

MINUTES OF CONVOCATION

Thursday, 24th June 2004
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Alexander, Banack, Bourque, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Coffey, Copeland, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Filion, Finkelstein, Finlayson, Furlong, Gold, Gottlieb, Harris, Heintzman, Hunter, Lawrence, Legge, MacKenzie, Manes, Murray, O'Brien, O'Donnell, Pattillo, Pawlitza, Porter, Potter, Ross, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Topp, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The reporter was sworn.

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TREASURER'S REMARKS

The Treasurer advised Convocation that the Finance Committee approved the proposal for the costs of the referendum on benchers remuneration. The referendum is scheduled to take place this fall.

The Treasurer was saddened by the passing of a very distinguished former colleague Gordon Farquharson, Q.C., LSM on June 13, 2004. Mr. Farquharson, who was a life bencher, practised law in Peterborough for 50 years. He was awarded a Distinguished Flying Cross for bravery in the Battle of Britain. The Treasurer described Mr. Farquharson's passing "as a significant moment in the profession" and extended condolences to his family on behalf of Convocation.

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Re: Referendum Funding

Mr. Chahbar presented the Finance and Audit Committee Report to Convocation.

Finance and Audit Committee
June 10, 2004

Report to Convocation

Purpose of Report: Decision
 Information

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

THE REPORT

1. The Finance and Audit Committee ("the Committee") met on June 10, 2004. Committee members in attendance were: Abdul Chahbar (v.c.), Peter Bourque, Andrew Coffey, Paul Dray, Allan Gotlib, Holly Harris, Allan Lawrence, Laurie Pattillo, Alan Silverstein, Gerry Swaye, Beth Symes and Bradley Wright. Staff attending were Malcolm Heins, Zeynep Onen, Fred Grady, Naomi Bussin and Andrew Cawse.
2. The Committee is reporting on the following matters:
 - For Decision
 - Allocation of referendum costs.
 - For Information
 - 2005 budget process

FOR DECISION:

ALLOCATION OF COSTS OF BENCHER REMUNERATION REFERENDUM

Request to Convocation

Convocation is requested to approve the allocation of up to \$120,000 from the 2004 Contingency to fund the costs of the member referendum on Bencher remuneration.

3. In May 2004, Convocation approved a mechanism for Bencher remuneration which will not be implemented until approved in a general referendum of the membership.
4. The referendum will be completed by year-end and there is no specific provision for the referendum costs of \$120,000 in the 2004 operating budget. The Committee considers it appropriate for the referendum funding to come from the Contingency of \$1.2 million approved as part of the 2004 operating budget. The Contingency was set up for this type of unbudgeted expenditure and has not been used to date, leaving a balance of \$1.08million for the rest of the year.

FOR INFORMATION:

BUDGET PROCESS

5. In January 2004, Convocation approved a budget timetable which sees the completion of operational reviews and preliminary bencher input of policy objectives and priorities into the budget completed by this month. This timetable allows staff to complete a draft budget during the summer. Professional Regulation and Policy and Legal Affairs were approved as the subjects for the operational reviews for the 2005 budget. These have now been completed and will be incorporated into materials for the 2005 budget.

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It was moved by Mr. Chahbar, seconded by Mr. Ruby that Convocation approve the allocation of up to \$120,000 from the 2004 Contingency Fund to fund the costs of the member referendum on bencher remuneration.

Carried

ITEM FOR INFORMATION

Budget Process

REPORT OF THE INTER-JURISDICTIONAL MOBILITY COMMITTEE

Re: Amendments to By-Law 33 (Inter-Provincial Practice of Law)

Mr. Hunter presented the Inter-Jurisdictional Mobility Committee Report to Convocation.

Report to Convocation
June 24, 2004

Inter-Jurisdictional Mobility Committee

Purpose of the Report: Decision

Prepared by the Policy Secretariat
(Sophia Spurdakos 416-947-5209)

OVERVIEW OF POLICY ISSUE

BY-LAW AMENDMENTS RESPECTING
INTERJURISDICTIONAL MOBILITY

Request to Convocation

1. That Convocation approves the proposed amendments to By-law 33, set out at Appendix 2 to this report.

Summary of the Issue

2. In August 2001 the Federation of Law Societies established a National Mobility Task Force to make recommendations on enhanced mobility for lawyers within Canada. In May 2002 the Task Force reported to the Federation with recommendations. The recommendations were accepted and in August 2002 the Federation delegates accepted a National Mobility Agreement. In December 2002, eight jurisdictions, including Ontario, signed the National Mobility Agreement. In March 2003 Convocation approved by-law amendments to By-laws 11, 13 and 33 to implement the provisions of the National Mobility Agreement. In April 2003 additional amendments were approved to By-laws 11 and 13.
3. Since the Agreement came into effect, a national working group of staff meets regularly to discuss implementation issues. In the course of these discussions it occasionally becomes clear that by-laws/rules need to be amended to clarify or better reflect the intent of the Agreement.
4. Appendix 2 contains proposed amendments to By-law 33.

THE REPORT

Terms of Reference /Committee Process

11. Committee members discussed the Committee issues on June 10, 2004. Derry Millar (Chair), George Hunter, Heather Ross and Bonnie Warkentin gave their input on the issues for decision. The staff person to the Committee is Sophia Sperdakos.
12. The first matter on which the Committee is reporting is the following:

Policy – For Decision

· Amendments to By-law 33 respecting inter-jurisdictional mobility

BY-LAW AMENDMENTS RESPECTING INTER-JURISDICTIONAL MOBILITY

(a) Background

13. The National Mobility Agreement (“the Agreement”) came into effect in Ontario in July 2003. Convocation approved necessary by-law amendments, particularly to By-laws 11 and 33 in March 2003, to come into force on July 1, 2003. Subsequent to March 2003, Convocation approved further housekeeping amendments to the relevant by-laws as well as additional provisions to address matters that arose in the course of implementing the Agreement.
14. Since the Agreement came into effect, a national working group of staff meets regularly to discuss implementation issues. In the course of these discussions it occasionally becomes clear that by-laws/rules need to be amended to clarify or better reflect the intent of the Agreement.
15. Appendix 1 contains the current wording of section 10 of By-law 33 dealing with temporary mobility.
16. Appendix 2 provides proposed amendments to By-law 33 to reflect necessary refinement or clarification to the language. In particular the amendments address the following:
 - a. The Agreement and model rules require that to be eligible for temporary mobility without a permit a lawyer must, among other things, not be subject to a criminal proceeding or be the subject of a conduct, capacity, or competence proceeding “in any jurisdiction”. The Law Society’s By-law 33 refers to “in a province or territory of Canada”. Since all other law societies have adopted the language of the Agreement, the proposed amendments to subsection 10(2)(b)(c)(d) and (e) of By-law 33 should refer to “any jurisdiction”, for consistency;
 - b. Where a lawyer gives an undertaking that restricts or limits his or her right to practise, whether that undertaking is given in the course of a proceeding or is given outside a formal proceeding - for example during the course of an investigation - that lawyer is ineligible for mobility while the condition or restriction is in effect. Once the restriction is lifted or the condition met the lawyer is again eligible for mobility without a permit. If, however, a lawyer is suspended (other than administratively) the fact of the suspension order means he or she is ineligible for mobility without a permit because he or she has a “discipline record” within the meaning of the Agreement.

It is recommended that section 10(2)(f) be amended to remove the words “and has had” to reflect the Agreement’s provision that a lawyer is again eligible for mobility without a permit once the terms, conditions, limitations or restriction on his or her authorization to practise are no longer in place. It is also recommended that the word “imposed” be deleted so that the section can apply to terms, conditions, limitations or restrictions obtained by way of an undertaking given other than as part of a proceeding.

Request to Convocation

17. That Convocation approves the proposed amendments to By-law 33, set out at Appendix 2 to this report.

APPENDIX 1

BY-LAW 33 –CURRENT WORDING OF SECTION 10

Interpretation: occasional practice of law

10. (1) In this section, a person practises law on an occasional basis if, during a calendar year, the person practises law in Ontario for not more than 100 days.

Prior permission not required

(2) A person who is not a member may, without the prior permission of the Society, practise law in Ontario on an occasional basis if, and so long as, the person,

- (a) is authorized to practise law in a province or territory of Canada outside Ontario;
- (b) is not the subject of a criminal proceeding in a province or territory of Canada;
- (c) is not the subject of a conduct, capacity or competence proceeding in a province or territory of Canada;
- (d) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is or was a member,
 - (i) revoking the person's membership in the governing body, disbarring the person as a barrister and striking the person's name off the governing body's roll of solicitors, or
 - (ii) permitting the person to resign the person's membership in the governing body;
- (e) is not the subject, and has no record, of any order made against the person by a tribunal of the governing body of the legal profession in each province and territory of Canada of which the person is a member suspending or limiting the rights and privileges of the person, other than for failure to pay fees or levies to the governing body, for insolvency or bankruptcy or for any administrative matter;
- (f) has and has had no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in each province and territory of Canada in which the person is entitled to practice law; and
- (g) does not establish an economic nexus with Ontario.

Same

(2.1) A person who is not a member, if and so long as the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario, may, without the prior permission of the Society, practise law in Ontario on an occasional basis,

- (a) as a counsel in a proceeding in the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a tribunal established under an Act of Parliament, a service tribunal within the meaning of the National Defence Act (Canada) or the Court Martial Appeal Court of Canada; or
- (b) as counsel to a court or tribunal mentioned in clause (a).

Practising on more than an occasional basis

(3) A person who is entitled under subsection (2) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by a Society official, if, and so long as, the person meets the requirements mentioned in subsection (2).

Same

(4) A person who is entitled under subsection (2.1) to practise law in Ontario on an occasional basis may practise law in Ontario on more than an occasional basis, as permitted by a Society official, if, and so long as, the person is authorized to practise law in a province or territory of Canada outside Ontario and does not establish an economic nexus with Ontario.

APPENDIX 2

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 33 [INTER-PROVINCIAL PRACTICE OF LAW]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 24, 2004

THAT By-Law 33 [Inter-Provincial Practice of Law], made by Convocation on May 24, 2001, amended on September 28, 2001, revoked and replaced on March 27, 2003 and amended on June 26, 2003 and September 25, 2003, be further amended as follows:

1. Clauses (b) and (c) of subsection 10 (2) of By-Law 33 [Inter-Provincial Practice of Law] are amended by deleting “a province or territory of Canada” / “aucune province ni aucun territoire du Canada” and substituting “any jurisdiction” / “aucun ressort”.
2. Clauses (d) and (e) of subsection 10 (2) of the By-Law are amended by deleting “province or territory of Canada” / “d’une province ou d’un territoire du Canada” and substituting “jurisdiction” / “d’un ressort”.
3. Clause (f) of subsection 10 (2) of the By-Law is deleted and the following substituted:
 - (f) has no terms, conditions, limitations or restrictions on the person’s authorization to practise law in each jurisdiction in which the person is entitled to practise law; and
 - f) son autorisation d’exercer le droit dans chaque ressort où il est habilité à exercer le droit n’est assortie d’aucune condition ni restriction;

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It was moved by Mr. Hunter, seconded by Mr. Finkelstein that Convocation approve the proposed amendments to By-Law 33 set out at Appendix 2 to the Report.

Carried

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REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

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

B.

ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, June 24th, 2004:

David Michael Cremar	Bar Admission Course
Sanjaykumar Madanlal Doshi	Bar Admission Course
Chernor Yahya Jalloh	Bar Admission Course
Elham Jamshidi	Bar Admission Course
John Poletes	Bar Admission Course
Sangeetha Punniyamoorthy	Bar Admission Course
William James Strecker	Bar Admission Course
Hendrik Hugh Angus Van Harten	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, June 24th, 2004:

Jean Elaine Blacklock	Province of Alberta
John David Bonn	Province of Nova Scotia
Kevin Lewis Cohen	Province of British Columbia
Patricia Emily Kennedy	Province of British Columbia
Bevin Catherine MacBean Worton	Province of Alberta

ALL OF WHICH is respectfully submitted

DATED this the 24th day of June, 2004

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

Carried

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Ms. Pawlitza then presented them to Madam Justice Susan G. Himel to sign the rolls and take the necessary oaths.

David Michael Cremar	Bar Admission Course
Sanjaykumar Madanlal Doshi	Bar Admission Course
Chernor Yahya Jalloh	Bar Admission Course
Elham Jamshidi	Bar Admission Course
John Poletes	Bar Admission Course
Sangeetha Punniyamoorthy	Bar Admission Course
William James Strecker	Bar Admission Course
Hendrik Hugh Angus Van Harten	Bar Admission Course
Jean Elaine Blacklock	Transfer, Province of Alberta

John David Bonn
Kevin Lewis Cohen
Patricia Emily Kennedy
Bevin Catherine MacBean Worton

Transfer, Province of Nova Scotia
Transfer, Province of British Columbia
Transfer, Province of British Columbia
Transfer, Province of Alberta

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MOTIONS – APPOINTMENTS

It was moved by Mr. Feinstein, seconded by Mr. Krishna

that James Caskey be appointed to the Federal Judicial Advisory Committee for Ontario (Ontario South and West) effective July 1, 2004 for a term of two years.

that Bonnie Warkentin be appointed to the Federal Judicial Advisory Committee for Ontario (Ontario East and North) effective July 1, 2004 for a term of two years.

that Julian Porter be reappointed to the Federal Judicial Advisory Committee for Ontario (Metro Toronto Region) for a term of two years.

Carried

It was moved by Mr. Hunter, seconded by Mr. Murray that Gordon Bobesich be reappointed the Law Society's representative on the Canadian National Exhibition Association for a term of one year, expiring September 2005.

Carried

It was moved by Mr. Hunter, seconded by Mr. Murray that Gerald Swaye be appointed a director to the LibraryCo Board.

Carried

It was moved by Mr. Hunter, seconded by Mr. Murray that Marion Boyd be reappointed to the Ontario Justice Education Network for a term of three years.

Carried

It was moved by Mr. Hunter, seconded by Mr. Murray that Alan Gold be appointed to the Judicial Appointments Advisory Committee as the Law Society's representative to complete the term of Todd Ducharme who was appointed to the Bench.

Carried

It was moved by Mr. Hunter, seconded by Mr. Murray that Gary Gottlieb be reappointed to the Ontario Bar Assistance Program Board of Directors for a term of one year.

Carried

It was moved by Mr. Wright, seconded by Mr. Feinstein that Carole Curtis be appointed Chair, and Laurence Pattillo and Mary Louise Dickson be appointed Vice-Chairs to the Professional Regulation Committee.

Carried

It was moved by Mr. Wright, seconded by Mr. Feinstein that Laurence Pattillo be appointed to the Proceedings Authorization Committee.

Carried

It was moved by Mr. Wright, seconded by Mr. Feinstein that Mary Louise Dickson be appointed as Summary Disposition Benchers.

Carried

DRAFT MINUTES OF CONVOCATION – MAY 28, 2004

The Draft Minutes of Convocation of May 28, 2004 were confirmed.

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REPORTS FOR INFORMATION

- Federation of Law Societies of Canada Report
- Government Relations Committee Report
- Lawyers Fund for Client Compensation Committee Report
- Ontario Lawyers Gazette Advisory Board Report
- Sole Practitioner and Small Firm Task Force Interim Report

FEDERATION OF LAW SOCIETIES OF CANADA REPORT

Federation of Law Societies of Canada
June 24, 2004

Report to Convocation

Purpose of Report: Information

Prepared by the George Hunter

Federation of Law Societies of Canada

Report to Convocation Regarding
Council Meeting

May 1, 2004 - Fredericton, New Brunswick

Prepared by George Hunter
May 20, 2004

The Council of the Federation of Law Societies of Canada met in Fredericton on May 1, 2004. George Hunter represented the Law Society of Upper Canada.

Appointment of Judges

After debate it was resolved that a series of questions be developed for Law Societies to answer in order that the Federation be able to assess whether there is consensus on this issue. Malcolm Heins accepted the delegation of this responsibility. Law Societies have been requested to file their positions on the appointment of Superior Court Judges as soon as possible and, in any event, before the summer recess. The Federation's Executive Committee will examine the creation of a Working Group to consider this matter.

Money Laundering

After extensive debate it was resolved that each Society adopt a “no cash” rule which substantially mirrors the rule promulgated by the Law Society of British Columbia. Societies were asked to consider this matter and, if in agreement, adopt their respective rules by September, 2004. The background to this matter will be presented to Convocation shortly. It was felt important that Societies enact appropriate by-laws sensitive to the particular needs of lawyers to assist the public interest in defeating money laundering.

The current money laundering litigation stay arrangement expires this fall in the BC action. Accordingly, it was resolved that counsel to the Federation, in cooperation with counsel for the Law Society of British Columbia, be instructed to prepare for pre-trial consultations.

The Council resolved to create a consultation process on electronic transfers of funds (EFTs) and how such transfers affect the legal profession. In that context, each Law Society is requested to report its views on EFTs to the Federation office at the earliest opportunity.

The Federation Task Force on Money Laundering legislation was authorized to meet with the Department of Justice. (This meeting was subsequently scheduled for May 19.) Maurice Laprairie, Q.C., Chairman of the Task Force, Jim Matkin, CEO of the Law Society of British Columbia and George Hunter met with the ADM of Finance charged with responsibility for this matter.

Compensation Funds

The Federation has created a Task Force on Compensation Funds in the context of the mobility protocol. The Task Force was instructed to analyze discussions that took place at Fredericton arising from the Conference and Working Group and subsequently make recommendations to Council.

Mobility

The Mobility Task Force chaired by Professor Vern Krishna, Q.C. was mandated to recommend a dispute resolution mechanism to be applicable under the Mobility Protocol as soon as possible.

The Council heard from Jim Bissell, Q.C., Assistant Deputy Minister, Department of Justice on the subject of the mobility of Department of Justice lawyers in Canada. It would appear that Council is close to consensus in agreement with the Department’s position. Societies were requested to report back to George Hunter as soon as possible with respect to their disposition regarding the comments of Mr. Bissell and the recommendations of the Task Force.

A sub-Working Group of the Task Force on Mobility dealing with the situation of notaries and their mobility was established and has prepared a report. There are differences between the Barreau and the Chambre. Council asked that the Barreau and the Chambre meet to work out the remaining differences and thereafter report to Council.

Standards of Conduct

Each Law Society was asked to file their conflict rules with the Federation’s office.

Council established a Working Group on codes of conduct to look at potential harmonization of conflict rules. Gavin MacKenzie has graciously agreed to serve on this Working Group.

Searches in Law Offices

Every Society was asked to provide its comments on a draft protocol on law office searches within 30 days. The matter has been referred to PRC.

Resolution on Unanimity

A resolution on unanimity was adopted unanimously by Council. All major decisions taken by Council require unanimity.

