and the Equity Advisor, they may, at the request of the complainant, speak to the Bencher(s) whose conduct has caused offence, in which case the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO will keep a written record of what was said to the respondent.

Allegations of Harassment or Discrimination but Complainant Does Not Want to Proceed

19. Where the complainant brings allegations of harassment and discrimination to the attention of the Equity Advisor and the CEO, but, after discussion, the complainant decides not to proceed with a written complaint, the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO will discuss the complaint and options available to address the complaint, including informal measures or the laying of a written complaint.

Complainant Files a Written Complaint

20. Where, after meeting with the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO, the complainant decides to lay a written complaint, whether or not the Chair of the Equity and Aboriginal Issues Committee, the Equity Advisor and the CEO are of the opinion that the conduct in question constitutes harassment as defined in the *policy*, the Equity Advisor and the CEO will assist the complainant to draft a written complaint which must be signed by the complainant.

c) WRITTEN COMPLAINT

i. When a Written Complaint has been Issued

21. Once a written complaint has been laid, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee, they will undertake to:

provide a copy of the complaint to the complainant and to the Treasurer

provide a copy of the policy to the respondent and advise the person(s) that he or she has the right to be accompanied by a person of their choice at any stage of the process

when deemed appropriate, seek a meeting with the respondent with a view to obtaining an apology or such other resolution as will satisfy the complainant.

ii. Decision Not to Proceed with the Complaint

22. Where it appears to the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee that the facts upon which the complaint are based occurred more than six months before the complaint was filed, unless they are satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee may, in their discretion, decide not to proceed with the complaint.

VII. MEDIATION

23. If agreeable to both the complainant and the respondent, the Equity Advisor, the CEO, and the Chair of the Equity and Aboriginal Issues Committee will arrange for the matter to be handle through an external mediation.

24. If the complainant and respondent do not agree to enter into mediation, and, if a mutually agreeable resolution has not been reached, the matter will be referred back to the Treasurer for her or his review pursuant to the *Law Society Act.* Or, in the case of a bencher who is not a member, the Treasurer may initiate a formal investigation in accordance with the Law Society's Workplace Harassment and Discrimination Prevention Policy.

25. If mediation is undertaken and a mutually agreeable resolution is not achieved, the matter will be referred back to the Treasurer for her or his review pursuant to the *Law Society Act.* Or, in the case of a bencher who is not a member, the Treasurer may initiate a formal investigation in accordance with the Law Society's Workplace Harassment and Discrimination Prevention Policy.

General Principles of Informal Resolution Process

26. The informal resolution, which will be undertaken by an external body, will follow the rule of natural justice and be undertaken within a reasonable time frame.

VII. COMPLAINTS AGAINST THE CHAIR OF THE EQUITY AND ABORIGINAL ISSUES COMMITTEE

27. If the complaint involves the Chair of the Equity and Aboriginal Issues Committee, and the Treasurer chooses to pursue the matter through the informal complaints process, the Vice Chair will assume the role of the Chair in the complaints procedures.

VIII. COMPLAINTS AGAINST THE TREASURER

28. Where a complaint involves the Treasurer, the Chair of the Equity and Aboriginal Issues Committee, the Chief Executive Officer and the Equity will refer the matter to the Chair of Finance and Audit Committee who, pursuant to By-Law 6 of the *Law Society Act*, will assume the role of the Treasurer.

29. The Chair of the Finance and Audit Committee may choose to pursue the complaint pursuant to the *Law Society Act* or may choose to pursue the complaint through the informal process set out in this policy.

Research on Alternative Dispute Resolution Best Practices

1. During its January 2001 meeting, EAIC directed staff in the Equity Initiatives Department to compile information on best practices concerning harassment complaints procedures to further inform the discussion of the proposed LSUC Bencher/Staff Relations Procedures.

2. The 1987 Supreme Court decision in *Robichaud* v. *Canada* (*Treasury Board*) confirmed that human rights legislation imposes a statutory obligation which requires employers to provide a safe and healthy work environment.[1]
3. Litigation generated by allegations of harassment and discrimination are generally very costly and time consuming, as well as destructive to employer-employee relations. Accordingly, there has been a trend over the last decade for employers to create alternative dispute resolution procedures which provide for more informal and less adversarial methods of complaint resolution, in contrast to formal administrative procedures and litigation.

4. Research conducted by the U.S. Equal Employment Opportunity Commission (EEOC) in 1999 identified a number of leading private sector employers who implemented alternative dispute resolution procedures to resolve internal employee disputes, including IBM, Intel, CIGNA, United Technologies Corporation, Barnett Banks, Inc, Bureau of National Affairs, Baltimore Gas and Electric and the Dial Corporation.[2]

5. The EEOC's research of leading private sector employers found that a wide-range of alternative dispute resolution methods were offered to employees. The range of ADR options included direct dialogue with one's supervisor and working informally to resolve the complaint; working with an ombudsperson; using the services of an employee hotline; engaging in mediation; and arbitration.

6. The CPR Institute for Dispute Resolution in the United States also notes that: "many companies have adopted internal mechanisms for resolving employment conflicts such as the following:

1. corporate "ombudsperson" assigned to field complaints and facilitate resolution;
- appeal to senior level executives for decision after "progressive" management review at successive levels
- management committee review (made up of, for example, senior human resources official, senior line management official, and management-level official of employee's choosing);
- joint management-employee "problem review" board;
- open door policy
- employee hotline
- peer review board, made up of fellow employees".[3]

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[1] [1987] 2 S. C. R. 84.

[2] U.S. Equal Employment Opportunity Commission. 1999. *Best Practices of Private Sector Employers*, p. 116.

[3] See *CPR Program to Resolve Employment Disputes* at www.cpradr.org

7. Companies which have signed the CPR Corporate Policy Statement on Alternatives to Litigation which obliges the company to "seriously explore negotiation or alternative dispute resolution (ADR) in cases with other signatories before pursuing full-scale litigation" include: American Express Company; AT&T; Bell Atlantic Corporation; Colgate-Palmolive Company; Delta Airlines Inc.; Eastman Kodak Company; and Federal Express Corporation.[4]

8. In the Canadian context, the Canadian Foundation for Dispute Resolution, whose mission and objective includes "encouraging corporations and law firms to take a leadership role in demonstrating the value of alternative dispute resolution and integrating it into the mainstream of business practices"[5], has number of organizational members including the Bank of Montreal; IBM Canada; Mobil Oil Canada; and Shell Canada Ltd.[6]

9. Further, a research study on internal dispute resolution (IDR) conducted by the Queen's University Industrial Relations Centre found that Canadian organizations "on the leading edge" had varying internal dispute resolution systems in place, including: an open door policy; a senior management review (a board or committee of management personnel that reviewed the complaint in a more formal setting); peer review; and a corporate Ombudsperson. The report stated that "ignoring the quality of IDR in a company can seriously compromise employee commitment to the success of the organization [and] a cornerstone of the high-performance workplace is maintaining and enhancing the companies' relationship with its employees".[7]

10. Similar to the Law Society of Upper Canada's model policy on workplace harassment in law firms which recommends that a firm's complaints procedures provide the option of a complaint being resolved through an informal process,[8] the Ontario Public Service also has adopted ADR as a method of resolving human rights violations in the workplace.

11. Canadian educational institutions are also implementing ADR practices; Carleton University is expecting its Human Rights Management Policy to be adopted by the Carleton Senate, and Queen's University is currently working on a similar policy.

Research and Options on Procedures re Bencher / Staff Relations

Introduction

1. During the April 12 meeting of EAIC, the Committee requested that staff in the Equity Initiatives Department undertake research to determine how Law Societies in other jurisdictions have dealt with Bencher/staff relations in

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[4]See *CPR Corporate Policy Statement on Alternatives to Litigation* at www.cpradr.org

[5] See Canadian Foundation for Dispute Resolution's *The Foundation's Role* at www.cfdr.org

[6] See Canadian Foundation for Dispute Resolution's *Current Member Organizations* at www.cfdr.org

[7] See Gary Furlong' s *Dispute Resolution: Beyond the Open Door in Large Canadian Companies* at www.mediate.com

[8] The Law Society of Upper Canada, 1998 *Guide to Developing a Policy Regarding Harassment in Law Firms*.

their harassment policies. This request was a follow-up to a memo from the CEO to EAIC in which John Saso reported that the existing LSUC *Workplace Harassment and Discrimination Prevention Policy* did not directly address interactions between staff and Benchers.

2. The Equity Initiatives Department surveyed Law Societies across Canada as well as the New York State and Michigan State Bar Associations as to the inclusion, or lack thereof, of Bencher/staff relations in harassment and discrimination policies. The Law Society of British Columbia and the Law Society of Manitoba are the only Law Societies in Canada to address Bencher/staff interactions in their harassment and discrimination policies, and of the two American State Bar Associations contacted, only the New York State Bar has addressed this issue.

Background

3. The current LSUC *Workplace Harassment and Discrimination Prevention Policy* does not address staff/Bencher relations. The current policy also fails to identify the procedures which are to be followed when a complaint of discrimination or harassment is brought forward. As the Law Society of British Columbia and the Law Society of Manitoba are the only other Law Societies to address Bencher/staff interaction in their harassment policies, these are the only policies which can be referenced to inform the LSUC policy development. The New York State Bar Association also has a sexual harassment policy which covers interactions between members of the House of Delegates (Benchers) and staff, and this policy can also inform the LSUC policy development.

Application of the Policy

4. The Law Society of British Columbia's *Workplace Harassment Policy* states that the policy "...applies to all Benchers, committee members and all those working for the Society in any capacity, including management, professional staff, administrative staff, articling students, summer students and contract personnel". Although the Law Society of Manitoba does not specifically identify Benchers in its *Respectful Workplace Policy*, it does state in its *Benchers Code of Conduct* that ... "Benchers must behave so as to comply with the Law Society of Manitoba's *Respectful Workplace Policy* and must not engage in any of the conduct prohibited by that Policy". The New York State Bar Association's policy on sexual harassment covers members of the House of Delegates, employees, and non-member third parties.

Complaint Procedures

5. The current LSUC *Workplace Harassment and Discrimination Prevention Policy* does not identify any procedures though which a complaint of harassment or discrimination can be addressed. When revising the current policy in order to cover Bencher/staff interactions, the procedures for addressing complaints must also be considered.

6. The Equity Initiatives Department has been working with the Human Resources Department to develop a clear set of complaint procedures to accompany the existing *Workplace Harassment and Discrimination Prevention Policy*. (See TAB A) The proposed complaint procedures currently under consideration do not address Bencher/staff relations. However, since Bencher/staff relations are to be covered by the policy, a modification to the proposed procedures is required.

7. If the LSUC follows the example of the Law Society of British Columbia, then no special procedures need to be developed to process complaints involving Benchers. The LSBC policy does, however, delegate disciplinary responsibilities to specific individuals, and in the case of any disciplinary action taken against a Bencher, it is the responsibility of the Treasurer, upon receipt of the written report of the investigator, to impose disciplinary measures. The LSBC policy also specifically identifies the types of disciplinary measures that the Treasurer can impose, measures which are different from the types of disciplinary action taken in the case of employees. Under this policy, the disciplinary actions which may be taken in the case of Benchers include: " (a) a private reprimand; (b) referral to counselling; (c) reassignment; (d) removal from all committees; (e) public reprimand by the Benchers as a whole; or (f) with regard to lay Benchers, referral of the results of an investigation to the Lieutenant Governor in Council".

8. If the LSUC follows the example of the Law Society of Manitoba, any harassment or discrimination complaint against Benchers will be investigated by independent counsel rather than by internal harassment advisors. The Law Society of Manitoba's *Benchers Code of Conduct* states that complaints against Benchers "shall be supervised by experienced, independent counsel who shall ... exercise all investigatory powers of the Complaints Investigation Committee in connection with the investigation". The Law Society of Manitoba does not require the Treasurer to impose disciplinary measurers against Benchers, but rather states in its *Benchers Code of Conduct* that "... the Complaints Investigation Committee shall proceed to dispose of the matter as it deems appropriate within the scope of the Rules of the Society".

9. The New York State Bar Association's *Sexual Harassment Procedures* do not indicate that complaints against members of the House of Delegates (Benchers) be handled differently than complaints against employees. All complaints are investigated by a "Sexual Harassment Response Committee" which is composed of staff members appointed by the Executive Director, and in some cases may be investigated by outside counsel.

For Committee Consideration

10. In relation to Bencher/staff interactions, the Committee needs to consider both policy as well as procedural issues. In terms of policy, the Committee may wish to

1. adapt the current policy to explicitly cover Bencher/staff relations;

2. following the example of the Law Society of Manitoba, adapt the current LSUC Bencher Code of Conduct to make explicit reference to the LSUC *Workplace Harassment and Discrimination Prevention Policy*; or

3. request that the Equity Initiatives Department and Human Resources Department develop a separate policy to address Bencher/staff relations.

11. Option 'a' is recommended. The existing policy can be easily adapted to cover Bencher/staff relations given that the current LSUC *Workplace Harassment and Discrimination Prevention Policy* already makes reference to Benchers. Section II of the current policy states that "[t]his policy covers employment-related harassment and discrimination involving Law Society employees, Law Society management or its board of governors". However, Benchers are not directly named in the policy under the heading which identifies who is covered by the policy. Any ambiguity arising from the failure to explicitly identify Benchers under the policy description of who is covered can be clarified by including Benchers in this section which identifies to whom the policy applies.

12. In terms of procedures to address complaints of harassment or discrimination involving Benchers, the Committee may wish to recommend to Convocation either:

i) the model of the Law Society of British Columbia's *Workplace Harassment Policy* and adapt the draft procedures currently under consideration to cover complaints involving Benchers; or

ii) the procedures developed by the Equity Initiatives Department in consultation with the Equity Advisory Group and Committee members. This provides a separate set of procedures to address complaints involving Benchers.