Intervention Policy

Each Society was asked to file its comments on a draft intervention policy as soon as possible. A copy of this policy has been provided to the Litigation Committee.

National Committee on Accreditation

The Council and the NCA Executive Director, Professor Krishna, reported on the National Committee on Accreditation, its procedures and finances. The Council adopted the 2004-2005 budget of the National Committee on Accreditation.

Financial Report

Council adopted a 2004-2005 budget premised on a levy of \$10.50 per full time equivalency member. The Council established a committee to examine budgetary provisions for enhanced activities of the Federation, to support management in preparing cost evaluation of the Council's Activity Plan and to consider an assessment of Federation resources. The Committee is composed of William Everett, Q.C. (LSBC), George Hunter (LSUC), Pierre Gagnon (Barreau) and Raymond Larkin, Q.C. (NSBS).

Patent Agents

Council is awaiting the federal government position on potential matters relating to privilege and self-regulation of patent agents.

Immigration Consultants

Council was informed that the Law Society of Upper Canada and Barreau du Québec were looking at the potential legal challenges to the current proposed regulatory regime regarding immigration consultants. The Council is also concerned that there ought to be an exclusion of law office employees from the application of the current regulations requiring membership in the Canadian Society of Immigration Consultants.

Trademark Application "List with your Lawyer"

Council resolved not to pursue an opposition to this trademark application.

Government of Newfoundland and Labrador

The government of Newfoundland and Labrador has recently announced that it intends to introduce legislation that would exempt government employed lawyers from paying their Law Society dues. The Newfoundland Law Society intends to fight this. Council members were requested to have their respective Presidents support the Newfoundland Law Society's position by sending letters to the Attorney General of Newfoundland and Labrador and which the Treasurer has done.

First Canadian Title in New Brunswick

The New Brunswick Law Society is engaged in litigation with First Canadian Title regarding the procedures by which First Canadian Title operates. Specifically, those with an interest in land are being requested to grant Powers of Attorney to First Canadian Title personnel who then, in turn, swear documents albeit they have no personal knowledge with respect to the lands in question. The Law Society of New Brunswick indicated that it might seek assistance with the litigation from the Federation in the future. In that event the matter would be referred to the Federation's Litigation Committee.

Winnipeg, November 4 – 6, 2004

George Hunter and Lori Spivak were appointed co-Chairs of the 2004 Winnipeg Planning Committee and were mandated to set up the 2004 Annual Conference.

Next Meeting

The next meeting for Council is scheduled for September 11, 2004.
LG-OTT-2\359319\1

GOVERNMENT RELATIONS COMMITTEE REPORT

Government Relations Committee
June 24, 2004

Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on June 15th, 2004. Committee members in attendance were: James Caskey (Co-Chair), Andrea Alexander, Marion Boyd, Andrew Coffey, Anne Marie Doyle, Dr Sy Eber, Dr Richard Filion, the Hon. Allan Lawrence, Heather Ross, Julian Porter, William Simpson (by telephone), Michelle Strom and Bradley Wright. Staff in attendance were Malcolm Heins, Katherine Corrick, Sheena Weir and Julia Bass.
2. The Committee is reporting on the following matters:
 - For Information: Faith Based Arbitrations in Ontario

FAITH-BASED ARBITRATIONS IN ONTARIO

Background

3. Under the Ontario *Arbitration Act*, parties to a dispute may select an arbitrator of their choice and the courts will enforce the arbitrator's decision.
4. Faith based arbitration services have been offered in Ontario for some time by, for example, Hassidic Jews and Ismaili Muslims.
5. During the last year, members of the Canadian Muslim community have announced plans to offer Muslim arbitration services, using the principles of Shariah law. No such services have been offered as yet.
6. This issue has attracted attention from governments and the media. Some of the media coverage of this issue is attached at Appendix 1. Some commentators have raised concerns about whether the introduction of Shariah law will be compatible with the *Canadian Charter of Rights and Freedoms*, particularly whether

the use of Shariah law in family law disputes will be even-handed between men and women. An article on this topic is attached at Appendix 2.

7. It should be noted that the *Arbitration Act* applies only to matters that are subject to arbitration under Ontario law. This does not include any criminal matters. The *Arbitration Act* contains provisions that permit the courts to intervene where the arbitration proceedings are unequal or unfair to the parties involved and to vary, set aside or declare invalid arbitration awards for a variety of reasons.
8. On April 28, 2004, the Access to Justice Committee discussed the proposed introduction of Shariah arbitrations in Canada. The issue was also discussed at the Equity and Aboriginal Issues Committee on June 10th.
9. The Access to Justice Committee will be studying this issue further and has proposed inviting Professor Edward Morgan of the University of Toronto to make a presentation on these issues. Professor Morgan's area of expertise is human rights and he has been quoted extensively in the media on the topic of faith-based arbitrations.
10. The Committee noted that the Premier of Ontario has now referred the issue for review by two cabinet ministers: the Attorney General, the Honourable Michael Bryant and the minister responsible for women's issues, the Honourable Sandra Pupatello (Appendix 3).
11. The Committee will be monitoring the results of this review and notes that the Access to Justice Committee will continue to study the issue.

APPENDIX 1

May 22, 2004. 01.00 AM

BERNARD WEIL/TORONTO STAR

Homa Arjoman, who fled Iran in fear of her life in 1989, now heads a campaign to stop the use of sharia in Canada, which she believes entrenches the inequality of women.

Ontario sharia tribunals assailed

Women fighting use of Islamic law

But backers say rights protected

LYNDA HURSTFEATURE WRITER

Had she stayed in Iran, Homa Arjomand would now be dead. All — all — of the women's activists she worked with in Tehran have been executed, victims of a reactionary regime that ruled, and continues to rule, by strict adherence to Islam's sharia law. In 1989, she and her husband paid \$15,000 to smugglers to help them and their two young children flee the country. For three days, they rode on horseback through the mountains, sleeping in barns before finally reaching Turkey. Two years later, the onetime professor of medical physics arrived in Canada as a refugee. And how grateful she was to be in a secular country, where female equality was the law. That was then. Last fall, Arjomand, now a transitional counsellor in Toronto for immigrant women, heard the province had quietly approved the use of Islamic law in Ontario's Muslim community. A group she'd never heard of, called the Islamic Institute of Civil Justice, had gained the right to hold tribunals, *darul qada*, in which marriage, family and business disputes can be settled according to sharia. The 1,300-year-old body of laws and rules for living was inspired by the Qur'an, Islam's holy book. Arjomand was horrified. "The last thing I expected in Canada, the last thing I want, is sharia law," she says. "Women are not equal under it, therefore it is opposed to Canada's laws and values. The government can't let this happen." The government has no intention of stopping it. Muslims can't be excluded from Ontario's 1991 Arbitration Act, which allows religious groups to resolve family disputes, says the attorney-general's office. Hassidic Jews have been running their own Beit Din arbitrations based on Jewish law for years. Catholics, too, even Ismaili Muslims. Rulings are binding, but must be consistent with Canadian laws and the Charter of Rights. "There

are safeguards built into the act," says Brendan Crawley, the attorney-general's spokesperson, who has been fielding calls from the world's press on the unprecedented decision. "Participation must be voluntary by both parties and there is recourse if a decision doesn't abide by Canadian law. They can appeal to the courts." Arjomand has heard all this and doesn't buy a word of it. Now head of the new International Campaign To Stop Sharia Courts in Canada, she and representatives from several concerned groups met last month with senior staff at the attorney-general's office and with Sandra Pupatello, the minister responsible for women's issues. Arjomand told them flatly that under the guise of protecting religious freedom and multiculturalism — the fear, perhaps, of offending the Muslim community's male leadership — they were about to let the rights of Canadian Muslim women be trampled on. Most at risk are young immigrants, said Arjomand, who come from the Middle East or North Africa, where sharia is the law and has been used to subjugate them their entire lives. They know nothing different. Now that sharia tribunals are to operate here, she says, many women will be socially and psychologically coerced into participating. To refuse would mean rejection by their families and the community — or worse. "In a straight disagreement between a husband and wife, the husband's testimony will prevail. That is sharia. Even those women who know they can appeal will not challenge an arbitration decision for fear of the consequences." Despite what the attorney-general's office blithely assumes, she says, it's unlikely decisions contrary to Canadian law will ever show up before the courts. Sharia-approved but illegal activities already occur in Toronto, and she fears this will give strength to them. Muslim women are battered but don't dare report it. Bigamous marriages occur. Among her clients are two 14-year-old girls who were married last year to older men, in defiance of Ontario law prohibiting marriage before age 16. "This is child abuse, sexual abuse," Arjomand says scathingly. "These girls were born in Canada. I want to tell them to leave and get them into group homes, but if they do they'll be disavowed and isolated." In a May 7 letter to Arjomand, John Gregory, general counsel to the attorney-general, acknowledged "the oppression that some Muslim women experience in Canada." But that was not reason to deny the Islamic Institute the right to use the Arbitration Act. "The family or community pressure that prevents (a woman) from going to court to dispute an arbitration seems likely to prevent her from going to court to assert her legal rights even without an arbitration." Moreover, he added, "you may be asking us to find a legal remedy for what is mainly a cultural or possibly religious problem. So far it is not clear to us what legal remedy would be effective and constitutional." Arjomand is now meeting with lawyers to see if they can find a remedy. A campaign Web site petition to halt the tribunals before they begin has already collected 2,056 names. Alia Hogben, Indian-born president of the Canadian Council of Muslim Women, says she got the same "nothing we can do" response after meeting with Gregory. And a council letter to Premier Dalton McGuinty was "sloughed off." "We've consulted scholars and they tell us we can't accept this," says the retired social worker. "Everyone in the world is looking at Canada. A precedent can't be set. We can't give in." Hogben dismisses the province's claim that Ismaili Muslims (followers of the Aga Khan) have used private arbitration for years without problem and therefore why shouldn't the rest of the community. As she dryly points out, "Ismailis don't use the sharia in their arbitrations." The women's council's 900 members come from all Islamic sects: Shia, Sunni, Sufi, Wahhabi, Somali and Ismaili. "It is difficult for us to speak out because we are practising, pro-faith Muslims who don't want to provide ammunition to those who malign Islam." But they feel they must, she says, because the equality of the sexes espoused by the Qur'an is not reflected in the sharia — the laws that evolved over 200 years following the death of Mohammad in 632 AD. "Living by religious law is our whole life. ... (In this) the Ontario government is the most enlightened in the world." Mumtaz Ali

"We see this as a women's equality issue," Hogben says. "Women are afraid they will not be 'good' Muslims if they don't go along with it or that they'll be accused of blasphemy. Why, why is it happening?" She answers her own question with another question: "Is it because the government doesn't want to be seen as anti-Muslim? But this is anti-women. Why should we be treated differently from other Canadian women?" The international rights group Women Living Under Muslim Laws has warned that secular states like Canada must be careful not to fall into the trap of not interfering in old-world traditions out of misguided sensitivity. Trying to avoid discrimination against a whole group, it says, can lead to discrimination against its female members. Like Arjomand, Hogben resents the contention of the Islamic Institute of Civil Justice and its head, Mumtaz Ali, that sharia arbitrations are an expression of Canada's multicultural ethos. "It's a false argument," she says. "Multiculturalism was never meant to take away the equality rights of a group, in this case Muslim women." Adeena Niazi, executive director of the Afghan Women's Organization, is "in between" on the issue. If it's applied correctly, Islamic law will be of benefit to women, she says, "but there has always been misinterpretation and misuse under the sharia, and women deprived of their rights." Niazi grew up in an Afghanistan that had an Islamic constitution in which women were educated and had careers. Only when the warlords and ultimately the Taliban seized power, she says, were sharia laws used to persecute women. She fled in 1988. The majority of Canada's 600,000 Muslims — more than half live in Ontario — are recent arrivals. Niazi says they often don't speak the language, don't know the laws, certainly know nothing about equal rights. "We see women who are beaten and who take it because they are afraid of the community. That's

the reality." Many in the Muslim community, men included, don't see how the arbitration tribunals can possibly work. Sharia differs among various sects and countries of origin. An interpretation in one country is unacceptable in another. In 2002, many Muslims around the world were outraged, for instance, when a Nigerian sharia court sentenced a woman found guilty of adultery to be stoned to death. After a global protest, the Nigerian high court overturned the ruling. "Which model will be used?" asks a male critic, Mubin Shaikh. "There is too much division in the community for this to work. Sharia is complex. Wahhabis Muslims won't go to a Sunni arbitrator and so on." The whole contentious idea of private sharia courts belongs to Mumtaz Ali, a retired Indian-born lawyer, president of the Canadian Society of Muslims and founder of the Islamic Institute of Civil Justice. Ali has been working since 1991 to find a way for Muslims to fully practise their faith in secular Canada, to be able to follow the sharia, which is required if they are to be devout. "Living by religious law is our whole life," he says. In facilitating that, "the Ontario government is the most enlightened in the world. This is the multiculturalism of my friend Pierre Trudeau." The existence of sects with varying interpretations of Islamic law isn't a concern because the model to be used is a "Canadianized sharia," he says. "It will be a watered-down sharia, not 100 per cent sharia. Only those provisions that agree with Canadian laws will be used. If there is a conflict between the two, Canadian law will prevail." (To critics, his remarks are confusingly at odds with an article written for the Calgary Herald in January by Syed Soharwardy, a founding member of the Islamic Institute, in which he wrote: "Sharia cannot be customized for specific countries. These universal, divine laws are for all people of all countries for all times.") Yes, Ali is aware that many Muslim women fear females will not be treated equally. They are wrong, he says: "That issue will not arise." He thinks they're afraid because they don't understand how the tribunals will work; indeed, few people do because details haven't been released. Ali says there will usually be two arbitrators hearing a dispute; one an expert on Canadian marriage, divorce and family laws, the other a sharia expert. If necessary, a third will act as umpire. They all will have access to a raft of Islamic scholars. Initially, arbitrators will come from a panel of about 15 lay people, not all of whom will be Muslim. One, he says, is a retired Ontario judge and non-Muslim. Few imams will be used, however, because "they are not qualified academically." Most will have taken a course on the arbitration process (which differs from mediation, in which parties reach their own agreement). Ali says this training accounts for the delay in getting the tribunals going. Husbands and wives will each have their own lawyer in attendance, he stresses, and arbitrators will be duty-bound to ensure no party is being pressured to take part or to accept a ruling. In any event, "that does not happen here," he says. "It happens in Egypt, in other countries, but not Canada. No one will be pressured. People think we're bringing in Taliban law. Not so. No one is going to be stoned to death or have their hands cut off." As he notes, "the Charter of Rights doesn't allow for cruel and unusual punishment." After speaking to a Muslim women's group in Edmonton this week, Ali was asked why women should go near a sharia arbitration when their rights are covered by Canadian courts. "To be a good Muslim you must," he told them. But it is also in women's own interests, he says. Just as Canadian law allows for prenuptial agreements, sharia offers marriage contracts. As an example, he says a woman could ask for the right of divorce — normally belonging only to men — to be transferred to her. Sharia also provides for her dowry to be returned to her. Critics are welcome to monitor any arbitration — appearing as "a friend of the court" — if they think the rights of women will be violated, he adds. This will come as news to the Council of Muslim Women, which was not informed that the arbitration tribunals were in the works, not asked for its views, nor to make recommendations. As far as it knows, the arbitrations will be private. "It would have been in Mumtaz Ali's interest to consult women's groups," says Annie Bunting, director of York University's law and society department. "Yes, Canadian laws will trump the sharia, on the books at least. But what impact will these tribunals have on women's lives?" That's the question being asked by Muslim women living in Canada a decade or more. A Halifax woman called Alia Hogben to say that if the tribunals come to pass, she will no longer consider herself a Muslim. Homa Arjomand no longer does, not after what happened to the women of Iran — and almost to her — under its draconian regime. She believes passionately that state and religion must be kept separate despite Canada's well-intentioned allegiance to multiculturalism. "Your beliefs should stay in your home, in your mosque, your church, your temple. We should remain a secular country with no separate rules for some groups, not when they discriminate against women."

Boutique law: It's the latest thing

By HEATHER MALLICK

Globe & Mail, Saturday, May 15, 2004 - Page F3

The news that Ontario will permit civil disputes such as divorce to be mediated under sharia or Islamic law is about the best idea since female foot-binding. It's not just, but it is restful. A woman with tiny claw-like feet isn't getting off the couch to hire a lawyer. And it's cheap: No court hearings, no going halves on the family home, no squabbles over custody, no fighting over wills.

For sharia law is already written. By a deity. And if you're a Muslim woman who makes the choice of going to Canadian courts rather than signing away her rights under sharia, you're offending one of the bigger gods, as I understand Islam.

This is interesting, not just because it's vile, but because it's part of a worldwide move toward privatizing everything, including the legal system. Ooooh, now we can go law-shopping.

Breaking up a nation's laws into a jigsaw puzzle where everyone gets one itty-bitty piece is part of a trend spearheaded by the Republican radical right in the United States. Junior Bush has opted out of international law -- shunning the treaty to establish the International Criminal Court, ignoring the United Nations in favour of pre-emptive strikes, rejecting decades of nuclear-weapons treaties, in effect ignoring the Geneva Convention, and even privatizing war. U.S. soldiers, many of them mercenaries paid by corporations out of public dollars, follow the law of the jungle with a level of torture that many of history's tyrants would have found unwise, shall we say.

Corporations are renewing efforts to be allowed to sue nations. And corporations like Enron and WorldCom rewrite the law in the sense that they know they'll largely get away with it.

Here, we have natives operating native courts in Canada. Now, there's sharia "mediation."

There used to be one legal system per nation and a basic but growing system of international law. Everyone had to follow it. It's public. That's why they call it "the law." Small groups are suddenly reinventing the legal system to suit themselves, which destroys the whole point of jurisprudence. Law becomes a market force or product that suits the U.S. Republican notion of grabbing. "Me want," a baby babbles. And this particular baby shall get.

Now, we have little islands of law being developed, and I don't mean a bank account in Bermuda.

The National Post likes sharia "mediation," even mocking The Globe and Mail for thinking it a front-page story. If the Post likes something that makes Muslims look different and bad, and it harms women, trust me, it's positively cyanotic. Save time, Muslim women, and bite the capsule now.

Journalist Paula Todd, on TVOntario, was on to the story early. She mapped it out for Ontarians, and I will trace her map for you so this sub-legal disease doesn't spread cross-country.

She interviewed Alia Hogben of the Canadian Council of Muslim Women, who pointed out that sharia law isn't monolithic, but is applied differently throughout the Islamic world (which is where stoning women to death comes in).