13. Consistent with Committee's direction at its June 7, 2000 meeting, Option "b" is recommended to provide a separate set of procedures to address complaints involving Benchers. These procedures instruct that all staff complaints involving Benchers be reported directly to the CEO and/or to the Equity Advisor who will work with the Treasurer to address the complaint. All Bencher-initiated complaints should be reported directly to the Treasurer who will work with the CEO and the Equity Advisor to address the complaint. Any complaints involving the Treasurer should be directed to the Chair of the Equity and Aboriginal Issues Committee who will work with the Equity Advisor and the CEO to address the complaint.

14. The LSUC complaints procedures should also indicate the types of disciplinary measures that may be taken in cases of harassment or discrimination involving Benchers. Again, following the model of the Law Society of British Columbia's *Workplace Harassment Policy*, the disciplinary measures that may be taken in cases involving Benchers will differ from those measures taken in cases involving staff. The LSUC complaints procedure should state that the disciplinary actions that may be taken in the case of Benchers may include, but are not limited to,: (a) a private reprimand; (b) referral to counselling; (c) reassignment; (d) removal from all committees; (e) public reprimand by the Treasurer; (f) public reprimand by the Benchers as a whole; or (g) with regard to lay Benchers, referral of the results of an investigation to the Lieutenant Governor in Council. These are different from the disciplinary actions that may be taken in cases involving staff which, as stated in the existing *Workplace Harassment and Discrimination Prevention Policy*, include "education, counselling, verbal or written reprimand, transfer or termination of employment". Any investigation or mediation undertaken in cases involving Benchers should be carried out by an external party.

APPENDIX "B"

ACTION PLAN FOR POLICY ISSUES FROM THE DEMOGRAPHIC PROFILE OF THE LEGAL PROFESSION

Background

1. In approving the 2000 budget for the Equity Initiatives Department, Convocation committed resources to the development of a demographic profile of the legal profession. Such a profile was included as a recommendation in the *Bicentennial Report on Equity Issues in the Legal Profession*[9]. York University's Institute for Social Research, directed by Professor Michael Ornstein, was selected to take on this assignment, and the report *Lawyers in Ontario: Evidence from the 1996 Census* was presented to EAIC at its February meeting. An executive summary of the demographic analysis report was forwarded to Benchers at the February meeting of Convocation.

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[9] See Recommendation 2: Study and Research "*To facilitate development of policies, programs, and services that further the achievement of equity and diversity within the profession, the Law Society should continue to conduct research on the changing demographics of the profession and the impact on the profession of barriers experienced by members of our profession for reasons unrelated to competence" (1997:26)*

2. A working group comprised of Stephen Bindman, Susan Switch (Equity Advisory Group), Denis Boivin (Equity Advisory Group), Jeff Hewitt (Roti io' ta'-kier) and Joy Casey (Feminist Legal Analysis Committee) was formed to consider this report with staff support provided by Charles Smith and Rachel Osborne. In discussions during its February meeting, EAIC directed the demographic analysis working group to review the policy issues arising from the report, and develop an action plan which prioritizes the issues and offers the time lines for action.

3. The working group met on March 26 and has drafted the attached action plan for EAIC's consideration.

Action Plan

Updating the Data

4. Given that the data on which the report was based is more six years dated, the working group was asked to consider ways of gathering more current data. For example, should such questions be placed on the annual Members' Annual Report, which would enable 100% reporting on the profession? Such data can then be used to measure the experiences of lawyers with the Law Society, eg., spot and focussed audits, discipline, where there are currently allegations regarding discriminatory treatment of racialized groups and women. The data can also be used to determine the level of success in diversifying the profession

5. The working group recommends that the Law Society use its Members' Annual Report (MAR) form to gather data, and further, that the Census Canada categories for self-identification be used on the MAR.
6. It is the view of the working group, however, that an educational campaign be undertaken prior to using the MAR to gather this type of data. Members will need to have an understanding as to why they are being asked to identify on the grounds of particular social characteristics, and an educational campaign that highlights the results of the demographic analysis report, as well as the Law Society's efforts to address the issues arising from the report, should be undertaken in the Fall 2001.

7. In terms of this issue, the working group recommends the following:

Action: working in consultation with the Communications Department, develop and deliver an educational campaign to the membership re the results of the demographic analysis report and the Law Society's response to the report

Time line: Fall 2001

Tracking Students Entering the Bar Admissions Course

8. The working group was asked to consider the usefulness getting a sense of the success of the law schools in attracting and graduating students from diverse backgrounds, and whether such data could help in promoting legal studies and the legal profession amongst groups identified as under-represented.

9. The Law Society is currently gathering data from students on a voluntary basis when they apply to the Bar Admissions Course. However, the working group recommends that data on applications and admissions to Law Schools in Ontario be gathered in order to construct a clear and broader picture of emerging demographics. The working groups recommends that this issue should be brought to the attention of the Admissions Committee, requesting that they forward the request for this information to the Committee of Law School Deans.

10. In terms of this issue, the working group recommends the following:

Action: this item should be referred to the Admissions Committee for action

Time line: May 2001

Users of the Law Society's services

11. The working group was asked to consider whether it is desirable to obtain a demographic profile of service users/members of the public in order to better understand gaps in public understanding, use and trust of Law Society programs and services.

12. The working group recommends that no immediate action be taken in response to this issue given the work that has been identified as a priority.

13. In terms of this issue, the working group recommends the following:

Action: none

Time line: n/a

Examining obstacles to representation based on those who appear to leave the profession

14. The report provides information on approximately 24,000 lawyers, falling approximately 6,000 short of those registered with the Law Society. The working group was asked to consider whether this gap in reporting may need to be explored to determine the status and personal characteristics of those not captured in the Census data as this may reveal information related to Aboriginal, Francophone and equity group characteristics.

15. The working group agreed that it would be beneficial to construct a profile of those lawyers who are no longer practising, and further, that information should be gathered on the reasons why those lawyers have left the profession. Some of this information could be available in the Law Society's data base. Additionally, once those individuals have been identified, a survey should be conducted to gather information on the factors that played a role in the lawyers' decision to leave the profession.

16. In terms of this issue, the working group recommends the following:

Action: determine what information can be gathered from the Law Society's data base with respect to lawyers who are no longer practising; refer to the survey methodology used in the Transitions report; develop questionnaire to survey those members who are no longer practising

Time line: summer 2001

Entry and Re-entry of Particular Groups into the Profession (eg., Women and Single Parents)

17. The Census data is a one-time snapshot and does not capture trend data; however, concerns have been raised since the *Transitions Report* that women face challenges due to leaving and re-entering the practice of law for a variety of reasons, eg., providing childcare, facing harassment and discrimination. Census information, even if tracked, would not be available for another few years and may not provide insight into this issue. The working group was asked to consider whether it is advisable to track such data through the Law Society's own records, i.e., the annual membership form, and if so, what needs to be done to track and analyse such data?

18. The working group agreed that this issue should be a priority. The Equity Initiatives Department has already contracted research on best practices in the legal profession in terms of equity and diversity issues, and over 1000 references have been gathered on equity and diversity policies and programs in law firms, 500 of which deal specifically with gender issues. The working group recommends that data be analysed and that a model policy be developed on best practices for training, recruiting, advancement, and retention of women in the legal profession.

19. In terms of this issue, the working group recommends the following:

Action: a "Request for Proposals" be developed to hire a consultant to analyse the 500 policies and programs identified in the best practices research for the purpose of drafting a model policy; consult with records and membership staff to determine if existing law society data base information reveals gender-related trends

Time line: immediate

Identifying Ethnocultural Diversity of those Included in the Current Data

20. The current data is based on characteristics of race, gender, Francophone, Aboriginal and disability status. As such, it does not provide information on ethnocultural identities and, as such, cannot insight into the cultural diversity of the legal profession. For example, Anglo- and Polish Canadians would be identified as white in the current report whereas an ethnocultural perspective would differentiate these groups. The working group was asked to consider whether it is advisable to undertake such a review, and if so, for what purpose?

21. The working group agreed that, although it would be useful and interesting to analyze the data in terms of ethnocultural identity, it is not a priority given the other pressing issues emerging from the demographic analysis report.

22. In terms of this issue, the working group recommends the following:

Action: none

Time line: n/a

Canadian Race Relations Foundation Award of Excellence Nomination

During the January 2001 meeting of Convocation, Treasurer Armstrong announced that the Law Society of Upper Canada had been selected by the Awards Jury of the Canadian Race Relations Foundation as a top nominee to be honoured at the 2001 Award of Excellence Symposium which was held in Vancouver in early March.

Although not selected for the Award of Excellence, the Law Society was one of 25 award nominee finalists selected from 78 nominees, and was the only legal association in Canada that received this distinction. The Law Society's commitment to equity and diversity within the legal profession in Ontario was applauded by the more than 125 race relations practitioners and stakeholders from across the country who attended the three-day symposium. As the Law Society's Equity Advisor, I was pleased to participate in a panel discussion which provided me with the opportunity to promote the Law Society's equity initiatives.

The Law Society of Upper Canada should take great pride in the national recognition it has gained in promoting equity and diversity in the legal profession.

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

(1) Copies of legal opinions from Mr. Andrew Pinto, Chair, Equity Advisory Group, Ms. Josee Bouchard, Education and Training Coordinator, Equity Initiatives and Mr. Raj Anand, WeirFoulds.

(2) Copy of excerpt of the Canadian Race Relations Foundation's 2001 Best Practices Reader - Table of Contents.

A debate followed.

It was moved by Mr. Wright, seconded by Mr. Copeland that the Policy and Procedures be referred back to Committee to redraft in light of the discussion and motions to amend.

Lost

It was moved by Mr. Crowe, seconded by Ms. Puccini that the policy be amended to have the triumvirate be composed of the Treasurer, the Chief Executive Officer and that the Equity Advisor be replaced with an elected bencher to be named for that particular matter by the Treasurer.

Mr. Wright moved an amendment to the Crowe/Puccini motion that the elected bencher be replaced with the immediate past Treasurer.

Mr. Wright's motion was accepted by the mover and seconder.

Ms. Pilkington moved an amendment that the triumvirate be composed of the Treasurer, an elected bencher nominated for that purpose and a Chief Executive Officer.

Ms. Pilkington's amendment was accepted by Mr. Crowe and Ms. Puccini.

Carried

It was moved Mr. Wright, seconded by Mr. T. Ducharme that the language used in paragraph 18 on page 11 of the Report be inserted in paragraph 16 on page 10, that a written record be kept of what is said to the complainant.

Lost

It was moved by Mr. Wright, seconded by Mr. Crowe that paragraph 20 be referred back to the Committee to consider someone other than the triumvirate assist the complainant in drafting a written complaint.

Carried

It was moved by Mr. Wright, seconded by Mr. Crowe that paragraph 20 be amended by adding that the written complaint be made under oath.

Withdrawn

It was moved by Mr. Wright, seconded by Mr. Crowe that the first indent in paragraph 21 be amended by adding that a copy of the complaint be provided to the respondent.

Carried

It was moved by Mr. Wright, seconded by Mr. Crowe that the third indent to paragraph 21 be amended to read "when deemed appropriate, seek a meeting with the respondent with a view to obtaining the respondent's response".

Carried

It was moved by Mr. Wright, seconded by Mr. Crowe that a new indent be added that where appropriate an apology be obtained or such other resolution as is satisfactory to the complainant or that the complaint be dismissed.

Carried

It was moved by Mr. T. Ducharme, seconded by Mr. E. Ducharme that paragraph 5 on page 8 be deleted and that the paragraphs under the heading "Confidentiality" be renumbered.

Carried

REPORTS DEFERRED

Report of the Admissions Committee

Admissions Committee
April 26, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met on April 12, 2001. Committee members in attendance were Derry Millar (Chair), Edward Ducharme (Vice-Chair), Marion Boyd, John Campion, Gillian Diamond, Pamela Divinsky, Dean Alison Harvison Young, George Hunter, Sanda Rogers and Stephanie Willson. Staff in attendance were Julia Bass, Bob Bernhardt, Katherine Corrick, Ian Lebane, Susan Lieberman, Zelia Pereira, Charles Smith, Elliot Spears, Richard Tinsley (for some items), Roman Woloszczuk.

2. The Committee is reporting on the following matters:
Policy - For Decision
1) Inter-Provincial Practice of Law; Implementation of the Protocol of 1994
2) BAC Students Lacking an LL.B
3) Payment of BAC Tuition Fees

POLICY - FOR DECISION

INTER-PROVINCIAL PRACTICE OF LAW
IMPLEMENTATION OF THE PROTOCOL OF FEBRUARY 1994

Background

3. In February 1994, the Law Society signed a Protocol on the Interjurisdictional Practice of Law negotiated under the *aegis* of the Federation of Law Societies of Canada (Appendix **1**). This protocol has now been signed by all the member Canadian law societies except those of the Yukon and Northwest Territories. (Nunavut is not yet a member of the Federation).

4. At the time of signing, most of the contracting parties including the Law Society of Upper Canada lacked the statutory jurisdiction to implement all of the provisions of the protocol.

5. The objective of the protocol was to make it easier for lawyers to practise in other Canadian jurisdictions while maintaining the ability of each law society to regulate lawyers practising within the jurisdiction, and to expand temporary mobility rights to solicitor's work. The protocol also includes provisions dealing with a number of related matters such as insurance, compensation, foreign legal consultants and interjurisdictional law firms.

6. The most significant innovation of the protocol is that where lawyers can satisfy a rigorous set of conditions, including having no record of conduct or competence orders in their home jurisdiction, they are to be allowed to engage in the occasional practice law in another province without notifying the law society in that province. Where any of the conditions are not met, permission must be sought.