But it has one common thread: patriarchy. In a will, a wife might get a quarter of the estate at the most. She cannot divorce her husband, but he can divorce her. She would get three months to a year of alimony, maximum. Note "alimony," as opposed to child support, because she won't get the kids if the husband wants them.

Opposite her sat Ali Hindy, a local imam. No, not David Bowie's wife, but a Muslim god's deputy, in this case a grey-bearded man exuding utter certainty and self-satisfaction. Ms. Hogben looked distressed to be defying both man and god. I applaud her bravery in daring to disagree.

"The man with a hammer interprets every problem as a nail," American scholar Stephen Holmes writes in the current London Review of Books. And in this case, Canadian law is what moderates the hammer.

The imam said that if the woman were unhappy, she could go to the Canadian courts. "You can take more." Pause. "You are disobeying god."

So a timid woman in a new country, who has never disobeyed a man or her god in her life, is going to find the money (where?) to defy her entire culture and ask for a divorce, half the assets, shared child custody and support, and a place to live while she takes out student loans to get a degree and, years later, a job. Add a burqa to the equation, leaving her unemployable, and she's done and dusted.

If you believe sharia mediation is plausible, then John Ashcroft's secretly an opera singer with three breasts. He's sleeping with Andrea Bocelli, and their love child, Rocco Ray Ashcroft, is being raised by Noam Chomsky in a rooming house in Bruges.

Have I now made it clear that allowing vulnerable women to be bullied into destitution and despair in a Liberal province is an absurd and fantastical idea that will end in tears? And blood, doubtless female?

Timing shouldn't matter when it comes to principle, but it does here. Speaking as a paranoid "my coffee smells of bitter almonds" type who just made an off-the-record-or-else speech at a Vancouver journalism conference and was later told that a man from the Seattle branch of the U.S. Department of Homeland Security was sitting in the front row, I can only say this: Canada, where I was born to immigrants, is as friendly a country to foreigners as can be found. But multiculturalism to the extent of cutting new Canadians off from the legal mainstream is like hacking off your own leg.

It doesn't grow back.

Battling phantoms on sharia law
Toronto Star June 10, 2004. 01:00 AM

HAROON SIDDIQUI

Reading, hearing and watching the debate on the ostensible introduction of sharia law in Ontario has been instructive — not about the proposed code, for there isn't one yet, but rather about the media debate on it and what it says about our collective values.

No cliché is being left unturned and no prejudice unmined — not merely in editorials and opinionated commentary but in supposedly neutral news copy and radio-TV scripts.

The spectre has been raised of Muslim women being subjugated even more than they already might be, or, worse, being stoned to death or killed in some other unspecified ways, right here on the sacred secular soil of Canada.

That the prospect of such murders here is less than zero has not deterred those predicting them or the journalists broadcasting them breathlessly. Anti-Islamic zealots have also been having a field day.

I do not question the right of those who are worried to be worried. These include Muslims and non-Muslims.

But all Canadians should worry about being dragged down the slippery slope of blithely accepting one standard of public debate for Muslim Canadians and another for adherents of other religions.

That's what the largely unchallenged hostile narrative on the subject suggests.

It puts us in the direction of discriminating against Muslims as a group in order to avoid potential discrimination against individuals. It also suggests that Queen's Park deny Muslim Ontarians the right to religious arbitration, while encouraging it for others.

How did we get here?

The 1991 Ontario Arbitration Act — no different than those in other provinces — allows two people to have a third person arbitrate their civil, but not criminal, dispute. The exercise is voluntary. Either party can challenge the outcome in court, on the grounds that the consent was involuntary or that the verdict was unfair or unlawful.

The process provides privacy, cuts costs and reduces court dockets.

Arbitration is a growing business.

At the religious level, some churches and synagogues formalized the informal arbitration they had always provided for parishioners, based on religious precepts.

The minority Ismaili Muslim sect in Canada set up its own highly organized arbitration system for business or family disputes. On a more modest level, the Toronto-based Council of Imams began a similar service, often helping women get Islamic divorce from vindictive estranged husbands.

Trouble arose when a group of no more than about 50 Muslims set up the Islamic Institute of Civil Justice to dispense sharia law.

They did not say which sharia, for there are as many variations as there are Muslim nations. Most important, they forgot that nobody could set up a sharia court in Canada.

All they could offer was a mediation service, on a commercial or on a non-profit basis, within Canadian law. They became a victim of their own grandiosity.

But those opposing them are battling phantoms. Still, their criticisms need addressing:

The sharia court was "quietly" approved.

The government did no such thing, quietly or otherwise. Any person or group can set up a mediation service, as a glance at the Yellow Pages attests, as also calls to Catholic, Protestant or Jewish umbrella organizations.

The Muslim mediators promising to operate within the law may not.

This is highly speculative, if not racist.

Muslim women may be told they are not good Muslims if they do not conform.

They might, in the same way Catholic or Hutterite or Orthodox Jewish women wanting abortions are warned of God's wrath.

Timid Muslim women living in self-contained immigrant enclaves "are much more subject to community pressure," according to Homa Hoodfar of Concordia University.

There is no proof that they are, any more than any other group of immigrant women have been, or are, in other ghettos.

I hope the professor maintains a higher standard in her academic work than she does in her public policy pronouncements.

Muslim women are being sacrificed at the altar of multicultural political correctness.

If they are, they are no more than other groups of women under religious arbitration.

Let's bring out of the closet the assumption that Muslims the world over treat women worse than other people. But how do we determine if Muslims in Canada are cut from the same cloth as the Taliban?

We should not have different sets of laws for different women.

This is most sensible. Everyone should be subject to the same law. But the counter-argument is that every arbitration ruling is subject to the same Canadian law.

There is no training, supervision or standards for arbitrators. True. But if we need regulations, we need them for all, not a selected few on the basis of race or religion.

It is ironic that while some of the leading critics of Islamic arbitration/mediation are accusing its proponents of importing old world ideas, their own rhetoric reflects the fears they accumulated elsewhere.

It is not for us to minimize their concerns. But their personal experiences abroad do not necessarily make them experts on Canadian public policy.

Equally, many believing Muslim women are genuinely concerned about patriarchal interpretations of Muslim family law. They are also disturbed, in these post-9/11 times, over the hijacking of the issue by anti-Islamists, or by those merely looking for a quick hit in the media.

But all need to be wary of advocating new forms of discrimination to forestall feared ones emanating from a voluntary practice. And they need to have more faith in Canada.

Haroon Siddiqui is the Star's editorial page editor emeritus. hsiddiq@thestar.ca.

APPENDIX 2

January 15/04.

[Article for JURISFEMME Journal]

PROPOSAL TO IMPLEMENT SHARIAH PERSONAL LAW IN CANADA.

By Alia Hogben, Executive Director, Canadian Council of Muslim Women

Some Canadian Muslims are proposing the implementation of sections of Shariah, i.e. Muslim law, to settle family disputes outside the court system through arbitration committees/tribunals. These committees would by-pass the court system, because we hear that the arbitrated agreements would be accepted by Canadian and Ontario law, because of the provisions of the provincial Arbitration Act.

The Canadian Council of Muslim Women, a national organization, has concerns regarding such a move. Firstly, we see no compelling reason to live under any other form of law in Canada, because we want the same laws applicable to us as to other Canadian women.

Our position is that we prefer to live under Canadian laws, governed by the Charter of Rights and Freedoms, which safeguard and protect our rights. This is not to say that the judicial system is perfect, but we know that there are mechanisms for change and that the law is not seen, by some, to be sanctified by divine authority, as Shariah is, and therefore not as easily subject to change.

Secondly, we are concerned that in deference to their religious beliefs, some Canadian Muslim women may be persuaded to use the Shariah option, rather than seeking protection under the law of the land.

Thirdly, there is no agreement amongst Muslims about the laws of Shariah. There is ongoing debate about the static or evolving nature of the jurisprudence and its adaptations to the realities of today's world. It is not divine law as argued by some, for though it is based on divine text, the Quran, the injunctions were interpreted over 100 years after the death of the Prophet Mohammad by jurists in different countries, who themselves insisted that these were

but interpretations. Shariah is a vast, complex system of jurisprudence; it is interpreted differentially in different countries and we question how, why and by whom it will be implemented in Canada.

For example, some countries where Muslim law is applied, such as Tunisia, have interpreted the law as limiting marriage to monogamy, while others like Pakistan, allow polygamy, if the first wife agrees. Other examples are that in some Shariah schools of jurisprudence inheritance laws favour males; a husband can divorce his wife without legal recourse; financial support for wives can be for a limited time period; granting of alimony is questionable; division of property can be against the woman's interests, and child custody can be given to fathers, according to the age of the child.

The network, WOMEN LIVING UNDER MUSLIM LAW [WLUML] has, in 2003, completed a research study in 15 countries which apply Shariah law. The research demonstrates the various understandings and implementation of Shariah and how this impacts on women.

We acknowledge the well-meaning intentions of some to reflect the sensitivities of Canadian Muslims, and for their need to have a presence and some power in society to ensure their interests are met. However, the introduction of a Shariah council may not solve the problem and may in fact exacerbate the issues for families.

Those who are proposing the implementation are well meaning, but in our opinion, there is an idealization of Shariah and a lack of understanding of the impact the practices will have on Muslim women. What will be the role of the arbiters, what will be their training in a complex, variant system of law and who will ensure the competence of the individuals who will serve as Islamic jurists in applying Shariah in the Canadian context?

Fourthly and most importantly, we are very concerned that the laws of Canada appear to be permitting the use of other laws in this country.

We understand that because there are inefficiencies or ineffectiveness within the court system there is a growing alternative system of law, outside the courts, which is an attempt to solve the court backlogs and costs associated with resolving family disputes.

There is real concern that rather than attempting to address the issues of the traditional family justice system, policy makers are focusing on mediation and other forms of settling disputes as an expedient and cost saving option. The alternative system may have certain advantages, but consideration has not been given to the impact on women and children.

The 1998 research, "Family Mediation in Canada" done by Equality Matters and the National Association of Women and the Law [NAWL] on the publicly funded Canadian Mediation Programs pointed out the difficulties for women who use this system of mediation.

It is vital to understand that if mediation has significant issues, then what legal assurances will be in put in place to ensure Muslim women's rights are protected, when they obtain binding arbitrated agreements, using Shariah.

The report states that mediation is designed to assist couples to reach their own agreement, with mediators facilitating the negotiations. There appears to be no criteria to measure whether women's equality is protected or undermined, and

"the lack of structures and processes to ensure mediator accountability, including certification standards, academic qualifications and training may result in inconsistent standards of practice and quality of service." (p3)

As well, family mediation services are "removed from state regulation and public scrutiny." p8 and

"when a family law consumer "chooses" mediation, the resolution of that dispute is effectively removed

from the formal justice system. As a consequence, there is not recourse to the procedural and substantive safeguards which protect litigants as part of a public justice system.” p34.

Further, “no public record detailing the nature of the dispute or the terms of the agreement is necessarily attached to a mediated case.” p34.

The research Report states that arbitration, is a

“private process that is similar to litigation or court adjudication, except that [1] the parties name a neutral third party, the arbitrator, and [2] the arbitrator is bound neither by the rules of court nor the law of evidence. The parties give the arbitrator the authority to make binding decisions on particular issues in dispute.” P18.

If this is accurate, then it is worrying, in light of the proposed use of Shariah, that there may not be any overseeing or monitoring of the woman’s equality rights. Further, the proposed binding arbitration using Shariah, within the “privatization and removal from public scrutiny” should be a major concern to law makers, who should be concerned about justice and equality of both parties. An important consideration should be that Canadian Muslim women may be treated differentially from other Canadian women in matters of family disputes regarding marriage, divorce, property settlements and child custody.

Will there be any provision within the court system which will ensure that agreements do not result in unfair or unjust settlements for Muslim women, and that there is no inconsistencies with the Charter? Will there be legal representation for women? Will there be a two-tier system of justice for Canadian Muslim women, binding arbitration according to Shariah and then the overseer court system itself?

In conclusion, CCMW’s objective is to assist Canadian Muslim women to live under Canadian law with its emphasis on equality and justice, which are the cornerstones of Islam and should be the basis of any Muslim law anywhere.

CCMW’s plans are to collaborate with NOIVMWC [National Organization of Immigrant and Visible Minority Women of Canada] and NAWL [National Association of Women and the Law] to do legal research on the questions we have raised; to write about the findings and to write a paper for Muslim women, the politicians, sister organizations and the media about the ramifications of adhering to Canadian law or the Shariah. We will use these materials to advocate for changes in Canadian law if necessary so that there is one law for all Canadian women, irrespective of race, religion or ethnicity.

The paper will be written in easy to understand language and will be translated into a number of ethnic languages so as to ensure its availability for all Muslim women.

CCMW is cognizant that our stand regarding Shariah places us in a difficult position. We are a pro-faith organization of Muslim women, we do not want to provide further ammunition to those who are keen to malign Islam and yet we must be honest about issues which affect us within the Muslim and non Muslim communities. Silence is not an option.

We hope to have the support of other women’s and other religious groups to ensure that Muslim women’s rights are protected under Canadian law.

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Objectives and Guiding Principles of the Canadian Council of Muslim
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Women.

APPENDIX 3

TORONTO STAR June 11, 2004. 06:09 AM

Islamic law proposal to undergo review

Muslim organization wants to use it for family disputes

Critics fear women would be coerced into participating

CAROLINE MALLAN
QUEEN'S PARK BUREAU CHIEF

The Ontario government will review plans to use Islamic law to settle family disputes before the practice is set to begin in the province.

Attorney-General Michael Bryant told reporters yesterday that the Islamic Institute for Civil Justice — the group that plans to use existing arbitration legislation to apply a form of sharia law to settle disputes in the Muslim community — will not begin until later this year.

"We're looking at what the options are, aware of the fact that the (institute) will not be up and running until later on this year, which permits us time to look at it and look at implications that any proposals that are being put forward might have on the entire arbitrations system and how the Arbitration Act works," Bryant said.

Premier Dalton McGuinty announced this week he has asked Bryant and Sandra Pupatello, the minister responsible for women's issues in his cabinet, to examine the issue in depth and report back to him on the best course of action.

The practice is permitted under the existing Arbitration Act that allows religious groups to resolve civil family disputes within their faith, providing all affected parties give their consent to the process and the outcomes respect Canadian law and human rights codes.

Several legal and women's groups have expressed concern that Muslim women might be coerced by what they label as a male-dominated culture into participating in sharia tribunals without informed consent because of community or religious pressures.

They argue the 1,400-year-old set of rules and laws is flawed because it does not view women as equal and therefore cannot provide equal justice to all parties in disputes, especially on issues of divorce, separation, child custody and division of property.

McGuinty said he shares that concern.

"I want to make sure we are getting this right and a particular concern of mine is whether or not women, who are, as I understand it opting into these arrangements ... I want to make sure they are in fact well informed about their laws under Canadian legislation and Ontario human rights codes."

Controversy arose after the Islamic Institute of Civil Justice made plans to use the 1991 Arbitration Act to settle disputes within the Muslim community. The move required no action on the part of the government, which has not passed any new regulations or laws directly related to sharia and the Arbitration Act.

Officials from the institute have stressed repeatedly that all of the arbitrations — details of which are still being worked out — will be subservient to Canadian law and charter provisions.

Bryant said the Arbitration Act is widely used by a variety of groups, both secular and religious.

"Right now, the Arbitration Act is being relied upon by a number of corporations, businesses, some of which in some cases, are applying religious laws. It's not like someone is coming to the government of Ontario seeking approval or disapproval of it." McGuinty told reporters the practices of people from different faiths should not come ahead of the inherent rights of all Canadians.

"We are saying there is something that takes precedence over all practices and cultures, and those are Canadian values as enshrined in human rights codes and our charter of rights."

Under the act, Hassidic Jews have been running their own Beit Din arbitrations based on Jewish law for years, as have Catholics and Ismaili Muslims. Rulings are binding, but must be consistent with Canadian laws and the Charter of Rights.

One government source said one possible outcome of the review ordered by McGuinty might be mandatory independent legal advice for everyone involved, especially Muslim women who might not appreciate that they have an alternative in the regular courts.

The Canadian Council of Muslim Women, whose 900 members come from a variety of Islamic sects, say Muslim women could be coerced into taking part in sharia tribunals or face family and community ostracism — or worse.

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

Copy of a letter in the Editorials of the Toronto Star dated June 13, 2004 re: Review of tribunals.

(page 16)

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE REPORT

Lawyers Fund for Client Compensation Committee
June 10, 2004

Report to Convocation

Purpose of Report: Information

Prepared by Lawyers Fund for Client Compensation
Dan Abrahams, Acting Manager, 416.596.4640

REPORT TO CONVOCATION, JUNE 2004

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on June 10, 2004.

Committee members in attendance were Larry Banack (Vice-Chair), Ronald Cass, Q.C., Richard Filion, and Andrew Coffey.

Staff and others in attendance were Malcolm Heins (CEO), Zeynep Onen (Director of Professional Regulation), Dan Abrahams (Acting Lawyers Fund Manager), Louis Bourgon (Lawyers Fund Counsel),

Fred Grady (Manager of Finance) Leslie Greenfield (Manager, Spot and Focused Audit) and Craig Allen (LawPRO VP and Actuary).

2. As a result of its meeting, the Committee is reporting on the following matters:

(A) ADMINISTRATION AND POLICY

i) Staff Recognition

The Committee wishes to express its gratitude to Fund staff for their dedication and for the quality of their work which has been instrumental to the efficient operation of the Fund in recent years.

ii) National Forum on Client Compensation

Dan Abrahams, Acting Lawyers Fund Manager, provided a verbal report on some of the key highlights from the 20th annual National Forum on Client Compensation held this year in Naples, Florida, under the auspices of the ABA Center for Professional Responsibility.

Overall, the Fund is in a healthy position relative to many funds operated in other North American jurisdictions. This is due in large part to a favourable claims history in recent years. Other jurisdictions, like Ontario, are attempting to determine an optimal fund surplus, that makes adequate provision for years in which the claims history is less favourable.

The protection afforded by the Compensation Fund is relatively comprehensive when compared with comparable funds elsewhere, particularly in smaller states. Many funds operate on a more marginal basis, and some tend to limit their risk exposure by adopting modest per claimant maximums and/or per lawyer caps.

iii) Spot Audit Program

As requested at the May Meeting, Leslie Greenfield, Manager - Spot and Focussed Audit, presented a report to the Committee detailing the program's history and recently introduced operational efficiencies. The report is attached as Appendix "A".

The Spot and Focussed Audit program came into existence in response to a review of the financial health of the Fund reported to Convocation in 1997. The main objective of the Spot Audit department is to support and promote high quality law firm record keeping practices, thereby mitigating the risk of claims against the Fund.

During its first years of operation, the program's emphasis was on random (or "spot") audits. Since 2002, the department has made the transition to a more focussed approach to audits, in an effort to enhance the program's remedial value. In particular, the department now places greater reliance on an established set of indicia that are suggestive of high-risk activities.

In early 2003, the program identified areas of improvement in the program's operations and audit processes. As a result, a number of enhancements were introduced. These newly implemented operational efficiencies have resulted in a reduction in the number of days before a file is reviewed and in the aging of monitored files.

Survey results from Members audited in 2003 have been favourable. Overall, Members find the audit process to be useful and are appreciative of the feedback provided by auditors.

The Spot Audit program has recently released a new Law Society product called "The Bookkeeping Guide", available both in print and on the Law Society website. The Guide was created based on an identified need following discussions between members and auditors. The Guide has been well received by the profession.

Since the program was first introduced, auditors have noticed a trend toward fewer significant issues being discovered during audits.

The Committee also wishes to express its thanks to staff in the Spot and Focussed Audit program for their hard work and dedication.

iii) Budget & Levy Issues for 2005

The Committee continued its ongoing discussion about the Fund's budget for 2005. In particular, issues surrounding the member levy, optimum Fund surplus, and the desirability of continued insurance coverage were discussed. Background materials before the Committee included a memorandum from Craig Allen, V.P. and Actuary of LawPRO (Appendix "B") and a memorandum from Heather Werry, Fund Counsel, which sets out some anecdotal and other indicators that may assist in making projections for the Fund (Appendix "C").

Beginning in 2001, the Fund implemented two important measures to ensure its long-term viability. The first of these measures was to obtain insurance coverage to protect against catastrophic claims that arose in a given year. Currently, the Fund has insurance to a maximum of \$10 million that attaches at a claims level of \$15 million. The second measure was the introduction of a sustained program to increase the Fund balance. The current Fund balance, net of amounts earmarked for claims in progress, now stands at approximately \$18.0 million.

Given the continued growth of the Fund balance, the Committee must now consider whether continued insurance coverage is warranted and if a reduction in the member levy is appropriate at this time.

Craig Allen, LawPRO VP and Actuary, presented the Committee with a variety of claims scenarios for the purposes of evaluating the consequences of continuing the insurance and/or reducing the member levy. Mr. Allen's projections take into consideration the fact that the Fund currently does not have a per member cap on claims and does not receive claims from financial institutions. Mr. Allen underscored the unpredictable nature of future claim levels against the Fund. However, based on available data, the probability of a large catastrophic claim year appears rather unlikely.

Decision of the Committee

The Committee has asked for further input from staff on the pros and cons of maintaining the Fund's insurance coverage and other related budgetary issues. The Committee intends to review budgetary matters when it meets again in September.

(iv) Per Member Caps

The Committee discussed, in a general way, the possible reinstitution of a per member cap and the impact that this might have on the budget. The Committee is not making a recommendation at this time.

(B) INFORMATION

i) Grants Paid

The Committee wishes to report that, since its last Report to Convocation, grants have been paid from the Fund in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Member (Status if Disciplined)	Number of	Total Grants
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	Claimants	Paid (\$)
Howard, Graham I. (Disbarred May 1, 2003)	1	21,631.02
Mavis, Larry M. (Disbarred August 12, 2003)	1	1,000.00
McMullen, Philip Brian (Disbarred June 4, 2003)	2	3300.00
Sinclair, James William (Disbarred April 24, 2003)	1	65,138.06
St-Fort, Rene (Disbarred March 2, 2000)	1	57,650.00
Tran, Eric Gregory (Disbarred April 22, 2003)	1	70.70
Solicitor #97	1	41,632.17
Solicitor #99	1	57,796.47
Solicitor #121	2	55,250.00
TOTAL	11	\$303,468.42

APPENDIX "A"

SPOT AUDIT DIVISION

STATUS REPORT FOR 2003

Prepared for:
The Lawyers Fund for Client Compensation

May 31, 2004

SUMMARY

Program Objectives

The main objective of the Spot Audit department is to support and promote high quality law firm record keeping practices thereby mitigating the risk of client claims against the Lawyers Fund for Client Compensation and errors and omissions fund. It achieves this objective by conducting compliance audits to assess a law firm's financial filing, record keeping and money handling to the Law Society's requirements, and providing guidance to members.

The Spot Audit Division has been successful in achieving a number of objectives and targets for the 2003 fiscal year through enhancing the program's effectiveness by implementing a more focused audit approach and improving operational efficiencies.

Program Focus

In the past, the majority of the spot audits were randomly selected. For instance, in 2001 about 74% of the 1037 spot audits were randomly selected. This approach often resulted in audits being conducted on practices that were low risk or had very little activity in trust accounts.

In 2002 & 2003, the department examined and implemented an approach to enhance member segmentation analysis to improve audit capabilities and increase the focus on risk profiles. The identification of different types of data

(indicia) that could be beneficial in detecting members involved in high risk activities was viewed as an essential exercise to manage risk and to enhance the program's remedial approach.

As a result of our transitioning to a more focused audit approach, 62% of the 2002 audits and 73% of the 2003 audits were elected using focused indicia. This focused/risk based audit approach has resulted in an increase of between 50 - 70% in the number of files escalated to Investigations since 2001.

The data and information used to establish this type of selection criteria is outlined in Appendix 1.

Program Efficiencies

In early 2003, we identified areas of improvements in the program's operations and audit processes. Changes were implemented to capitalize on these enhancements to operational efficiencies. Some of our major accomplishments include:

- Reduction in the number of days to submit files for review (2001: 60 days vs 2003: 21 days)
- Reduction in the number of days before a file is reviewed (2001: 78 days vs 2003: 36 days)
- Aging of monitored files (2002: 8 months vs 2003: 3 months)

As a result, audits are completed and issues dealt with on a more timely basis.

Membership Feedback

The survey results from members who were audited in 2003 continue to be very positive and indicate that the members appreciate and find value in the remedial approach that is utilized to assist them in their record keeping practices. Our surveys indicate a very high percentage (91%) of the members found the spot audit process to be constructive. Almost 100% of the members responded that they found the spot auditor's conduct to be professional and helpful, and the audit report to be useful.

Bookkeeping Guide

The Spot Audit program has recently released a new Law Society product called "The Bookkeeping Guide", available on the Law Society website. This Guide was developed based on membership needs identified by the Spot Auditors through discussions with members. The website is currently receiving several hundred visits per month. As part of our remedial mandate, the Guide is being provided to all new sole practitioners. These new practitioners will be selected for a spot audit within 9-12 months, and we will then assess the effectiveness of the Guide in assisting members in managing their financial books and records. To date the Guide has been well received, and the Law Society has received several testimonials.

Program Implications

The Spot Audit department is currently completing an average of 1000 audits per year. The original Spot Audit program target of 1400 audits per year set in 1998 was based on the objective of auditing every law firm once every 5 years. This target has not been achieved under the current Spot Audit program budget in any year of the program. It was based on an estimate of 1.5 days to conduct a "simple" audit of books and records and the assumption that all audits would be solely books and records. However, the reality of the current audit process is that it takes approximately 1.5 days to audit books and records, and 3.5 days to audit more complex engagements, such as those containing mortgages and estates, or re-audits. As a result, additional time and effort is required to deliver more of these higher risk and more complex files.

The change to conducting more focused audits is in keeping with the Law Society's requirements for quality assurance, the wish to reduce claims to the Compensation Fund, and the need to govern the membership in the public interest. Under this new process, the Law Society will require approximately 7.5 years to undertake an audit on every law firm.

APPENDIX 1

Spot Audit Indicia

Audit Selection Indicia

Spot Audit uses financial and non-financial indicia in identifying higher risk members for audit selection. A data extraction and analysis tool uses these indicia to identify potential high risk members for audit selection.

The specific indicia used in the audit selection process includes:

- Newly formed law practices.
- Members that are sole estate trustee.
- Members that handle private mortgages
- Late filers of the Member's Annual Report (MAR)
- Members whose MAR financial information indicates potential risk factors, such as:
 - √ indebtedness to clients
 - √ unreconcilable differences between client trust liabilities and trust bank balance
 - √ unchanged trust accounts
 - √ overdrawn trust accounts

Spot Audit has commenced implementing these enhancements in its selection process for 2003. As a result, the selection criteria for 2003 audits has shifted from random to more focused audits.

See Appendix 2 – Comparative Analysis for details.

APPENDIX 2

Comparative Analysis

Audit Selection Criteria

The spot audit program has used several criteria in the selection of audits that were approved by Convocation at the commencement of the program in 1998. These selection criteria were:

- Random
- Firms with estate practices or private mortgages (M&E)
- Newly formed practices (NF)
- Referrals from other Law Society departments
- Reaudits
- Late filings of MAR's (Fail to File or FF)

Since inception of the spot audit program, the majority (62%) of audits have been randomly selected.

Selection Criteria of Audits

(see graph in Convocation file)

In 2002/2003, Spot Audit improved the selection process using specified indicia in conjunction with a data extraction/analysis tool. This allowed Spot Audit to extend its analysis over all MAR's recorded in the AS400, and reduced the risk of omitting higher risk members from being selected.

As a result, the percentage of audits randomly selected declined in 2003 to 27% of the total number of audits, while the percentage of focused audits increased. Mortgages & estates (M&E) and newly formed sole practitioners (NF) are the primary indicia used in the focused audit selections.

Selection Criteria of Audits Conducted (2003)

(see graph in Convocation file)

The graph below demonstrates that over the past 6 years, the ratio of focused and random audits has recently changed as a result of concentrating our efforts on potentially higher risk members.

Random vs Focused Audits

(see graph in Convocation file)

SELECTION CRITERIA

Year	NI	FF	M&E	NF	Other	Random	Reaudit	MAR	Referred	Total
1998	37	90	8	0	0	286	1	0	2	424
1999	77	176	37	35	6	715	24	0	87	1,157
2000	31	69	94	86	1	732	28	0	16	1,057
2001	0	9	130	130	4	637	46	0	81	1,037
2002	0	9	132	280	5	344	87	0	50	907
2003	0	31	220	349	8	290	69	65	26	1,058
Total	145	384	621	880	24	3,004	255	65	262	5,640

NI: Selection criteria not indicated.

Escalated Audit Files

Indicia of Escalated Files

In 2002, Spot Audit saw a significant increase in the number of escalated audit files. This was due to a change in our selection approach and a higher proportion of focused audits. As a result, we have seen an increase in escalated files of 50 - 70% since 2001 and a doubling of escalated files compared to 2000.

In 2002, firms with private mortgages and estates comprised 67% of audit files that were either escalated to Investigations or resulted in an undertaking. Audit engagements containing private mortgages and/or estates have been recognized as a key indicator of higher risk to the compensation fund and the public's protection. This continues to be our most contentious audit area and we focus on these as an important part of our public interest mandate.

Relationship between Escalated Files and Mortgages & Estates

(see graph in Convocation file)

Our recent efforts in the application of indicia in the audit selection process of potentially higher risk members, has resulted in these audits engagements gaining predominance as escalated files. For example, in Chart 1 below, we see that in 2001 the majority of escalated files were selected through the random process. Within two years, the use of indicia has now emerged as the selection basis for escalated files and, additionally, has resulted in an overall increase in the number of files escalated or undertakings prepared by members.

Chart 1 – Selection Reason for Escalated Files

(see graph in Convocation file)

Chart 2 demonstrates the emerging importance of the use of indicia in uncovering audits with significant issues (i.e., escalated to Investigations), as a percentage of the total of escalated files for the year.

Chart 2 – Selection Reason for Escalated Files

(see graph in Convocation file)

Survey Results

The survey responses from members audited in 2003 were extremely favourable on the spot audit program. Members found the spot audit process to be constructive, the Audit Report to Member to be useful and the spot auditors to be very professional and helpful.

From the 131 surveys received in 2003, the members responded that:

Spot audit process was constructive	91%
Auditor's conduct was professional and helpful	~100%
The Audit Report to Member was useful	~100%
The Internal Control List was useful	95%
Would be interested in attending a course on financial recording keeping	44%

APPENDIX "B"

TO: Lawyers' Fund for Client Compensation Committee

FROM: Craig Allen
Vice President & Actuary

DATE: May 31, 2004

RE: Considerations Re Compensation Fund Levy 2005

Beginning in 2001, the Compensation Fund undertook a sustained program to increase its Fund Balance (the net worth of the Fund net of amounts earmarked for claims in progress). In each year from 2001 through 2003, the Compensation Fund levy provided roughly \$2.6 million for smaller incidents and an additional amount for large-scale defalcations. In 2003, the additional amount was \$1.5 million, based on the average large-scale defalcation over the time since 1990. As there was no major defalcation during this period, the Fund Balance grew from \$9.3 million at December 2000 to \$17.4 million at December 2003.

The growth of the Fund Balance over that period created an opportunity to reduce the member levy from \$280 for 2003 to \$230 for 2004. With the lower levy, the provision for large-scale defalcations was reduced from \$1.5 million to \$400,000. Thus, the levy would roughly cover the Fund's costs for a year without a large-scale defalcation - if there were such a large-scale incident, its claims would reduce the Fund Balance. In the absence of a large-scale incident, the Fund Balance would remain at the same level.

Protection for worse-than-expected results is provided both by the Fund Balance and by the insurance of the Fund underwritten by LAWPRO. The insurance, to a maximum of \$10 million, attaches at a claims level of \$15 million.

Through March 31, 2004, the value of claims reported to the Fund is roughly \$500,000, which is less than the \$750,000 budgeted for the quarter. This favourable variance, along with better-than-expected investment results has increased the Fund Balance to \$18.0 million.

In light of the continued growth of the Fund Balance, the question arises whether the Fund Balance is high enough to justify

- eliminating the insurance, and/or
- subsidizing a reduction of the levy.

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

(\$000s)

Year	Small-Scale	Large-Scale	Total
1991	4,000	4,800	8,800
1992	4,400	0	4,400
1993	2,800	900	3,700
1994	2,500	1,600	4,100
1995	2,600	500	3,100
1996	2,500	3,700	6,200
1997	1,700	600	2,300
1998	1,500	2,200	3,700
1999	2,300	0	2,300
2000	1,800	4,000	5,800
2001	2,500	0	2,500
2002	2,000	0	2,000
2003	2,500	0	2,500
2004 (est.)	2,750	0	2,750

For the purpose of evaluating the consequences of continuing the insurance and reducing the levy, the following claims scenarios are presented. They are tested against four options with respect to the 2005 levy and the insurance coverage:

1. Levy \$199, without Insurance

2. Levy \$215, with Insurance
3. Levy \$230 (same as 2004), without Insurance
4. Levy \$230, with Insurance (status quo)

Scenario 1:

Under this scenario, claims for the year are valued at \$2.5 million. This is the level of claims experienced in 2003, and is roughly equal to an average year of claims (in the absence of a large-scale defalcation).

The current Fund Balance of \$18.0 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2005
\$199, without Insurance	\$18.1 million
\$215, with Insurance	\$18.1 million
\$230, without Insurance	\$19.0 million
\$230, with Insurance	\$18.5 million

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

Scenario 2:

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

The current Fund Balance of \$18.0 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2005
\$199, without Insurance	\$14.7 million
\$215, with Insurance	\$14.7 million
\$230, without Insurance	\$15.6 million
\$230, with Insurance	\$15.1 million

Under this scenario, the Fund Balance returns roughly to its December 2002 level of \$14.9 million. The insurance has little effect at this level.

Scenario 3:

Under this scenario, claims for the year are valued at \$11.5 million. This scenario is constructed by beginning with the value of claims experienced in 1991, \$7.5 million. This is the year where the Fund's claims reached their peak value.

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

In addition, there were only 15,200 lawyers in private practice in Ontario in 1991, compared to the 20,000 currently in practice. If the count of 1991 claims were adjusted in line with the increased number of lawyers, the \$8.8 million of limits-adjusted claims would rise to \$11.5 million.

The current Fund Balance of \$18.0 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2005
\$199, without Insurance	\$9.1 million
\$215, with Insurance	\$9.1 million
\$230, without Insurance	\$10.0 million
\$230, with Insurance	\$9.5 million

Under this scenario, the Fund Balance returns roughly to its December 2000 level of \$9.3 million. It is notable that such an extreme scenario (a level of claims experienced only once in fourteen years) only returns the Fund back to its status at the time that the sustained program to increase the Fund Balance was started.

Scenario 4:

Under this scenario, claims for the year are valued at \$15.0 million. This is the highest level of claims at which the Fund is not indemnified by the insurance coverage.

The current Fund Balance of \$18.0 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2005
\$199, without Insurance	\$5.6 million
\$215, with Insurance	\$5.6 million
\$230, without Insurance	\$6.0 million
\$230, with Insurance	\$5.5 million

Scenario 5:

Under this scenario, claims for the year are valued at \$20.6 million. This is the level of claims that would exhaust the Fund's financial resources, in the absence of insurance.

The current Fund Balance of \$18.0 million changes to the following, under each of the options, in this scenario:

Option	Fund Balance, Dec 2005
\$199, without Insurance	\$0
\$215, with Insurance	\$5.6 million
\$230 without Insurance	\$0.4 million
\$230, with Insurance	\$6.0 million

Inferences:

The impact on the Fund Balance of reducing the levy is minor, in comparison to the impact of various claims scenarios. In addition, there would be a minimal impact from eliminating the insurance, unless claims exceed \$15.0 million.

The attached chart shows the historical claims experience of the Fund since 1990, stated in probability format. This experience is shown in the context of a probability curve. It can be seen that in no year has the claims level exceeded \$7.5 million – this is well short of the \$15 million threshold at which the current insurance attaches. Furthermore, claims have not exceeded \$2.6 million since 2000. That said, the absence of a large-scale defalcation

in the last four years does not indicate that there is no possibility of another such defalcation arising in the next year - the experience of other Canadian jurisdictions points to the continued threat.

Probabilities of Claims Outcomes
Lawyers' Fund for Client Compensation

(see graph in Convocation file)

APPENDIX "C"

Memorandum

From: Heather A. Werry, Counsel
Lawyers Fund for Client Compensation

TO: Lawyers Fund for Client Compensation Committee

cc: Dan Abrahams, Acting Manager

DATE: May 31, 2004

RE: Anecdotal and Economic Factors Affecting Fund Claims

I. ANECDOTAL EXPLANATIONS

Claims to the Fund have always been unpredictable as seen from the attached graphs, discussed in Section II of this memorandum. However discussions with experienced Fund staff produced the following anecdotal explanations for why the claims have decreased in the recent past. The order is not an indication of importance.