7. The protocol includes model by-laws for adoption by each province to implement the protocol's provisions.

8. British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick and Nova Scotia have implemented the temporary mobility provisions of the protocol.

9. The *Law Society Amendment Act, 1998* gave the Law Society of Upper Canada the necessary authority to implement the protocol, including the authority to make by-laws governing such matters as the occasional practice of law by lawyers from another province and the practice of law by interprovincial law firms.

10. The attached draft by-law (Appendix 2) concerning the occasional practice of law is the first proposed by-law implementing the inter-provincial mobility part of the protocol. It is based on the model by-law in the protocol, with certain variations set out below. (It does not cover all of the issues set out in the protocol, some of which will require further implementing by-laws, e.g. inter-jurisdictional law firms and foreign legal consultants).

11. The Law Society's current provision for out of province lawyers is by-law 22 which provides a limited mechanism whereby lawyers from elsewhere in Canada may apply to appear as counsel in a specific proceeding in Ontario. This constitutes preferential treatment for barristers over solicitors.

Contents of the Draft By-law: Provisions in Conformity with the Protocol

12. The draft by-law adopts the protocol's '10-20-12' definition of 'occasional practice', meaning a lawyer acts on no more than 10 matters for no more than 20 days in a 12 month period.

13. The by-law provides special treatment for lawyers practising in federal courts and tribunals (section 3) and for lawyers employed by the federal Crown (section 4). They may practice occasionally in Ontario provided they are members in good standing of their home law society.

14. Where a lawyer meets the conditions set out in section 5 of the by-law, there is no requirement to seek permission from or to notify the Law Society of Upper Canada that the lawyer will be practising in Ontario occasionally. These conditions are:
    a. Entitled to practice in another province or territory
    b. Member in good standing of home law society (or societies)
    c. Not the subject of criminal proceeding in any jurisdiction
    d. Not the subject of competence or conduct proceeding
    e. No criminal record
    f. No record of conduct or competence orders in any jurisdiction.

15. Where not all of the conditions in section 5 are met, the lawyer may apply to the Law Society for permission to practise occasionally in Ontario.

16. Section 9 of the by-law subjects lawyers engaging in occasional practice in Ontario to the regulatory and disciplinary regime of the Law Society of Upper Canada, including, *inter alia*, the right to reprimand or fine and the right to prohibit the lawyer from further practice in Ontario. (The home province will retain the right to take further disciplinary action).

17. Section 10 provides that out of province lawyers may not open Ontario trust accounts for their clients' funds. (Funds as an advance on legal fees may be paid into a trust account in the lawyer's home province.) Trust funds in Ontario must be handled by an Ontario lawyer.

18. The protocol provides for the establishment of a 'National Excess Plan' to compensate claimants who suffer a financial loss arising from the dishonesty of a lawyer engaged in the inter-provincial practice of law. This plan is designed to supplement the amount recoverable from a lawyer's home provincial plan, where this is less than what the claimant would have received if the lawyer had been from the host jurisdiction.

19. The National Excess Plan requires a contribution of $2 per lawyer by each law society, until the plan balance reaches $1million. The Law Society has been collecting the funds for the Ontario share of this fund since 1998, but will not be able to pay this money over until approval of this by-law. By the end of 2000, the Law Society held $200,000 for this purpose.

Provisions not in Conformity with the Protocol: Jurisdiction-Specific Law

20. The model by-law in the protocol restricts the capacity of an out-of-province lawyer to practise 'jurisdiction-specific' law, and provides that the lawyer must do so 'in consultation with a member of the Society'.

21. 'Jurisdiction-Specific Law' is defined in the protocol to include "topics of substantive and procedural law which, whether statutory or common law, are specific to this province". On a literal reading this would include all provincial statute and common law, including provincial rules of court both civil and criminal. This could have the unintended consequence of making temporary mobility more cumbersome than it was before the protocol, in that the out of province lawyer would always be required to retain a local lawyer to advise on local law.

22. This restriction has not been followed in BC, Alberta and Saskatchewan in their implementation of the protocol. Rather, they have adopted a scheme which relies on the ethical duty of a lawyer to act competently. The proposed by-law follows the approach used in the western provinces.

Discussion

23. Ontario is a leading member of the Federation of Law Societies of Canada and was an active participant in the lengthy negotiations leading up to the signing of the protocol in 1994. One of the principal objectives of the protocol was to facilitate inter-provincial mobility by eliminating the 'check-in' requirement with the host jurisdiction.

24. The 'no check-in' system means that the host law society is not notified that an out of province lawyer is now in practice in the province. This means that the Law Society will no longer have a record of all lawyers legally entitled to practise in Ontario. The Committee considered the fact that this could raise an issue in the handling of complaints if the Law Society is unable to determine whether the complaint concerns a local paralegal, an out of province lawyer or some other person. However, the Committee felt that this consideration was outweighed by the objectives which Ontario subscribed to in the negotiation of the protocol.

25. The other jurisdictions which have already adopted the temporary mobility provisions of the protocol have not reported any difficulties, although Ontario may be a more attractive jurisdiction for out of province lawyers as a result of the greater concentration of legal work in this province.

26. The provisions of the by-law are in keeping with Ontario's obligations under the Agreement on Internal Trade (AIT) under the Social Union Framework Agreement. The AIT was signed by all provinces except Quebec, although Quebec is expected to be in voluntary compliance. Chapter 7 of the AIT (Labour Mobility) commits provinces to eliminate residency requirements, align licensing, certification and registration measures with the terms of the Chapter, recognize occupational qualifications and, where necessary, reconcile occupational standards.

Committee's Deliberations

27. The Committee's view was that since Ontario played a major role in the negotiation of the protocol, it would be inconsistent not to implement its provisions. Accordingly, the Committee recommends approval of the by-law.

Request to Convocation

28. Convocation is requested to review the motion (shown in Appendix 2) to enact the proposed By-law 32 and, if appropriate, approve it.

BAC STUDENTS LACKING AN LL.B.

Issue

29. In the new model of the BAC, students can enter the course and write exams before receiving their third-year law school results. This raises the question of what happens to a student who turns out to have failed third year and therefore lacks an LL.B.

a. should students have to withdraw from the BAC until they successfully complete their LL.B.?
b. should students be able to retain credit for any BAC courses passed so far, and if so for how long?
c. should such students be permitted to continue taking BAC exams?

30. A similar issue arises in the case of NCA students who turn out to have failed some or all of the NCA exams. (In this discussion, LL.B. is used to include any necessary qualification, whether LL.B., J.D., or NCA).

Current Practice

31. Cases where such students not only commenced the BAC but also completed exams have been rare under the previous model of the BAC, and generally concerned NCA students. (The former Phase One did not involve any examinations). The practice has been that such students were not permitted to proceed any further in the BAC once their status was known, but were allowed to retain credit for any courses already passed, even when they were not immediately forthcoming about the problem. (This approach was paradoxical as it rewarded concealment of the situation).