(a) SPOT AUDIT PROGRAM

The spot audit program was introduced in 1998 and is funded by the Lawyers Fund. The spot audit program replaced the previous system where members were required to annually have an accountant certify they were maintaining proper books and records. Now accountants trained by the LSUC do spot audits throughout the province. The hope was to reach every member every 5 years. The member does not know when they will be scheduled for an audit. It is difficult to determine if program is having a deterrent effect on claims. Better books and records likely result in the member knowing exactly what his trust liabilities are. The member is therefore less likely to make a serious error that could grow into a bigger problem.

(b) MORTGAGES

Mortgage investing has always been among the biggest problems for the Fund. Historically, large defalcations have involved clients investing in mortgages or other, similar types of investments. Some factors that may be reducing the volume of investing in mortgages by lawyers and thereby reducing the largest source of claims:

- THE TWO LAWYER RULE introduced May 2001 required separate representation for borrowers and lenders on private mortgages. Prior to the two lawyer rule lawyers sometimes had mortgage companies that earned a brokerage fee of a percentage of the advance. We sense this business has largely dried up. There is little incentive for lawyers to get involved in mortgage arranging as charging a percentage of the advance was the only way to make money in this area.
- MORTGAGE BROKERS are taking over the business of arranging financing of mortgages

- NO INSURANCE COVERAGE LawPRO changed the insurance policy to discontinue coverage of mortgage brokering so members may have decided to stop doing brokerage work
- TITLE INSURANCE obtained for many transactions now and may provide coverage where fraudulent mortgages have been registered on title that the Fund may previously have responded to
- HISTORICALLY LOW INTEREST RATES borrowers are not looking to lawyers for funding as rates from financial institutions are very attractive
- RISING REAL ESTATE VALUES mortgages are not incurring losses due to strong real estate market so even if investing through lawyer no loss

II. ECONOMIC FACTORS

A relatively good economy in recent years, especially for real property assets, has probably had a positive impact on the level of claims. In general, losses and hence claims to the Fund tend to be discovered after a recession starts.

(a) GRAPH

The attached graph depicts new claims received in each calendar year, with and without limits applied. (The insurance works essentially on this basis, although rather than claims received, the insurance works on the basis of notice received. We have used claims rather than potentials as the dollar value of potentials is often not known.)

The graph also tracks fluctuations in mortgage interest rates. The graph only depicts the interest rate as at the last Wednesday in January in each year. There would be fluctuations in the interest rate within the year that would not be reflected in the graph, but general trends should be evident.

COMPARISON OF MORTGAGE INTEREST RATES* WITH NEW CLAIMS MADE** (GROSS & WITH LIMITS)

(see graph in Convocation file)

(b) ANALYSIS

It is clear from the graph that there is a wide fluctuation in claims from year to year. However once the \$100,000 limit is applied, the fluctuation is less marked. The gross claim amount can be misleading, as one very large claim can significantly alter the numbers. For example the level of gross claims in 2003 is almost twice the limited amount. In 1991 claims at limits were three times as large as in 2003. There has been a low volume of new claims received since 1999 with a small spike in 2000 reflecting the McInenly claims.

Is the volume of claims affected by economic factors? Arguably, the huge spike in 1991 is a reflection of the major recession in the real estate market that commenced in 1990. There is some delay before problems are discovered and hence the spike occurred in 1991 rather than in 1990. The mortgage interest rate in the 1990 to 2003 period was at its highest in 1990-91, and claims increased in the years immediately following those high rates.

Query whether a new recession like the one in 1990 would have the same impact on claims that it did in the past. Again, it seems plausible to surmise that new claims would not likely spike as in the past on a major real estate recession as claims involving mortgages are on the decline.

Minor economic fluctuations do not appear to result in changes in the volume of new claims. However it could probably be asserted that low interest rate periods have corresponded with low claims volumes. The fluctuations in claims during periods of relative economic stability are explained more by the discovery in any given year of one member's major defalcation. (McInenly is an example of this, of course.)

(c) STATISTICS CANADA REAL ESTATE DATA

We have also attached some statistics on housing starts and prices which have increased in Ontario continually since 1999. Again, it is fair to conclude that claims will remain relatively low as long as the real estate market is growing.

Housing Starts

	2002	2003
Starts		
Canada	205,034	218,426
Newfoundland and Labrador	2,419	2,692
Prince Edward Island	775	814
New Brunswick	3,862	4,489
Nova Scotia	4,970	5,096
Quebec	42,452	50,289
Ontario	83,597	85,180
Manitoba	3,617	4,206
Saskatchewan	2,963	3,315
Alberta	38,754	36,171
British Columbia	21,625	26,174
Sources: Statistics Canada, CANSIM, table <u>027-0008</u> , Canada Mortgage and Housing Corporation (CMHC).		

Value of Building Permits (Residential Construction)

Residential Construction Permits	1999	2000	2001	2002	2003
\$ millions					
Canada	19,957.1	20,342.1	22,619.2	29,586.9	31,971.4
Newfoundland and Labrador	151.2	168.1	185.6	244.1	297.1
Prince Edward Island	69.4	54.9	64.3	96.4	89.2
Nova Scotia	477.0	505.4	467.8	623.9	668.8
New Brunswick	274.2	265.3	284.4	372.9	410.2
Quebec	3,104.8	3,194.4	3,647.1	5,216.1	6,506.7
Ontario	9,833.9	10,226.0	11,166.7	13,714.4	14,275.5
Manitoba	364.3	345.1	340.7	440.8	525.5
Saskatchewan	270.3	251.0	222.0	276.4	350.0
Alberta	2,765.0	2,879.9	3,351.3	4,607.3	4,240.5
British Columbia	2,591.7	2,403.1	2,829.9	3,888.1	4,514.2
Yukon	18.1	14.4	16.1	22.0	28.9
Northwest Territories	..	10.5	27.7	53.8	50.7
Nunavut	..	24.0	15.5	30.7	14.0
Source: Statistics Canada, CANSIM, tables <u>026-0003</u> and <u>026-0008</u> and Catalogue no <u>64-001-XIE</u> .					

New Housing Price Index

	1999	2000	2001	2002	2003
1997=100					
Canada	101.9	104.1	107.0	111.3	116.7
House only	103.0	106.2	109.9	115.9	123.0
Land only	100.6	101.3	102.2	103.5	105.0
St. John's (Nfld.Lab.)	99.1	101.2	103.2	107.7	112.5
Charlottetown (P.E.I)	100.7	102.6	103.8	104.5	105.5
Halifax (N.S.)	104.0	107.4	110.5	114.4	119.1
Saint John – Moncton – Fredericton (N.B.)	98.2	97.9	98.0	00.1	102.9
Québec (Que.)	102.3	104.5	107.1	111.7	121.9
Montréal (Que.)	102.5	106.3	111.7	118.1	126.8
Ottawa-Gatineau (Ont./Que.)	103.3	110.9	123.7	133.3	138.3
Toronto (Ont.)	105.0	107.8	110.5	114.2	119.5
Hamilton (Ont.)	104.3	106.8	109.0	113.8	120.9
St. Catharines-Niagara Falls (Ont.)	105.7	110.1	112.7	114.9	120.5
London (Ont.)	101.3	104.2	106.8	109.8	115.0
Kitchener-Waterloo (Ont.)	104.0	108.2	111.4	116.0	119.8
Windsor (Ont.)	100.9	101.6	101.5	102.0	102.1
Sudbury-Thunder Bay (Ont.)	96.7	95.5	94.6	95.5	96.4
Winnipeg (Man.)	102.4	105.3	107.2	110.0	114.1
Regina (Sask.)	107.8	110.7	113.5	117.7	124.9
Saskatoon (Sask.)	103.7	105.8	108.8	110.5	113.6
Calgary (Alta.)	112.7	115.3	118.2	124.4	130.9
Edmonton (Alta.)	105.5	107.7	109.4	117.3	124.0
Vancouver (B.C.)	91.1	90.2	90.9	93.2	96.2
Victoria (B.C.)	89.7	85.8	86.2	89.3	96.2
Source: Statistics Canada, CANSIM, table <u>327-0005</u> and Catalogue no <u>62-007-XDPB</u> .					

ONTARIO LAWYERS GAZETTE ADVISORY BOARD REPORT

Ontario Lawyers Gazette Advisory Board
June 24, 2004

Report to Convocation

Purpose of Report: Information

Prepared by the Communications & Public Affairs Department
(Lucy Rybka-Becker: 416-947-7619)

The Report

Terms of Reference

1. The Ontario Lawyers Gazette Advisory Board met on April 22, 2004. Committee members in attendance were: Brad Wright (chair), Julian Porter and Holly Harris. Staff members in attendance were Lucy Rybka-

Becker, Heather MacDonnell, Genevieve Proulx and Perry Lim. At the meeting, Hugh Anderson and Michael Sullivan of The Strategic Counsel presented findings of the 2004 member readership survey.

2. The Board is reporting on the following:

For Information

- Ontario Lawyers Gazette readership survey report

Information

Ontario Lawyers Gazette Readership Survey Report

Summary of Report

3. In January 2004, the Law Society's Communications and Public Affairs Department undertook a quantitative survey of members concerning their usage and impressions of sources of information about the legal profession and the practice of law, with particular emphasis on the Ontario Lawyers Gazette (OLG).
4. The Strategic Counsel, a research firm, was enlisted to conduct the research and analysis and presented its findings to the Ontario Lawyers Gazette Advisory Board at a meeting on April 22, 2004. Committee members in attendance were: Brad Wright (chair), Julian Porter and Holly Harris. Staff members in attendance were Lucy Rybka-Becker, Heather MacDonnell, Genevieve Proulx and Perry Lim.
5. This report presents an overview of findings from the survey, including member perceptions regarding the quality and content of the OLG, French content in the OLG and the special issue devoted to the theme of professionalism that was produced in Fall 2002. The report also indicates an evolution in the information needs of members and how they are and want to access information.
6. The full report prepared by The Strategic Counsel is attached at Appendix 1.

About the Ontario Lawyers Gazette

7. The Ontario Lawyers Gazette (OLG) is the flagship publication of the Law Society of Upper Canada. It is published five to six times a year by the Communications and Public Affairs Department, and is distributed at no charge to its membership. The print run has grown to over 37,000.
8. The goal of the OLG is to provide Law Society members with a comprehensive package of news and features that inform them of Convocation's decisions, the Law Society's activities, programs, services, operations and governance, and information on emerging issues, trends and events in the legal profession in Ontario.
9. In each issue, four pages are dedicated for Tour D'Horizon, which includes articles directed to Francophone members and those involved with or interested in the French-speaking legal community. The section includes newsworthy articles translated or adapted from the rest of the issue as well as original content regarding news and information of interest to the Francophone Bar.
10. In September 2000, the membership of the Editorial Advisory Committee for the Ontario Lawyers Gazette was changed to include bench representation. The resulting Ontario Lawyers Gazette Advisory Board includes benchers appointed by the Treasurer, supported by the Law Society's Director of Communications and Public Affairs who serves as Editor-in-Chief, a Communications Advisor who serves as the Managing Editor, a French Language Services Advisor and a Creative Designer.

11. Board members help identify stories and photo opportunities that will be of interest to the membership, provide feedback on proposed themes for the OLG and deal with policy issues as they emerge.
12. In March 2000, the Law Society undertook its first quantitative survey of its members on the Ontario Lawyers Gazette. The 61-question telephone survey was conducted by telephone by the research firm Strategic Communications between March 13 and March 17, 2000. A total of 218 randomly selected phone surveys were completed. Based on the Law Society's membership of 28,000 in 2000, the margin of error for a sample of that size is +/-6.6%, nineteen times out of twenty.
13. Findings in the 2000 survey found the Ontario Lawyers Gazette to be among the most popular sources of information for lawyers. The OLG received high marks for its credibility. Members indicated an interest in receiving more "news that affects the profession", as well as more practical "how to" information and regular advice along the lines of a column such as "frequently asked questions".
14. Based on this feedback, editorial changes were made to provide more of the news and information in which members indicated interest. Since 2000, the content has evolved to contain an increased amount of practice-related information and more in-depth focus pieces exploring news and issues of importance to the profession.
15. The appearance of the OLG has also evolved in response to feedback in the 2000 survey. More visuals, images and colour have been incorporated to give the publication a fresh and more professional look and feel, to make the OLG easier and more inviting to read. An online version of the OLG was also created to provide members with convenient access to current and back issues.

Overview of the 2004 member readership survey

16. In January 2004, the Law Society undertook a follow-up quantitative survey to benchmark against the results of the 2000 survey, to elicit member feedback on their evolving information needs and readership patterns, and to determine how well the OLG is meeting their needs and interests.
17. The 2004 survey was broader than the original research in 2000 in order to test the success of other communications strategies the Law Society has put in place. The new survey was designed to probe for member feedback concerning their usage and impressions of sources of information about the legal profession and the practice of law, with particular emphasis on the Ontario Lawyers Gazette.
18. The 2004 study tracked a number of questions from the 2000 study, and where appropriate, findings from 2000 have been included in the analysis of findings from the 2004 study.
19. For the 2004 readership audit, the sample size was increased to 400 interviews and includes 49 interviews in French. Based on the Law Society's membership of 34,600 in January 2004, the margin of error on a sample of 400 interviews is +/- 4.9 percentage points, nineteen times out of twenty. This makes the findings of the 2004 survey even more reliable than the data gathered in 2000.
20. Overall, the findings from the 2004 member readership audit suggest that the OLG continues to meet its readers' expectations and the objectives of the OLG. Member ratings in 2000 suggested that the OLG was well received by members. In the 2004 study, the OLG receives similar or higher ratings from members on all the dimensions of quality that were measured in both 2000 and 2004.
21. Member feedback also demonstrates the OLG's increased emphasis on in-depth focus pieces has found a receptive audience among the membership. Members also recall the special issue of the OLG produced in 2002 and are interested in seeing additional special issues produced.
22. Key findings from the 2004 survey are provided below for the following core areas:
 - a) Information received from the Law Society
 - b) Sources of information
 - c) Perceptions of the Ontario Lawyers Gazette

- d) Quality of the Ontario Lawyers Gazette
- e) Content of the Ontario Lawyers Gazette
- f) French Content of the Ontario Lawyers Gazette
- g) Ontario Lawyers Gazette Online
- h) Special Issue of the Ontario Lawyers Gazette

Information received from the Law Society

23. Lawyers feel more informed in 2004 than they did in 2000 about issues on which they receive information from the Law Society. On four of the five issues tested in both 2000 and 2004, the proportion of lawyers who report feeling “very” or “somewhat informed” is significantly higher in 2004. The only exception to this is information concerning decisions made by Convocation where the proportion who feel informed is lower in 2004 than it was in 2000. However, six-in-ten members feel either “very” or “somewhat informed”.

Sources of information

24. There are several significant changes in 2004 in both the sources of information members report using and in their perceptions of the most accurate sources they use.
25. Topping the list of the wide variety of information sources that members report using are the Ontario Reports, followed by the mainstream media. Mentions of the OLG are significantly lower. However, online resources Quicklaw and the Law Society Web site, neither of which was mentioned in 2000, strongly emerged for the first time this year. Quicklaw, which provides members with access to over 2,500 online resources including caselaw summaries, ranked as the third most popular information source. The Law Society Web site tied as the fourth most popular source, with legal trade publications The Law Times and Lawyer’s Weekly.
26. The sources of information reported by survey participants were provided without prompting. These findings, therefore, suggest an evolution in the way members are gathering information, and possibly also the need for information in a more timely fashion. The Ontario Reports are published weekly and new content is added to the Law Society Web site on a daily basis, whereas the OLG is published every other month.
27. Another factor that may contribute to the Web site’s popularity is the fact that the Law Society significantly revamped the site in 2002. As a result, Web site traffic has substantially increased. The number of monthly hits to the site has grown from three million (January 2003) to 10 million (January 2004).
28. Consistent with their usage of information sources overall, members cite the Ontario Reports as the source that provides them with the most accurate, reliable information.

Perceptions of the Ontario Lawyers Gazette

29. Even with the other sources of information members access, survey respondents indicated they do read the OLG, believe it to be credible, and find its content to be useful.
30. A majority of members report that they read both the OLG and the Ontario Reports, and indicate that they see little or no overlap in content between them.
31. Findings from the research suggest that members see the OLG and the Ontario Reports as quite distinct from one another. There are substantial differences in their content and the frequency with which they are published. The Ontario Reports, published weekly, includes reported cases, member-directed advertising, classified ads, and Notices to the Profession. The OLG, by contrast, is published just six times a year and its content reflects the frequency with which it is published. While it contains notices about programs and practice management issues, as well as information about upcoming events and programs, the OLG also

devotes considerable space to focus pieces that take a more in-depth look at issues of importance to the profession.

Quality of the Ontario Lawyers Gazette

32. Members believe that the OLG is maintaining a consistent level of quality. Member satisfaction with the quality of the OLG is consistent with findings from the study in 2000.
33. As it was in 2000, the most highly rated aspect of the OLG in 2004 is its credibility, which three-quarters of members rate as either “excellent” or “good”.
34. Both the writing style and visual appearance of the OLG receive higher ratings in the 2004 audit, with six-in-ten members rating either as “excellent” or “good”.

Content of the Ontario Lawyers Gazette

35. Members are also satisfied with most of the types of news and information that appear in the Gazette.
36. Most highly rated are focus pieces that take an in-depth look at major issues, which 91% of members said they were “very interested” in reading. Strong interest in reading the following was also high: notices about programs and practice management issues (86%), information about upcoming events and programs (86%), and information about discipline and suspensions (82%).
37. Members, however, express significantly less interest in editorials by Law Society officials (52%).
38. These findings suggest that the Gazette’s increased focus on in-depth pieces is appropriate and has been well received by the membership.

French Content of the Ontario Lawyers Gazette

39. Under the French Language Services policy adopted by Convocation in 1989, the Law Society is committed to serving the profession and the public in both English and French at its Toronto and Ottawa offices, in the Bar Admission Course and in its external communications with members.
40. In each issue of the OLG, four pages are dedicated for Tour D’Horizon, which includes articles directed to Francophone members and those involved with or interested in the French-speaking legal community. The section includes newsworthy articles translated or adapted from the rest of the issue as well as original content regarding news and information of interest to the Francophone Bar.
41. There has been minimal feedback from the profession regarding French content in the OLG, and the 2000 survey did not include questions regarding French content. To gauge member interest in reading French content in the OLG, as well as their satisfaction with the content provided, it was determined to include questions about French content in the 2004 survey. It was also determined that a portion of the survey sample should be dedicated to include members who have requested that the Law Society communicate with them in French or have advised the Law Society that they are competent to represent clients in French.
42. Of the 400 interviews conducted for the 2004 survey, 49 were conducted with French-speaking members, representing 12% of the sample.
43. All 400 survey participants were asked if they read the sections of the OLG that are published in French. The findings indicate that 27% of respondents indicated they read all or portions of the French content.
44. While most members (about three-quarters) do not read the French sections, those who do read it, read it regularly and find it to be valuable. This is particularly true among members who were interviewed in French, of which 92% report reading the French content “always” or “sometimes” and 96% of whom perceive the content to be “very valuable” or “somewhat valuable”.