Background

32. This issue will become much more important under the new model of the Bar Admission Course, as almost all students will proceed directly from law school to the writing of BAC exams.

Options

33. There are several possible options:

a. Make the LL.B. an absolute requirement for taking the BAC. This would mean that students who turn out to have failed third year would have to leave the BAC and start all over again when they obtain their degree.

b. Allow students who turn out to have failed third year to retain credit for any exams they have passed prior to notification, but require that they interrupt their BAC studies until they have their degree (i.e. they would not be able to complete the rest of the Skills Phase once they find out that they have failed).

c. Allow students who turn out to have failed third year to complete the Skills Phase and to retain credit for exams or assessments successfully completed, but not to go beyond the Skills Phase. This means they would be unable to start articling until their degree is completed.

d. Allow students to complete the BAC without interruption provided they can show they have graduated by the time they receive their Certificate of Successful Completion, (or before their call to the bar).

Option A

34. Require students to withdraw and start again (participation in course is void *ab initio*). This option may be seen as unduly harsh. Many courses at law school can be taken in either second or third year, and students failing the course at the end of second year would have had the option of re-sitting.

35. This option would hold students back and prevent them from being called to the bar with their class.

36. On the other hand, allowing students to proceed in these circumstances would mean that they might start articling before completing their LLB. This may raise questions about their right of appearance as students-at-law.

37. This option has the advantage of simplicity as a student either does or does not have the necessary prerequisites for the BAC.

Option B

38. Requiring students to interrupt their BAC studies if it is found they lack an LL.B. would mean that all students in the BAC would be required to have the same qualifications. It would also prevent a student from commencing articles without possessing an LL.B.

39. However, it would hold students back and might prevent them from being called to the bar with their class.

40. Under this option, it would also be necessary to determine the date on which students cease to acquire credits (e.g. when they are informed they have failed, when they ought reasonably to have known, etc.)

Option C

41. Allow students to retain credits earned in the Skills Phase but not beyond.

42. Most students will not find out they have failed until they are in the Skills Phase. In keeping with the practice in the past, they should be allowed to retain credit for examinations and assessments in this phase and to complete this phase of the BAC, but not proceed to article or to start the other teaching phase of the BAC. If the student nevertheless proceeds further, no credit would be available for any articling or Substantive Phase examinations commenced in the absence of the necessary degree.

43. This approach would make it clear that the approved degree is a requirement for the BAC. Retention of credits obtained during the Skills Phase would mean that students would not be unduly disadvantaged for shortcomings of which they were unaware.

Option D

44. The most permissive option is to allow students to continue in the BAC on the basis that they will have to obtain their LL.B. before being called to the bar. This would prevent holding students back when they may lack only one small prerequisite for their LL.B.

45. This may raise issues about whether students can commence articles without an LL.B., including whether the courts would grant such students rights of appearance.

46. Under this option students could theoretically complete articles and obtain all other requirements for their call to the bar but still lack an LL.B.

47. This option could be limited by requiring that students have successfully completed some reasonable proportion of the required exams.

48. The rationale for this approach is that there is no strong policy reason for holding students back when there is a reasonable expectation they can make up the necessary prerequisites before their call to the bar.

Committee's Deliberations

49. The Committee recommends Option C. This will enable students to keep the credits earned before they find out that they failed an examination, but at the same time will avoid a situation where students proceed to article without an LL.B.

Request to Convocation

50. Convocation is requested to approve a policy that would permit students who have failed some of their LL.B. examinations to retain credits earned during the Skills Phase of the BAC but not to proceed beyond that Phase until all the required examinations for an LL.B. have been passed.

PAYMENT OF BAC TUITION FEES

Issue

51. Since most students now enter the BAC directly from law school, they do not have the advantage of having earned an income from articling to assist them in paying their BAC fees. Many students have also incurred substantial debts as a result of the increase in law school tuition fees.

52. The current section 5(1) of by-law 12 requires students to pay the tuition fee before commencing the course. Section 6 provides that a student who has not paid the fee in full may be removed from the course by the Admissions Committee.

53. The committee has approved a staff proposal to assist students unable to pay the BAC tuition fee immediately following law school by offering alternative payment plans, spreading the payment of the tuition fee out over a longer period. These monthly payment plans will permit students to use their income while articling to pay their fees.

54. Since this will mean that students may complete the course without having paid their fees, the Committee is recommending that the Department of Education be given the authority to withhold a certificate of successful completion of the Bar Admission Course from a student who has outstanding tuition fees. This would prevent the student from being called to the bar until the fees are paid.

Discussion

55. The deferred payment plans will make it easier for students to arrange the payment of their fees.

56. The current methods for collection of unpaid BAC fees are time-consuming and have proved ineffective. The removal of a student by the Admissions Committee is a rather draconian remedy which has not been resorted to.

57. Universities typically withhold graduation formalities from students with outstanding debts for such items as parking fees and library fines. Students will thus be familiar with this concept.

58. If this policy is approved by Convocation, by-law amendments will be required to implement it .

Request to Convocation

59. Convocation is requested to approve the policy that the education department be granted authority to withhold a certificate of successful completion of the BAC from any student who has outstanding BAC tuition fees.

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

(1) Copy of the Protocol on the Interjurisdictional Practice of Law. (Appendix 1)

(2) Copy of Proposed By-Law 32 - Occasional Practice of Law. (Appendix 2)

Report of the Professional Regulation Committee

Professional Regulation Committee
March 8, 2001[1]

Report to Convocation

Purpose of Report: Decision

Prepared by the Policy Secretariat

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TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on March 8, 2001. In attendance were:

Gavin MacKenzie	(Chair)
Niels Ortved	(Vice-Chairs)
Heather Ross	
Andrew Coffey	
Carole Curtis	
Patrick Furlong	
Robert Topp	

[1]Includes one item from the March 8 meeting reported to March 22, 2001 Convocation and deferred to April 26, 2001 Convocation.

Staff: Janet Brooks, Margot Devlin, Felecia Smith, Elliot Spears, Richard Tinsley, Jim Varro and Jim Yakimovich.

2. This report contains a policy report on amendments to By-Law 31 on Unclaimed Trust Funds.

I. POLICY

AMENDMENTS TO BY-LAW 31 ON UNCLAIMED TRUST FUNDS

A. INTRODUCTION AND BACKGROUND

3. The Committee has prepared amendments to By-Law 31[2] to incorporate a process for reconsideration of claims for payment of unclaimed trust funds that are denied. The amendments are required to implement the subject matter of a successful motion to amend the by-law immediately prior to its adoption by Convocation on January 25, 2001 to provide a right of appeal within the Law Society to a claimant whose claim is denied. As the by-law presented to Convocation did not include language to give effect to the amendment, the drafting issue was referred to the Committee.

4. By-Law 31 provides the mechanics for the scheme in sections 59.6 through 59.14 of the *Law Society Act* for the Society's receipt, administration and payment to claimants of unclaimed trust funds. Unclaimed trust funds paid to the Society pursuant to the by-law are held in trust by the Society in perpetuity for the purpose of satisfying the claims of those entitled to the money. A person may apply to the Society in accordance with the by-law for payment of the money held in the Society's trust.

5. The by-law requires claimants to complete an application to the Society for payment of the funds and to provide certain information in support of the application. In its current form, the by-law authorizes the Secretary to consider a claim and either grant or deny the claim, or refer it to a committee of benchers appointed under the by-law. The committee of benchers either grants or denies the claim and its decision is final. The claimant has a right of appeal from that decision to the Superior Court of Justice (s. 59.11 of the *Law Society Act*).

B. NATURE OF THE AMENDMENT, OPTIONS, AND THE COMMITTEE'S VIEWS

Nature of the Amendment

6. The motion moved at Convocation on January 25 that amended the by-law was that a person claiming entitlement to unclaimed trust funds should have the right of appeal to a committee of benchers from the Secretary's refusal to grant the claim.

The Options

7. Elliot Spears, Legislation and Research Counsel, initially provided the Committee with three options for amending the by-law to give effect to the motion. A fourth option was also explored at the Committee's suggestion, and was based on the process for review of claims to the Lawyers' Fund for Client Compensation. All four options include the claimant's right of appeal to the Superior Court of Justice from the final decision of the bencher committee, as enshrined in the *Law Society Act.*

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[2]The current version of the by-law appears at Appendix 1.

8. The options are described below. The relevant portion of By-Law 31 for the purpose of the amendments is sections 5 through 8, which read as follows:

Consideration of claim

5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim;

(b) deny the claim; or

(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.

Secretary grants or denies claim

(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.

Term of office

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

Consideration of claim by committee of benchers: quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law.

Procedure

(2) The procedure applicable to the consideration by the committee appointed under section 6 of a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law shall be determined by the committee.

Consideration of claim by committee of benchers

8. (1) The committee appointed under section 6 shall consider every claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

Option #1

9. The first option would retain the current scheme set out in sections 5 to 8 and add to it a right of appeal to the committee of benchers described in section 6 for those whose claims were refused by the Secretary. The primary amendments to the by-law would involve deleting subsection 5(2) and adding new subsections under section 5 to provide for claimant's written application to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Option #2

10. The second option would involve amending the scheme currently in sections 5 to 8 by requiring the Secretary to either grant or deny a claim (the option of referring a claim to the committee of benchers would be eliminated) and giving all claimants whose claim is denied by the Secretary a right of appeal. This option would require amendments to delete paragraph 5(1)(c) and subsection 5(2) in the by-law, and, as in option #1, to add new subsections under section 5 to provide for a written application for reconsideration of the Secretary's decision to deny the claim.

Option #3

11. The third option would amend the scheme currently in sections 5 to 8 by requiring the Secretary to grant a claim or to refer it to the committee of benchers (the option of denying a claim would be eliminated). Amendments for this option would require deletion of paragraph 5(1)(c) and subsection 5(2), which refer to the Secretary's denial of the claim.

Option #4

12. This option would provide that all decisions to grant or deny claims for unclaimed trust funds are to be made by a committee of benchers and would require a restructuring of much of sections 5 through 8. The amendments would provide for a new committee of benchers, composed of all benchers eligible for membership on the hearing panel, that would consider every claim and determine whether to grant or deny the claim. The Secretary would initially review the claim and refer it to the committee with a recommendation.

The Committee's Views

13. After considering all four options and accompanying language for amendments to sections 5 through 8, the Committee felt that option #2 was the most appropriate, for the following reasons:
    (a) The appeal would be available to all claimants whose claims are denied;
    (b) The involvement of the bencher committee would arise from a decision of the Secretary, unlike the scheme, for example, in option 3 or 4, where a committee of benchers could receive a matter for reconsideration or review on referral from the Secretary (without a decision). The Committee's view was that it is preferable to have a decision on which the benchers' reconsideration is based;
    (c) The committee of benchers would only become involved after a decision denying a claim, unlike the scheme, for example, in option 4, where a committee of benchers reviews all matters based on the Secretary's recommendation. The Committee was mindful of benchers' considerable time commitment for hearings and other Law Society responsibilities, and felt that bencher time would be best utilized if required only for reconsideration of the decision denying the claim.

14. Procedurally, reconsideration of the claim is based on written submissions to the committee of benchers, subject to the committee's discretion to permit oral submissions.

15. The Committee proposes that the following amendments be made to sections 5 through 8 of the by-law to implement option #2:

Consideration of claim

5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim; or

(b) deny the claim. ~~; or~~

~~(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.~~

~~Secretary grants or denies claim~~

~~(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.~~

Secretary denies claim

(2) If the Secretary denies the claim under clause (1) (b), the Secretary shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Secretary in writing of the application within thirty days after the day specified in the Secretary's notice to the claimant that his or her claim has been denied.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider ~~claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.~~ applications for reconsideration made under subsection 5 (2).

Term of office

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

~~Consideration of claim by committee of benchers: quorum~~

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering ~~a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of ~~a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

~~Consideration of claim by committee of benchers~~

Powers

8. (1) The committee appointed under section 6 shall consider every ~~claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law~~ application for a reconsideration made under subsection 5 (2) and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

16. A motion appearing in the next section of the report includes the above proposed amendments.

C. DECISION FOR CONVOCATION

17. Convocation is requested to amend By-Law 31 as set out in the motion below to implement the amendment to the by-law made upon its adoption on January 25, 2001 to provide a right of appeal within the Society for claimants whose claims are denied.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 31
[UNCLAIMED TRUST FUNDS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 26, 2001

MOVED BY

SECONDED BY

THAT By-Law 31 [Unclaimed Trust Funds] made by Convocation on January 25, 2001 be amended as follows:

1. Subsection 5 (1) of the By-Law is amended by,

(a) adding "or" at the end of clause (a);

(b) deleting "or" at the end of clause (b); and

(c) deleting clause (c).

2. Subsection 5 (2) of the By-Law is deleted and the following substituted:

Secretary denies claim

(2) If the Secretary denies the claim under clause (1) (b), the Secretary shall so notify the claimant and the claimant may apply to the committee of benchers appointed under section 6 for a reconsideration of the claim.

Time for making application

(3) An application for a reconsideration under subsection (2) shall be commenced by the claimant notifying the Secretary in writing of the application within thirty days after the day specified in the Secretary's notice to the claimant that his or her claim has been denied.

3. Sections 6 to 8 of the By-Law are deleted and the following substituted:

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider applications for reconsideration made under subsection 5 (2).

Term of office

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

Quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering an application for a reconsideration made under subsection 5 (2).

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration by the committee appointed under section 6 of an application for a reconsideration made under subsection 5 (2) shall be determined by the committee.

Written submission

(3) Unless the committee permits a person to make oral submissions to it, all submissions to the committee shall be in writing.