45. Ratings for the credibility and quality of the French sections of the OLG among those interviewed in French are in line with the ratings for the OLG overall. Further, the majority of those who read the French content say it meets their information needs (70%).
46. These findings suggest that French-speaking members read the French content of the OLG regularly and see this content as both valuable and credible.
47. Only a minority of those who read the French section of the OLG suggest there should be more French content. The implication, therefore, is that the amount of the OLG currently published in French is sufficient for the strong majority of members.

Ontario Lawyers Gazette Online

48. Each issue of the Ontario Lawyers Gazette is posted to the Law Society Web site following its distribution to the membership. This is done to provide members with access to an online version of current and back issues that can be easily referenced.
49. The online version of the OLG is a duplicate of the print version. On some occasions, the online version may include longer versions of in-depth pieces featured in the issue's Focus section, or additional content that is referenced in the issue.
50. The online version is not heavily accessed by visitors to the Law Society's Web site. Therefore, one of the goals of the 2004 member survey was to gauge member interest in the online OLG and member interest in electronic sources of information generally.
51. The findings indicate that most members do not use the online version of the OLG as a source of information. However, the findings suggest that the OLG does drive members to other sources of online information through references in articles. Just over one-quarter of members say they go to a Web site referred to in an OLG article to obtain more information about the subject of that article.
52. Nearly two-thirds of members are unaware that the OLG is available on the Law Society's Web site and its readership is quite limited. Among those aware of the online OLG, approximately three-quarters say they never read it. This limited readership among those who are aware of it suggests that members may not see the OLG as the type of information source that they either need or want to access electronically.
53. This is also consistent with the survey's findings regarding the most popular sources of information. Members are increasingly using online sources such as the Law Society Web site and Quicklaw for more immediate access to news, and the OLG for its in-depth coverage of issues of importance to the profession.

Special Issue of the Ontario Lawyers Gazette

54. The Law Society produced a special issue of the Ontario Lawyers Gazette in Fall 2002, titled "Professionalism: A Century of Perspectives" at the request of the OLG Advisory Board.
55. In light of prevailing events and issues of importance in the profession in 2002, staff identified a theme and produced this special issue completely in house with no new funding required. It was produced as one of the regular issues of the OLG, within its existing budget for 2002, and distributed to members together with the Fall/Winter 2002 issue in one mailing.
56. The special issue contained a blend of speeches, articles, media clippings and archival evidence on the theme of professionalism spanning the last hundred years. It also included a special section in honour of the late G. Arthur Martin, including speeches delivered at his tribute.

57. The issue was produced collaboratively with the Law Society's Archives department. Feedback was also received from the Ontario Lawyers Gazette Advisory Board under former chair Julian Porter, and John Honsberger, who served as editor for the "Gazette", a past-publication of the Law Society.
58. Only minimal feedback was received from the membership about the special issue, making it difficult for the Law Society to gauge member interest in its content, and whether the membership would be interested in reading such special issues in the future. The 2004 readership survey was designed, therefore, to elicit feedback on the special issue and member interest in the production of similar issues in the future.
59. The findings from the 2004 readership audit suggest that awareness of the special issue of the Ontario Lawyers Gazette is moderately high, as just under one-half of members recall the issue. This suggests that for many members the special issue of the Ontario Lawyers Gazette was a memorable one.
60. Members also read the special issue, as a majority of those who recall it perused the issue and read items that interested them. Only 5% of those who recalled the special issue did not read any of the issue.
61. Consistent with recall and readership findings, a majority of members who recall or read it would like to see more such special issues (71%). This suggests that the special issue found a receptive audience.
62. Based on this feedback, the Ontario Lawyers Gazette Advisory Board and staff will continue to publish the Ontario Lawyers Gazette up to six times per year, including a special issue of the OLG devoted to a "special interest" theme as may be found appropriate from year-to-year.

Methodology

63. The survey was conducted on behalf of the Law Society by the research firm The Strategic Counsel. Data for this research was gathered through a 53-question, telephone survey among 400 members of the Law Society between January 22 and February 3, 2004. The breakdown of the demographics of this sample is included in The Strategic Counsel's report at Appendix 1.
64. Of the 400 completed interviews, the objective was to complete 350 interviews in English among members who conduct their practices in English. Another 50 interviews were to be conducted in French among members who have requested that the Law Society communicate with them in French or have advised the Law Society that they are competent to represent clients in French.
65. The sample of members whose primary language is English was drawn at random from the Law Society's member database. The Strategic Counsel completed 351 interviews in English (representing 88% of the sample).
66. The Law Society database contains the names of only about 350 members who have requested French communications or indicated competence to represent clients in French. Of this list, 50 member names were drawn at random and 49 interviews completed in French (representing 12% of the sample).
67. The findings of this survey are statistically valid. The margin of error on a sample of 400 is +/- 4.9 percentage points, nineteen times out of twenty.

APPENDIX 1

The Strategic Counsel

Gregg, Kelly, Sullivan & Woolstencroft:

The Strategic Counsel

www.thestrategiccounsel.com

A Report to
The Law Society of Upper Canada
Member Readership Study

June 2004

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I. Executive Summary

Executive Summary

A. Introduction, Objectives and Methodology

The *Strategic Counsel* is pleased to present to the Law Society of Upper Canada this executive summary of findings from a survey of members concerning their usage and impressions of sources of information about the legal profession and the practice of law, with particular emphasis on the Ontario Lawyers Gazette.

Data for this research was gathered through a telephone survey among 400 members of the Law Society between January 22nd and February 3rd, 2004.

The objective was to complete 350 interviews in English among members who conduct their practices in English, and 50 interviews in French among members who have requested that the Law Society communicate with them in French or have advised the Law Society that they are competent to represent clients in French. The sample of members interviewed in English was drawn at random from the Law Society's member database. Although the objective was to complete an additional 50 interviews in French, at the time this research was conducted the Law Society database contained the names of only 350 members who had requested French communications or indicated competence to represent clients in French. Consequently, we contacted each those 350 members, of whom 49 were interviewed in French for this research. The margin of error on a sample of 400 is +/- 4.9 percentage points, nineteen times out of twenty.

The Law Society undertook a member readership audit in 2000 and the 2004 study tracked a number of questions from the 2000 study. Where appropriate, findings from 2000 have been included in the analysis of findings from the 2004 study. All differences reported are significant at the 95% confidence level.

B. Sources of Information Used/Most Accurate Source

Members report using a wide variety of sources to obtain information concerning legal issues and the practice of law. Among these sources, the Ontario Reports are cited most frequently, followed by mainstream media. Mentions of the Ontario Lawyers Gazette are significantly lower, which implies that the Gazette is not seen as a top of mind information source to the same extent as other sources are. Suggesting an evolution in the way members are gathering information, Quicklaw and the Law Society website, which were not mentioned in 2000, emerge as sources in 2004. Perceptions of the most accurate source are similar. When members are asked which one of the sources they mentioned they regard as providing them with the most accurate, reliable information, the Ontario Reports are again cited most frequently.

Consistent with these findings, members report that they most often learn about Notices to the Profession through the Ontario Reports, which are cited more than twice as often as the next most frequently cited source – the Ontario Lawyers Gazette.

C. Information Received from the Law Society

Findings suggest that, overall, lawyers feel more informed in 2004 than they did in 2000 about issues on which they receive information from the Law Society. On four of the five issues tested in both 2000 and 2004, the proportion of lawyers who report feeling "very" or "somewhat informed" is significantly higher in 2004. The only exception to this is information concerning decisions made by Convocation, about which the proportion who feel informed is significantly lower in 2004 than it was in 2000. Even here, however, six-in-ten members feel either "very" or "somewhat informed".

D. The Ontario Lawyers Gazette

Although the Gazette is not mentioned as a source of information for legal issues and the profession of law to the same extent as other sources such as the Ontario Reports, members do read it and find it to be useful. Six-in-ten members report reading every issue, and a further 17% of members report reading about half the issues. Just 7% of members say that they never read any issues. Further, among members who read at least some issues, about seven-in-ten (68%) either peruse the entire Gazette and read items of interest (59%) or read the Gazette thoroughly from cover to cover (9%).

Members clearly see the Gazette as a way of keeping up-to-date and informed, since about one-in-two members who read at least some issues of the Gazette explicitly cite this as their reason for doing so. Moreover, members appear generally satisfied with the Gazette's content. When readers are asked if there is anything missing from the Gazette that they would like to see added to it, fully six-in-ten (63%) say that they do not believe that anything is missing. Suggestions regarding content, among those who offer one, include adding "information on issues facing the profession" (17%) and information about "changes in legislation, case law or statutory provisions" (10%).

Assessments of the Lawyers Gazette in 2004 are generally consistent with the ratings received in 2000 across the four criteria examined in each year. As it was in 2000, the highest rated aspect of the Gazette in 2004 is its "credibility". Three-quarters of members (76%) rate the "overall credibility of the Lawyers Gazette" as "excellent" (34%) or "good" (43%). Slightly smaller, but still solid, majorities give the Gazette positive ratings for "writing style" (61%), and "visual appearance" (60%).

"The 'fit' between the information the Lawyers Gazette provides and the information you need" (43%), remains, as it was in 2000, the only criterion tested on which fewer than one-half of members provide a rating of "excellent" or "good". Less than ten percent of members indicate that the "fit" is "excellent" (7%), while roughly one-third (35%) say the "fit" is "good". This suggests that, notwithstanding the earlier finding that 63% of members had no suggestions to offer when asked directly, there may still be information members might like that the Gazette does not presently include.

One criterion was assessed for the first time in 2004 – "the extent to which the writing/language used is inclusive of women and individuals from equality-seeking communities". A bare majority of members overall (52%) rates this aspect of the Gazette as either "excellent" (17%) or "good" (35%). Of note, however, about one-quarter of members (24%) say either "don't know" or do not provide a rating on this criterion. Recalculated with the "don't know" and "no answer" responses removed, the proportion of "excellent" or "good" ratings is significantly higher at 69%, placing this criterion just behind the "the overall credibility" of the Gazette as the most highly-rated of the criteria tested.

There is significant interest among members in most of the types of news and information that appear in the Lawyers Gazette. More than eight-in-ten members indicate that they are "very" or "somewhat" interested in seeing four of the five types of news and information tested. Moreover, the majority of members report that they are "very" interested in these types of information. Specific ratings are as follows:

- "Focus pieces that take a more in-depth look at major issues and topics" (91% "very" or "somewhat" interested, 51% "very" interested)
- "Important notices about programs and practice management issues" (86%, 59%)
- "Information about upcoming events and programs, including continuing legal education" (86%, 53%)
- "Information about discipline and suspensions" (82%, 38%)

Members express significantly less interest in "editorials by Law Society officials, including the Treasurer, the CEO and benchers" (52%). Just over ten percent of members (13%) say they are "very" interested in such editorials, with a further four-in-ten (39%) reporting that they are "somewhat" interested.

E. The On-line Lawyers Gazette

Although the Gazette has been available on-line at the Law Society's website for some time, nearly two-thirds (62%) of members remain unaware of it. Further, among the sizeable minority (38%) that is aware that the Gazette can be accessed on-line, the large majority (78%) indicate that they "never read the Lawyers Gazette on-line". The few members who do read the on-line version of the Gazette are more than twice as likely to read it "occasionally" (16%) than to read it "sometimes" (4%) or "regularly" (2%).

Notwithstanding the limited awareness of the on-line version of the Gazette, over a quarter (28%) of members who read the Gazette report following a reference to the website to seek further information regarding the subject of an article either "always" (2%) or "sometimes" (26%).

F. Lawyers Gazette Format Preferences

Despite the growing interest in electronic access to information, the strong majority of members (73%) indicate that they would prefer to continue to receive the Lawyers Gazette in hard copy by mail. One-quarter of members would prefer to receive the Gazette electronically (25%).

Members are evenly divided in their preferences as to the format the Gazette should take if it were to be published only on-line: 44% of members would prefer to receive the Gazette in its present format, while an identical proportion (44%) would prefer to receive the publication as matters become newsworthy. The remaining members (12%) are undecided.

G. Special Issue of the Gazette

Awareness of the special issue of the Gazette devoted to professionalism is moderately high. On a total awareness basis, just less than half of members (45%) indicate that they recall having seen or read this issue. One-third of members recall this issue on an unaided basis (32%), with a further 13% recalling it when prompted. The fact that so many recall the issue on an unaided basis (that is, they did not have it described to them as “an historical issue of the Gazette devoted to professionalism”) suggests that it was for many a memorable issue. The majority of members (55%), however, do not recall having seen or read it.

In addition to being recalled, the historical issue also appears to have been read. Of the members who have seen or read the special issue, two-in-ten (21%) “read the report thoroughly, cover to cover”, while more than twice as many indicate that they “perused the entire report and read some items that interested them” (49%).

The majority of members (71%) report that they would like to see more special issues. This is consistent with the extent with which members report having read the special issue tested in the research.

H. Ontario Reports

The overall approach to reading the Ontario Reports is similar to how the Lawyers Gazette is read, with two-thirds of members looking through the entire publication and reading some items of interest. One-quarter of members “only read items of interest, and do not read anything else” (24%), while 6% “read the report thoroughly, cover to cover”, and 4% “peruse the entire report but do not stop to read much”.

Examining the issue of what parts of the Ontario Reports members read, the majority of members who read the Ontario Reports indicate that they typically read all parts of the report (61%). This suggests that the majority of members find all of the content in the Reports worth reviewing.

One-quarter (25%) report that they devote most of their attention to the reported cases, while fewer than one-in-ten members typically review the Reports primarily for “advertising” (7%) or “Notices to the Profession” (6%).

I. The Lawyers Gazette and the Ontario Reports – Reading Patterns and Content

The extent to which members regard both the Ontario Lawyers Gazette and the Ontario Reports as important sources of information, although in different ways, is evident from the finding that the large majority of members (69%) report that they read both publications. Of the remaining members who generally only read one of these two publications, the vast majority (28%) read the Ontario Reports and not the Gazette. Just 3% of members report reading the Gazette but not the Reports.

The implication here is that, where a choice is being made, then the Ontario Reports is believed to be more vital than the Gazette. This may be because the information contained in the Ontario Reports, and in particular reported cases, is perceived by members as more directly related to their practices than the information typically contained in the Gazette.

The hypothesis that the Gazette and the Ontario Reports are seen as performing very different information functions is further supported by the finding that the majority of members (70%) believe that there is “not very much” (44%) or “virtually no” (26%) overlap between the content of the Lawyers Gazette and the content of the Ontario Reports. This is consistent with the almost identical proportion of members who report that they generally read both the Ontario Reports and the Gazette (69%). A small proportion of members (20%) perceive “some” overlap between the two publications, while virtually no members perceive that there is “a great deal” of overlap (1%).

Given that the two publications are generally seen as significantly differentiated in their content, it is perhaps not surprising that just over half (53%) of members indicate that they would prefer to keep the Lawyers Gazette and the Ontario Reports as separate publications. However, a fairly substantial minority of members (39%) would like to see the two publications combined into one.

J. The Lawyers Gazette – French Content

Overall, most members do not read the French sections of the Gazette. Three-quarters (73%) of members overall report that they “never” read the sections of the Lawyers Gazette that are published in French. Of those who do read the French sections (27%), 11% report that they “always” read them, while the remaining 16% report that they “sometimes” (10%) or “rarely” (6%) read them. Given that French-speaking members only represent about 12% of the total sample, however, the clear implication of these findings is that readership of the French sections of the Gazette is not restricted to French-speaking members.

As would be expected, virtually all French-speaking members (96%) say that they read the sections of the Gazette that are published in French. Moreover, they read them regularly. Nearly three-quarters of French-speaking members indicate that they “always” (72%) read these sections, while a further one-in-five (20%) “sometimes” read them. These findings clearly suggest that the French sections of the Gazette are seen as important by the members, French-speaking members in particular, who read them.

Further supporting the perceived value of the French sections of the Gazette, three-quarters (76%) of members who read the French sections find the content “very” (21%) or “somewhat” (55%) valuable. As would be expected, French-speaking members in particular find the French sections to be valuable. While French-speaking members are no more likely than members overall to rate the French sections as “very” valuable (21% each), French-speaking members are significantly more likely to rate the sections published in French as “somewhat” valuable (75% vs. 55%).

The majority of members who read the French sections of the Gazette say that the portions published in French meet their information needs (70%). There is, however, a significant minority of members who believe that more sections of the Gazette should be published in French (21%). Not surprisingly, the desire to have more French content is significantly higher among French-speaking members (34%).

Members who feel that more of the Gazette’s content should be published in French were asked for suggestions as to what should be added. Suggested most frequently were publishing a fully French Gazette (27%) and increasing the number of French articles with bilingual summaries (23%). Less frequently mentioned suggestions include publishing the editorials, relevant or important articles, and “cases/decisions” in French (9% each).

Assessments of the French content in the Gazette among all those who read it are moderately high for each of the three dimensions tested. Of note, the proportion of members providing a “needs improvement” rating ranges between only 2% at the low end to just 8% on the high end. The highest rating (63%) is given for the credibility of the Gazette’s French content (25% “excellent” and 38% “good”), although this rating is significantly lower than the “overall credibility” rating given for the Gazette as a whole (76%). Ratings for the “overall quality” and “visual appearance” of the Gazette’s French content fall in about the same range (59% and 54%, respectively). The proportion of “excellent” ratings given for “the visual appearance” of the French content of the Gazette are, however, significantly lower than proportion given for the “credibility” of that content (12% and 25%, respectively). It is important to note here, however, that French-speaking members, to whom the French sections of the Gazette are presumably most important, provide significantly higher ratings than do readers overall both for the credibility (81% “excellent” or “good”) and the overall quality (79%) of the Gazette’s French content.

II. Introduction, Objectives and Methodology

Introduction, Objectives and Methodology

A. Introduction and Objectives

The *Strategic Counsel* is pleased to present to the Law Society of Upper Canada this report of findings from the Member Readership survey. The overall objective of this research was to explore among members their usage and impressions of sources of information about the legal profession and the practice of law, with particular emphasis on the Ontario Lawyers Gazette.

B. Research Method and Sample

A telephone survey was conducted among 400 Law Society members between January 22nd and February 3rd, 2004. The sample was drawn from the Law Society member database. The objective was to interview 350 members whose primary language is English and 50 members who are French-speaking.