Powers

8. (1) The committee appointed under section 6 shall consider every application for a reconsideration made under subsection 5 (2) and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

APPENDIX 1

BY-LAW 31
Made: January 25, 2001
UNCLAIMED TRUST FUNDS

APPLICATION TO PAY MONEY TO SOCIETY

Application form

1. (1) A member who makes an application under subsection 59.6 (1) of the Act shall complete an application form provided by the Society.

Information: application based on clause 59.6 (1) (a)

(2) A member who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (a) of the Act shall provide to the Society the following information:

1. The member's member number, address, telephone number, fax number and, if any, e-mail address.

2. If the member holds the money in trust together with one or more other persons, the name, member number, if applicable, and contact information of each of those persons.

3. The amount of the money.

4. The conditions, if any, subject to which the money is held is trust.

5. The name and last known address and telephone number, according to the member and each person who together with the member holds the money in trust, of each person who is entitled to the money or a part of the money.

6. The social insurance number, if known, of each individual who is, and the corporation number, if known, of each corporation that is, entitled to the money or a part of the money.

7. The date of birth, if known, of each individual who is entitled to the money or a part of the money.

8. If two or more persons are entitled to the money, the amount of the money to which each person is entitled, according to the financial records of the member and each person who together with the member holds the money in trust.

9. If a person who is entitled to the money is a corporation, information as to whether the corporation exists at the time of the application, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.

10. If a person who is entitled to the money is a corporation that exists at the time of the application, the name and address of each director, officer and shareholder of the corporation, according to the official records of the government of the jurisdiction in which the corporation was incorporated or continued.

11. The name and last known address, according to the member and each person who together with the member holds the money in trust, of the person from whom the money was received.

12. The date on which the money was received.

13. The reasons for which the money was received.

14. The efforts made by the member and each person who together with the member holds the money in trust to locate each person entitled to the money.

15. Any other information that the Secretary may require.

Information: application based on clause 59.6 (1) (b)

(3) A member who makes an application under subsection 59.6 (1) of the Act based on circumstances described in clause 59.6 (1) (b) of the Act shall provide to the Society the information described in paragraphs 1 to 4 of subsection (2) and the following information:

1. The period of time for which the money has been held in trust.

2. The reasons why the member is unable to determine who is entitled to the money.

3. Any other information that the Secretary may require.

Supporting documents

(4) A member who makes an application under subsection 59.6 (1) of the Act shall provide to the Society copies of documents that are in the member's possession and control that may be required by the Secretary to support the information provided under subsection (2) or (3).

Certification

(5) A member who makes an application under subsection 59.6 (1) of the Act shall certify that all information provided under subsection (2) or (3) is correct to the best knowledge of the member.

Secretary's consideration of application

2. (1) The Secretary shall consider every application under subsection 59.6 (1) of the Act made in accordance with section 1 of this By-Law and, on the basis of the information provided under subsection 1 (2) or subsection 1 (3) of this By-Law and any documents provided under subsection 1 (4) of this By-Law, shall,

(a) if he or she is satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, approve the application; or

(b) if he or she is not satisfied that the condition for making the application set out in clause 59.6 (1) (a) or (b) of the Act is met, refuse to approve the application.

Application based on clause 59.6 (1) (a)

(2) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (a) of the Act, in considering the application, the Secretary shall have regard to,

(a) what efforts the member has made to locate the person entitled to the money; and

(b) whether or not there is any reasonable prospect the person entitled to the money can be located.

Application based on clause 59.6 (1) (b)

(3) If an application under subsection 59.6 (1) of the Act is based on circumstances described in clause 59.6 (1) (b) of the Act, in considering the application, the Secretary shall have regard to the nature of trust in which the money was held and the circumstances in which the trust arose.

CLAIMS FOR PAYMENT OF MONEY

Interpretation: "claimant"

3. In section 4, "claimant" means a person who makes a claim under subsection 59.10 (1) of the Act.

Making claim

4. (1) A claimant shall complete a claim form provided by the Society.

Information

(2) A claimant shall provide to the Society the following information:

1. The claimant's name, address and telephone number.

2. If the claimant is a corporation, the claimant's corporation number.

3. The amount of the money that the claimant is claiming payment of.

4. The name of the member to whom the money was paid in trust and, if the money was paid to the member and one or more other persons for them together to hold the money in trust, the name of each of those other persons.

5. The last known address, according to the claimant, of the member to whom the money was paid in trust and, if the money was paid to the member and one or more other persons for them together to hold the money in trust, the last known address, according to the claimant, of each of those other persons.

6. The date on which the money was paid in trust to the member, or to the member and one or more other persons, or, if the money was paid in trust to the member, or to the member and one or more other persons, in two or more separate payments, the date of each separate payment.

7. The reason or reasons why the money was paid in trust to the member, or to the member and one or more other persons.

8. The reason or reasons why the claimant did not claim payment of the money from the member or the member and the person or persons who held the money in trust.

9. Any other information that the Secretary may require.

Supporting documents

(3) A claimant shall provide to the Society copies of documents that are in the claimant's possession and control that may be required by the Secretary to support the information provided under subsection (2).

Certification

(4) A claimant shall certify that all information provided under subsection (2) is correct to the best knowledge of the claimant.

Consideration of claim

5. (1) The Secretary shall consider every claim under subsection 59.10 (1) of the Act made in accordance with section 4 of this By-Law and, on the basis of the information provided under subsection 4 (2) of this By-Law and any documents provided under subsection 4 (3) of this By-Law, shall,

(a) grant the claim;

(b) deny the claim; or

(c) refer the claim to the committee of benchers appointed under section 6 of this By-Law.

Secretary grants or denies claim

(2) If the Secretary grants the claim under clause (1) (a) or denies the claim under clause (1) (b), subject to section 59.11 of the Act, the Secretary's disposition of the claim is final.

Committee of benchers

6. (1) Convocation shall appoint a committee of at least three benchers to consider claims under subsection 59.10 (1) of the Act that are referred by the Secretary under clause 5 (1) (c) of this By-Law.

Term of office

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

Consideration of claim by committee of benchers: quorum

7. (1) Three benchers who are members of the committee appointed under section 6 constitute a quorum for the purposes of considering a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law.

Procedure

(2) The procedure applicable to the consideration by the committee appointed under section 6 of a claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law shall be determined by the committee.

Consideration of claim by committee of benchers

8. (1) The committee appointed under section 6 shall consider every claim under subsection 59.10 (1) of the Act that is referred by the Secretary under clause 5 (1) (c) of this By-Law and shall,

(a) grant the claim; or

(b) deny the claim.

Dispositions final

(2) Subject to section 59.11 of the Act, the committee's disposition of a claim is final.

FORMER MEMBERS

9. This By-Law also applies, with necessary modifications, in respect of former members.

Report on the Federation of Law Societies' Mid-Winter Meeting

(see Report in Convocation file)

CONVOCATION ROSE AT 5:55 P.M.

Confirmed in Convocation this 24th day of May, 2001

Treasurer