The primary language of members participating in the survey was established prior to conducting this research using the Law Society's member database. The database records the names of members who indicate a preference for receiving communications from the Law Society in French and/or have indicated to the Law Society that they are able to represent clients in French. The sample of members whose primary language is English was drawn at random from the Law Society database. The same process could not be followed for French-speaking members as the database contained the names of only 350 such members. In the result, we completed 351 interviews among members whose primary language is English (representing 88% of the sample), and 49 French-speaking members (representing 12% of the sample).

The Law Society undertook a member readership audit in 2000 and the 2004 study tracked a number of questions from the 2000 study. Where appropriate, findings from 2000 have been included in the analysis of findings from the 2004 study. All differences reported are significant at the 95% confidence level.

The margin of error on the total sample of 400 is +/- 4.9 percentage points, 19 times out of 20.

III. Sources of Information About Legal Issues and the Profession of Law

Sources of Information

Members appear to access a wide variety of sources when seeking information about legal issues and the profession of law. On both a first mention and all mentions basis, the Ontario Reports are cited most frequently (22% and 43%, respectively), followed by "mainstream media" (14% first mention and 30% all mentions).

All other sources of information about legal issues and the profession of law are cited by less than two-in-ten members on an all mentions basis. These include:

- Lawyers Weekly (19%)
- The Law Times (17%)
- Quicklaw (15%)
- Law Society website (12%)
- Legal association newsletters or publications other than the Gazette (10%)

There have been some significant changes in the sources of information members report using to learn about legal issues and the profession of law on an all mentions basis since 2000. Specifically, the proportion of members who cite the Ontario Reports has increased 28 percentage points over 2000 (43% vs. 15%). Mentions of “mainstream media” similarly have nearly quadrupled since 2000 (30% vs. 8%). The proportion of members mentioning the Ontario Lawyers Gazette, by contrast, has declined from 14% in 2000 to 7% in 2004.

Two sources of information emerged in 2004 that did not appear in 2000. More than one-in-ten members mention Quicklaw (15%) and the Law Society website (12%). These findings may reflect an evolution in the way lawyers use electronic/internet sources to acquire information.

Sources of Information

Significant differences in all sources mentioned in 2004 also exist by language.

- French-speaking members are significantly less likely than English members to mention the Ontario Reports (29% vs. 45%), the Law Society website (4% vs. 13%), legal association newsletters or publications other than the Gazette (4% vs. 11%), and Canadian Bar Association’s magazine “The National” (0% vs. 11%) as sources they use to get information about legal issues and the profession of law.
- French-speaking members however, are more than twice as likely as English members to mention Quicklaw (31% vs. 13%) and legal case reports (16% vs. 3%).

Most Accurate Source of Information

The Ontario Reports are cited most frequently as providing the most accurate and reliable information about legal issues and the profession of law (17%). This is consistent with sources of information mentioned. Further, the Reports are mentioned twice as often as the next nearest source of information, which interestingly is Quicklaw (8%). Overall significant declines are evident for some sources since 2000, including the Lawyer’s Weekly (3% vs. 7%), Law Times (2% vs. 6%) and the Ontario Lawyers Gazette (2% vs. 19%).

As with the sources of information mentioned, French-speaking members are significantly more likely than English members to cite Quicklaw (23% vs. 6%) and legal case reports (18% vs. 1%) as the most accurate sources of information.

There are a number of possible explanations for the significant changes on the both sources of information used and most accurate source used measures.

The first is that questionnaire design has had an impact. In 2004, the questions concerning sources of information were the first ones asked, whereas in 2000 they did not arise until Q.27. As a result, it is possible that respondents in 2000, who were exposed to a series of questions concerning the Law Society and its activities before being asked about sources of information used, were more likely as a result of this exposure to mention a Law Society publication. Secondly, the 2004 study was conducted among a sample of 400 members, which is almost twice as large as the 2000 sample of 218. Further, the average number of responses per respondent on this measure is higher in 2004 (2.3) than it was in 2000 (1.9). This would be most likely to affect the overall number of total mentions. Finally, as noted earlier, several of the changes in the number and types of sources identified in 2004 suggest that lawyers are now using a greater variety of sources for information on legal matters than they were in 2000. In particular, findings from 2004 suggest an increasing reliance on Internet-based sources.

(see survey - pages 32 – 34)

Information received from the Law Society

Overall, members in 2004 are significantly more likely than they were in 2000 to report that they feel “very” or “somewhat informed” concerning issues about which they receive information from the Law Society. In particular,

there have been significant increases in the proportions who feel that they are “very informed”. Significantly more members indicate feeling “very” informed about “issues facing the profession” (20% in 2004 vs. 12% in 2000), “changes in policies and procedures for members” (18% vs. 11%), “changes in legislation, rules and by-laws” (19% vs. 9%), and “initiatives that are being undertaken to respond to issues facing the profession” (12% vs. 6%).

A strong majority of members report feeling “very” or “somewhat informed” about “issues facing the profession” (78%), “Law Society resources and services to assist members” (77%), and “changes in policies and procedures for members” (73%). Somewhat smaller majorities feel informed about “changes in legislation, rules and by-laws” (62%), “decisions made by Convocation” (62%), and “initiatives that are being undertaken to respond to issues facing the profession” (61%).

Despite these gains, perceptions of the degree to which members feel informed have slipped in one area in 2004. Fewer members in 2004 indicate that they feel “very” or “somewhat informed” about “decisions made about Convocation” than did members in 2000 (62% down from 71%). This drop in familiarity traces primarily to those who feel that they are “somewhat” informed about this issue (44% down from 52%).

There are significant variations in the degree to which members felt informed about specific issues by language, gender, location, employment, and years called to the bar:

- French members are less likely to report feeling “very” or “somewhat informed” than English members about “Law Society resources and services to assist members” (63% vs. 80%).
- Members who work in the GTA are significantly more likely than those who work outside the GTA to describe themselves as informed (“very” or “somewhat”) about “changes in legislation, rules and by-laws” (68% vs. 57%), while French members feel less informed than English members about this issue (49% vs. 64%).
- Compared to their counterparts, females (56%), members with 5 or more lawyers in their firm (48%) and members who have been called to the bar for less than 10 years (53%) are significantly less likely to describe themselves as “very” or “somewhat informed” about “decisions made about Convocation”.
- Women are more likely than men to report feeling informed about “initiatives that are being undertaken to respond to issues facing the profession” (68% vs. 57%).

(see survey in Convocation file)

Sources of Awareness for Notices to the Profession

As reported earlier, the Ontario Reports appear to be the single most important information source for Ontario Lawyers. This is confirmed by the finding that more than half of members (57%) report that they learn about Notices to the Profession through the Ontario Reports, which is almost three times the proportion of mentions received by the next most frequently cited source - the Ontario Lawyers Gazette (21%). Mentions of the Gazette as a source of learning about Notices to the Profession are, in turn, almost three times higher than mentions of any other single source, suggesting that this may be one of the reasons members read the Gazette.

Roughly one-in-ten members report that they learn about Notices to the Profession through the Law Society website (8%) or from other lawyers (7%).

There are some significant demographic differences on this issue.

- French-speaking members (29%) and members who work outside the GTA (25%) are significantly more likely than their counterparts (20% and 17%, respectively) to report that they learn about Notices to the Profession through the Gazette.
- Conversely, English-speaking members (59%) and members who work in the GTA (62%) refer to the Ontario Reports for this information more frequently than do French speakers (43%) and members who work outside the GTA (52%).

(see survey in Convocation file)

IV. Ontario Lawyers Gazette

Ontario Lawyers Gazette

Although the Ontario Lawyers Gazette is not recalled especially frequently as one of the sources of information used for legal issues and the profession of law, it is still nonetheless read by the majority of members. Six-in-ten members (59%) report they read “every issue”. While the majority of members continue to read “every issue” of the Gazette in 2004, the proportion of members indicating that they do so has dropped nearly 10 percentage points since 2000 (68%). However, almost all members report reading at least some issues. Only 7% of members in 2004 report that they “never read any issues”, a proportion which is unchanged from 2000. Frequency of reading the Lawyers Gazette varies slightly by demographics. Men (64%) are significantly more likely than women (52%) to read “every issue”, while members with 5 or more lawyers in their firm (49%) are less likely to say that they read each issue. Members who read at least some of the Gazette were then asked to describe how they read it. Six-in-ten (59%) indicate that they “peruse the entire Lawyers Gazette and read items of interest”. This compares with 68% in 2000. Significantly more members in 2004 report that they “only read items of interest, and do not read anything else” (19%), and “peruse the entire Lawyers Gazette, but do not read much” (13%) than did members in 2000 (8% and 7%, respectively). Only a small minority (9%) reports reading “the Lawyers Gazette thoroughly, cover to cover”. Members who read every issue of the Gazette are significantly more likely than less avid readers to read the Gazette “cover to cover” (14% vs. 1%). In contrast, those who do not read every issue are more likely to read “only items of interest” and little else compared to their counterparts (29% vs. 13%).

Note: While this question was also asked in 2000, an important distinction must be made between the two samples. In 2004, only respondents who reported reading at least some of the Gazette were asked this question, whereas in 2000 all respondents were asked the question irrespective of whether they reported reading the Gazette. Thus, while comparisons here are useful, the two studies are not directly comparable.

(see survey in Convocation file)

Main Reasons for Reading the Lawyers Gazette

Members cite a number of reasons for reading the Gazette. However, the most frequently mentioned reason is to “keep up-to-date and informed” (38%). One-in-ten members indicate that they read the Gazette out of “professional and personal interest in articles” (11%), or to obtain “general information” (11%).

Members who have been called to the bar for 21 years or more are directionally less likely to indicate that their main reason for reading the Gazette is to “keep up to date and informed” (26%). French members compared to English members are significantly more likely to mention that they read the publication for “information on issues on the profession” (19% vs. 3%).

(see survey in Convocation file)

Suggestions for Improving Content of the Lawyers Gazette

Overall, members are satisfied with the content of the Lawyers Gazette. More than sixty percent of members (63%) report that there is nothing that is missing from the Lawyers Gazette which they would like to see added, which suggests that members do not have major issues with the content of the Gazette. Suggestions regarding content, among those who offered one, include adding, “information on issues facing the profession” (17%) and information about “changes in legislation, case law or statutory provisions” (10%).

Suggestions for Improving Content of the Lawyers Gazette

(see survey in Convocation file)

Perceived Quality of the Lawyers Gazette

Overall, assessments of the Lawyers Gazette in 2004 are consistent with the ratings received in 2000 on the four criteria that were assessed in both years. As it was in 2000, the highest rated aspect of the Gazette in 2004 is its “credibility”. Three-quarters of members (76%) rate the “overall credibility of the Lawyers Gazette” as “excellent” (33%) or “good” (43%). Slightly smaller, but still solid, majorities give the Gazette positive ratings for “writing style” (61%), and “visual appearance” (60%).

“The ‘fit’ between the information the Lawyers Gazette provides and the information you need” (43%) is the only criterion tested on which fewer than one-half of members provide a rating of “excellent” or “good”. Less than ten percent of members indicate that the “fit” is “excellent” (7%), while roughly one-third (35%) say the “fit” is “good”. This suggests that, notwithstanding the earlier finding that 63% of members had no suggestions to offer when asked directly, there may still be information members might like that the Gazette does not presently include.

One criterion was assessed for the first time in 2004 – “the extent to which the writing/language used is inclusive of women and individuals from equality-seeking communities”. A bare majority of members overall (52%) rates this aspect of the Gazette as either “excellent” (17%) or “good” (35%). Of note, however, about one-quarter of members (24%) say either “don’t know” or do not provide a rating on this criterion. Recalculated with the “don’t know” and “no answer” responses removed, the proportion of “excellent” or “good” ratings is significantly higher at 69%, placing this criterion just behind the “the overall credibility” of the Gazette as the most highly-rated of the criteria tested.

There are some significant demographic variations in evaluations of the Gazette.

- Members who work outside the GTA are more likely than those who work within the GTA to give higher ratings for “the writing style in the Gazette” (67% vs. 56%), “the visual appearance of the Lawyers Gazette” (65% vs. 54%), and “the ‘fit’ between the information the Lawyers Gazette provides and the information you need” (48% vs. 36%).
- French-speaking members provide higher ratings for the “writing style of the Lawyers Gazette” (77%) than do English-speaking members (59%).

(see survey in Convocation file)

Interest in Types of News and Information in the Lawyers Gazette

There is significant interest among members in most of the types of news and information that appear in the Lawyers Gazette. More than eight-in-ten members indicate that they are “very” or “somewhat” interested in seeing four of the five types of news and information tested. Moreover, the majority of members report that they are “very” interested in these types of information. Specific ratings are as follows:

- “Focus pieces that take a more in-depth look at major issues and topics” (91% “very” or “somewhat” interested, 51% “very” interested)
- “Important notices about programs and practice management issues” (86%, 59%)
- “Information about upcoming events and programs, including continuing legal education” (86%, 53%)
- “Information about discipline and suspensions” (82%, 38%)

Members express significantly less interest in “editorials by Law Society officials, including the Treasurer, the CEO and benchers” (52%). Just over ten percent of members (13%) say they are “very” interested in such editorials, with a further four-in-ten (39%) reporting that they are “somewhat” interested.

Interest in the content of the Gazette varies significantly by several demographic groups.

- Men (90%), English members (92%), and members who work in the GTA (93%) are significantly more interested than their counterparts in “important notices about programs and practice management issues” (80% women, 49% French and 79% non-GTA).
- Members of an equality-seeking community are more likely than non-members to express interest in “information about upcoming events and programs, including continuing legal education” (91% vs. 84%), and are less likely to express interest in editorials by Law Society officials (46% and 56%, respectively).

Consistent with the findings on this question concerning member interest in receiving information about discipline and suspensions, when asked directly, fully three-quarters of members (77%) say that it is “very” (50%) or “somewhat” (27%) important to continue to publish information about discipline and suspensions in the Gazette in addition to being posted on the Law Society’s website.

(see survey in Convocation file)

Importance of Continuing to Publish Information About Discipline/Suspensions in the Gazette

(see survey in Convocation file)

The On-line Lawyers Gazette

Although the Gazette has been available on-line at the Law Society’s website for some time, nearly two-thirds (62%) of members remain unaware of it. Further, among the sizeable minority (38%) that is aware that the Gazette can be accessed on-line, the large majority (78%) indicate that they “never read the Lawyers Gazette on-line”. The few members who do read the on-line version of the Gazette are more than twice as likely to read it “occasionally” (16%) than to read it “sometimes” (4%) or “regularly” (2%).

Notwithstanding the limited awareness of the on-line version of the Gazette, over a quarter (28%) of members who read the Gazette report following a reference to the website to seek further information regarding the subject of an article either “always” (2%) or “sometimes” (26%). This finding tends to add further support to the finding reported earlier that lawyers are making greater use of electronic sources when seeking out information related to the practice of law.

(see survey in Convocation file)

Frequency Access Additional Information On-line based on a Reference in the Gazette

(see survey in Convocation file)

Lawyers Gazette Format Preferences

Despite the growing interest in electronic access to information, the strong majority of members (73%) indicate that they would prefer to continue to receive the Lawyers Gazette in hard copy by mail. One-quarter of members would prefer to receive the Gazette electronically (25%). There are no significant demographic differences in member preferences on this issue.

Members are evenly divided in their preferences as to the format the Gazette should take if it were to be published only on-line: 44% of members would prefer to receive the Gazette in its present format, while an identical proportion (44%) would prefer to receive the publication as matters become newsworthy. The remaining members (12%) are undecided.

French-speaking members (59%) are significantly more likely than English-speaking members (43%) to prefer the present format if the Gazette were only available on-line. In contrast, members who have been called to the bar 21 years or more are less likely than their younger counterparts to prefer the current format (33% vs. 51%).

(see survey in Convocation file)

Awareness of the Special Issue of the Gazette

Awareness of the special issue of the Gazette devoted to professionalism is moderately high. On a total awareness basis, just less than half of members (45%) indicate that they recall having seen or read this issue. One-third of members recall this issue on an unaided basis (32%), with a further 13% recalling it when prompted. The fact that so many recall the issue on an unaided basis (that is, they did not have it described to them as “an historical issue of the Gazette devoted to professionalism”) suggests that it was for many a memorable issue. The majority of members (55%), however, could not recall having seen or read it. There are no significant demographic differences in awareness of the special issue.

In addition to being recalled, the historical issue also appears to have been read. Of the members who have seen or read the special issue, two-in-ten (21%) “read the report thoroughly, cover to cover”, while more than twice as many indicate that they “perused the entire report and read some items that interested them” (49%). Fewer members “perused the entire issue but did not stop to read much” (12%), “read the items that interested them, and did not read anything else” (7%), or “did not read any of the special issue of the Gazette” (5%).

The majority of members (71%) report that they would like to see more special issues. This is consistent with the extent with which members read the special issue tested in the research. Members of an equality-seeking community (81%) are significantly more likely to want to see more of such issues than are those who are not members of such a community (65%).

(see survey in Convocation file)

Special Issue of the Gazette

(see survey in Convocation file)

V. Ontario Reports

Ontario Reports

The overall approach to reading the Ontario Reports is similar to how the Lawyers Gazette is read, with two-thirds of members looking through the entire publication and reading some items of interest. One-quarter of members “only read items of interest, and do not read anything else” (24%), while 6% “read the report thoroughly, cover to cover” and 4% “peruse the entire report but do not stop to read much”.

Examining the issue of what parts of the Ontario Reports members read, the majority of members who read the Ontario Reports indicate that they typically read all parts of the report (61%). This suggests that the majority of members find all of the content in the Reports worth reviewing. One-quarter (25%) report that they devote most of their attention to the reported cases. Men (28%) are significantly more likely than women (19%) to take this approach to reading the Reports.

Fewer than one-in-ten members typically review the Reports primarily for “advertising” (7%) or “Notices to the Profession” (6%). Members who work in the GTA (10%) are more likely to look at the Reports primarily for advertising than are members who work outside the GTA (4%).

(see survey in Convocation file)

Reading Patterns for the Lawyers Gazette and the Ontario Reports

The extent to which members regard both the Ontario Lawyers Gazette and the Ontario Reports as important sources of information, although in different ways, is evident from the finding that the large majority of members (69%) report that they read both publications. Men (72%) are significantly more likely than women (62%) to read both publications, while members with more than 5 lawyers in their firm compared to their colleagues in smaller practice arrangements are less likely to do so (58%).

Of the remaining members who generally only read one of these two publications, the vast majority (28%) read the Ontario Reports and not the Gazette. Women (34%) are significantly more likely than men (24%), and those with more than 5 lawyers in their firm (43%) more likely than those in smaller practices, to read only the Ontario Reports. Just 3% of members report reading the Gazette but not the Reports.

The implication here is that, where a choice is being made, then the Ontario Reports are believed to be more vital than the Gazette. This may be because the information contained in the Ontario Reports, and in particular reported cases, is perceived by members as more directly related to their practices than the information typically contained in the Gazette.

(see survey in Convocation file)

Lawyers Gazette and Ontario Reports - Content

The hypothesis that the Gazette and the Ontario Reports are seen as performing very different information functions is supported by the finding that the majority of members (70%) believe that there is “not very much” (44%) or “virtually no” (26%) overlap between the content of the Lawyers Gazette and the content of the Ontario Reports. This is consistent with the almost identical proportion of members who report that they generally read both the Ontario Reports and the Gazette (69%). A small proportion of members (20%) perceive “some” overlap between the two publications, while virtually no members perceive that there is “a great deal” of overlap (1%).

Given that the two publications are generally seen as significantly differentiated in their content, it is perhaps not surprising that just over half (53%) of members indicate that they would prefer to keep the Lawyers Gazette and the Ontario Reports as separate publications. However, a fairly substantial minority of members (39%) would like to see the two publications combined into one.

The only significant demographic variation on this question is that women (46%) are significantly more likely than men (35%) to prefer a combined report.

(see survey in Convocation file)

VI. French Content of the Gazette

Readership and Perceptions of French Sections of the Gazette

Overall, most members do not read the French sections of the Gazette. Three-quarters (73%) of members overall report that they “never” read the sections of the Lawyers Gazette that are published in French. Of those who do read the French sections (27%), 11% report that they “always” read them, while the remaining 16% report that they “sometimes” (10%) or “rarely” (6%) read them. Given that French-speaking members only represent about 12% of the total sample, however, the clear implication of these findings is that readership of the French sections of the Gazette is not restricted to French-speaking members.

As would be expected, virtually all French-speaking members (96%) say that they read the sections of the Gazette that are published in French. Moreover, they read them regularly. Nearly three-quarters of French-speaking

members indicate that they “always” (72%) read these sections, while a further one-in-five (20%) sometimes read them. These findings clearly suggest that the French sections of the Gazette are seen as important by the members, French-speaking members in particular, who read them.

Those who identify themselves as members of an equality-seeking community (35%) and members who work outside the GTA (33%) are also significantly more likely than their counterparts (13% and 9%, respectively) to read the sections of the Lawyers Gazette that are published in French.

Generally speaking, members who read the French sections of the Gazette also typically read the English sections. About six-in-ten members (62%) who read the French sections of the Gazette report that they read “other portions than those published in French”, while one quarter (25%) indicate that they read both. Fewer than one-in-ten members who read the French sections indicate that they most often read “only the portions that are published in French” (7%). Thus while the French sections are seen as valuable, those who read them also express interest in the sections of the Gazette that are published in English.

Further supporting the perceived value of the French sections of the Gazette, three-quarters (76%) of members who read the French sections find the content “very” (21%) or “somewhat” (55%) valuable. As would be expected, French-speaking members in particular find the French sections to be valuable. While French-speaking members are no more likely than members overall to rate the French sections as “very” valuable (21% each), French-speaking members are significantly more likely to rate the sections published in French as “somewhat” valuable (75% vs. 55%).

Frequency of Reading French Sections of the Gazette

(see survey in Convocation file)

Readership of both English and French Sections of the Gazette

(see survey in Convocation file)

Perceived Value of the French Sections of the Gazette

(see survey in Convocation file)

Sufficiency of French Content in the Gazette

The majority of members who read the French sections of the Gazette say that the portions published in French meet their information needs (70%). There is, however, a significant minority of members who believe that more sections of the Gazette should be published in French (21%). Not surprisingly, the desire to have more French content is significantly higher among French-speaking members (34%). It is also higher among members who work outside of the GTA.

Members who feel that more of the Gazette’s content should be published in French were asked for suggestions as to what should be added. Suggested most frequently were publishing a fully French Gazette (27%) and increasing the number of French articles with bilingual summaries (23%). Less frequently mentioned suggestions include publishing the editorials, relevant or important articles, and “cases/decisions” in French (9% each).

Interestingly, about one-third of the members who feel that the Gazette should include more French content either did not offer any suggestions when asked what should be added.

(see survey in Convocation file)

Assessments of French Content in the Gazette

Assessments of the French content in the Gazette among all those who read it are moderately high for each of the three dimensions tested. Of note, the proportion of members providing a “needs improvement” rating ranges between only 2% at the low end to just 8% on the high end.

The highest rating (63%) is given for the credibility of the Gazette’s French content (25% “excellent” and 38% “good”), although this rating is significantly lower than the “overall credibility” rating given for the Gazette as a whole (76%). Ratings for the “overall quality” and “visual appearance” of the Gazette’s French content fall in about the same range (59% and 54%, respectively). The proportion of “excellent” ratings given for “the visual appearance” of the French content of the Gazette are, however, significantly lower than proportion given for the “credibility” of that content (12% and 25%, respectively).

It is important to note here, however, that French-speaking members, to whom the French sections of the Gazette are presumably most important, provide significantly higher ratings both for the credibility (81% “excellent” or “good”) and the overall quality (79%) of the Gazette’s French content. Those who are members of an equality-seeking community do likewise.

(see survey in Convocation file)

VII. Sample Profile

Sample Profile

1. Employment Status

The large majority of members surveyed in 2004 report that they are currently employed as a lawyer (89%).

The employment situation of members who make up the sample in 2004 is generally consistent with the 2000 sample. The only statistically significant difference is a drop among members who indicate that they work for a firm with more than 50 lawyers (8% down from 23% in 2000).

2. Years Called to the Bar

The 2004 sample is almost equally split among members who have been called to the bar for 15 years or less (51%) and those who have been called for 16 years or more (49%). More specifically, 38% of members have been called for less than 10 years, 28% have been called for 11 to 20 years and 34% have been called to the bar 21 years or more. These proportions are consistent with the profile of members surveyed in 2000, with the exception of an increase in the number of members who have been called to the bar for 25 years or more (21% in 2004 vs. 14% in 2000).

Members surveyed in 2004 who have been called for less than 5 years are significantly more likely to be female, French-speaking and to be practising with 5 or more lawyers in their firm. In contrast, those who have been called for 21 years or more tend to be male and less likely to identify themselves as members of an equality-seeking community.

3. Incidence of Membership in an Equality-Seeking Community

Overall, a significant proportion of members (36%) identify themselves as belonging to an equality-seeking community. The incidence of membership in an equality-seeking community was investigated both on both an unaided and an aided basis. The unaided measure consisted simply of asking members directly whether they considered themselves to be a member of such a community. On that basis, about a quarter of those interviewed

(25%) said that they do. The remaining member were then read the Law Society's definition of equality-seeking communities and asked whether, having heard that definition, they now identified themselves as a member. On that aided basis, a further 12% indicated that they do consider themselves to be members of such a community.

Sample Profile

Members who identify themselves as belonging to an equality-seeking community are significantly more likely to be female, and French. Conversely, members who have been called to the bar for more than 21 years are less likely to say that belong to such a community. Collectively, these findings suggest that the profession is becoming more diverse.

4. Gender

Of those interviewed, 64% are male and 36% female. This represents a modest shift since 2000, as the number of women has increased directionally from 29% in 2000 to 36% in 2002. A directional change is significant at the 90% confidence level.

5. Language

The primary language of members participating in the survey was established prior to conducting this research using the Law Society's member's database. The database records the names of members who indicate a preference for receiving communications from the Law Society in French and/or have indicated to the Law Society that they are able to represent clients in French.

The objective was to interview 350 members whose primary language is English and 50 members who are French-speaking as defined in the paragraph above. The sample of members whose primary language is English was drawn at random from the Law Society's member database. The same process could not be followed for French-speaking members, as the database contained the names of only about 350 such members. In the result, we completed 351 interviews among members whose primary language is English (representing 88% of the sample), and 49 French-speaking members (representing 12% of the sample).

6. Location

The 2004 sample is evenly divided between members who work in the GTA (51%) and those who work outside the GTA (49%).

Note: Membership in an equality-seeking community, language and location demographics were not collected in the 2000 survey.

(see survey in Convocation file)

SOLE PRACTITIONER AND SMALL FIRM TASK FORCE INTERIM REPORT

June 24, 2004

Sole Practitioner and Small Firm Task Force

Interim Report to Convocation

Purpose of the Report: Information

INFORMATION

1. In April 2004 the Task Force reported to Convocation on its progress to date. In particular it provided Convocation with the results of the customized research it had commissioned Strategic Communications Inc. to undertake on the experiences of sole practitioners and small firm lawyers. The research consisted of a telephone survey of 734 lawyers representing small and large firms and several one-on-one in-depth interviews.
2. The quantitative and qualitative research was designed as a broad exploration to provide baseline information across a range of topics, clarify key issues and inform subsequent research into the specific issue areas. The areas of focus were:
 - Practice Profile
 - Satisfaction with Practice
 - Financial Viability
 - Access to Legal Services
 - Members of Equality-Seeking Communities
 - Demographics
3. Following its report in April the Task Force identified additional qualitative research that would assist it to develop recommendations. Strategic Communications Inc. then conducted focus groups to obtain further information. The focus groups took place in Toronto, London and Sudbury.
4. The purpose of the focus groups was to gather additional information from lawyers practising in firms of five or fewer lawyers in the following categories: sole practitioners practising alone; sole practitioners practising in association; lawyers practising as employees/associates; and lawyers from equality-seeking communities. Specifically, the following focus groups were undertaken:

London: 1 focus group of sole practitioners, some practising alone and some practising in association

 1 focus group of employees/associates

Toronto: 1 focus group of sole practitioners practising alone

 1 focus group of sole practitioners practising in association

 2 focus groups of lawyers practising as employees/associates

 2 focus groups of lawyers who self-identified as belonging to equality-seeking communities

Sudbury: 1 focus group of representatives from the various categories
5. In addition, Strategic Communications Inc. has conducted interviews with a number of lawyers. Over the summer, it will be preparing its report on the additional research it has undertaken in this phase of the Task Force's study.
6. The Task Force has now begun to identify areas for recommendations to Convocation. It will continue to develop a recommended approach over the summer and early fall.

REPORTS DEFERRED

Professional Development, Competence & Admissions Committee

- Amendments to By-Law 38 (Specialist Certification)

Professional Regulation Committee

- Amendments to By-Law 34 (Professional Corporations)

PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Professional Development, Competence & Admissions Committee
June 24, 2004

Report to Convocation

Purpose of Report: Decision
 Information

Policy Secretariat
(Sophia Spurdakos 416-947-5209)

AMENDMENTS TO BY-LAW 38 (SPECIALIST CERTIFICATION)

Request to Convocation

8. That Convocation approves amendments to By-law 38 (Specialist Certification), which are set out at Appendix 2.

Summary of the Issue

9. In April 2003 Convocation approved By-law 38 (Specialist Certification) implementing the improved specialist certification program it approved in June 2002. In June 2003 it approved the French version of the By-law.
10. The By-law has now been in operation for over a year and there are some minor administrative changes that are necessary to
 - a. correct discrepancies in the By-law numbering;
 - b. harmonize some of the specialist certification program administrative requirements with those of the Law Society in general; and
 - c. add administrative flexibility.
11. The proposed amendments are set out at Appendix 2.

THE REPORT

Terms Of Reference/Committee Process

26. The Committee met on June 10, 2004. Committee members George Hunter (Chair), Gavin MacKenzie (Vice-chair), Bill Simpson (Vice-Chair), Peter Bourque and Kim Carpenter-Gunn attended. Staff members Diana Miles, Elliot Spears and Sophia Spurdakos also attended.
27. The Committee is reporting on the following matters:

Policy – For Decision

Amendments to By-law 38 (Specialist Certification)

Information

- New Licensing Program – Competencies
- Legal Aid Ontario Quality Assurance Program

AMENDMENTS TO BY-LAW 38 (SPECIALIST CERTIFICATION)

28. In April 2003 Convocation approved By-law 38 (Specialist Certification), which implemented the terms of the improved program it approved in June 2002. In June 2003 it approved the French version of the By-law. The By-law is set out at Appendix 1.
29. The By-law has now been in operation for over a year and there are some minor administrative amendments that are necessary. These are set out in Appendix 2 and address the following:
 - a. Paragraphs 1 and 2 of the proposed amendments correct errors in the number formatting of two sections of the By-law. The wording of the relevant sections remains identical.
 - b. Paragraphs 3 and 4 of the proposed amendments harmonize the program's administrative reporting and payment requirements with other Law Society requirements. Specifically,
 - i. the January 1 date for payment of the certification annual fee is amended to January 31 to match other Law Society reporting requirements; and
 - ii. the March 31 date for submitting the annual specialist certification report is amended to January 31 to match other Law Society filing requirements; and
 - c. Paragraph 5 of the proposed amendments introduces administrative flexibility in re-admitting those whose certificates have been revoked. Subsection 32(3) provides that a certified specialist whose certificate has been revoked may only apply for certification after 12 months from the date of revocation. This has proven to be onerous, particularly where the revocation is for administrative rather than substantive reasons. The Committee is recommending that the mandatory waiting period be discontinued. Accordingly, subsection 32(3) is no longer required.
30. Pursuant to By-law 38, fees respecting the specialist certification program are to be approved by Convocation. Convocation previously approved the Certification fees in June 2002, including an administrative fee of \$50 for late recertification applications. It is proposed that the \$50 administrative fee apply as well to processing applications for recertification following a revocation.

Request to Convocation

31. That Convocation considers the proposed amendments to By-law 38, set out at Appendix 2 and, if appropriate, approves them.
32. That Convocation extends the applicability of the \$50 administrative fee for late recertification applications to applications for recertification following revocation of a certificate.

INFORMATION

NEW LICENSING PROGRAM - COMPETENCIES

33. In December 2003, Convocation approved a new licensing program to commence in 2006. The Professional Development and Competence department has been charged with developing the design, which will be presented to Convocation for approval.

34. Appendix 3 is a report on the competencies that will underlie the new program. The report outlines the development process. Tabs 1, 2 and 3 of Appendix 3 set out the specific competency profiles that will form the backbone of the licensing examinations and the skills and professional responsibility program.
35. The most critical component of the competency validation exercise is the involvement of the profession. Lawyers were recruited to participate in competency development teams, focus groups and in surveys. The Law Society contacted 181 legal groups or individuals to provide names of “exemplar” legal professionals to be involved in the development process as subject matter experts who would bring a comprehensive and valid perspective to competency identification. The Law Society received 384 names for proposed participants, a significant number of who have already been involved in the developmental work. A lengthy survey on competency issues was also sent to 4000 lawyers. Approximately 421 responded. To date, 587 lawyers in Ontario have had substantial input into the determination and validation of competencies. A detailed description of the profession’s participation in the development process to date is included in Appendix 3.
36. Having developed and validated the competencies, the next stage in the design process is to develop the licensing examination blueprint and the skills and professional responsibility program curriculum design. To meet the deadlines Convocation established for introduction of the new licensing program, this process will begin immediately, using the competency profiles. Once the blueprinting process begins, the competencies are set. Revising them would necessitate repeating the entire competency development and validation process.
37. It is anticipated that the final blueprints will be provided to the Committee and to Convocation in September 2004.

LEGAL AID ONTARIO QUALITY ASSURANCE PROGRAM

38. Legal Aid Ontario (LAO) has a quality assurance program in place to comply with the requirements of the Legal Aid Services Act. Section 92 provides:

The Corporation shall establish a quality assurance program to ensure that it is providing high quality legal aid services in a cost-effective and efficient manner.
39. LAO has now developed standards for duty counsel acting on Immigration and Refugee matters. Similar standards work is currently being undertaken for criminal and family court duty counsel.
40. In developing the standards for immigration and refugee law LAO consulted with a number of organizations, including the Law Society’s Director of Competence. It sought to develop standards that are consistent with those being developed in the Law Society’s specialist certification program and that support the Law Society’s minimum expectations for professional development. Essentially, the standards focus on professional development requirements.

APPENDIX 1

BY-LAW 38

Made: April 25, 2003

SPECIALIST CERTIFICATION

PART I GENERAL

Definitions

1. In this By-Law,

“Board” means the Specialist Certification Board;

“certification staff” means employees of the Society assigned by the Chief Executive Officer the responsibility of supporting the work of the Board and the specialty committees; and

“Committee” means the standing committee of Convocation responsible for professional competence matters.

Exercise of powers by Committee

2. The performance of any duty, or the exercise of any power, given to the Committee under this By-Law is not subject to the approval of Convocation.

PART II SPECIALIST CERTIFICATION BOARD

Board to be established

3. (1) There is established the Specialist Certification Board.

Composition of Board

(2) The Board shall consist of seven persons appointed by the Committee as follows:

1. Four benchers who are not lay benchers.
2. One lay bencher.
3. Two persons who are certified specialists who are not benchers.

Term

(3) Subject to subsection (4), a person appointed to the Board shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(4) A person appointed to the Board holds office as a member of the Board at the pleasure of the Committee.

Chair

4. (1) The Committee shall appoint one member of the Board as chair of the Board.

Term of Office

(2) Subject to subsection (3), the chair holds office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(3) The chair holds office at the pleasure of the Committee.

Function of Board

5. It is the function of the Board,
 - (a) to establish specialty committees;
 - (b) to oversee the work of the specialty committees;
 - (c) subject to section 12, to establish standards for the certification of members as specialists;
 - (d) to determine the areas of law in respect of which members may be certified as specialists;

- (e) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the specialty committees and the Board of an application under section 17 and the consideration by the Board of an application under section 22, subsection 31 (3), subsection 31 (5), subsection 31 (6) or section 33 and the exercise by the Board of its discretion under subsection 31 (2) or subsection 32 (2);
- (f) to develop for the Committee's approval policies relating to the certification of members as specialists;
- (g) to recommend to the Committee the amount of the fees payable by applicants for specialist certification and certified specialists under this By-Law; and
- (h) to certify members as specialists.

Quorum

6. Four members of the Board constitute a quorum for the purposes of the transaction of business.

Meeting

7. (1) The Board shall meet at the call of the chair and in no case shall the Board meet less often than twice a year.

Meeting by telephone conference, etc.

- (2) Any meeting of the Board may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Annual report to Committee

8. Not later than March 31 in each year, the Board shall make a report to the Committee upon the affairs of the Board of the immediately preceding year.

Confidentiality

9. (1) A member of the Board shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

- (2) Subsection (1) does not prohibit,
 - (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
 - (b) disclosure required of a member of the Board under the Society's Rules of Professional Conduct;
 - (c) disclosure of information that is a matter of public record; and
 - (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART III SPECIALTY COMMITTEES

Board to establish committees

10. (1) The Board shall establish a specialty committee for each area of law in respect of which a member may be certified as a specialist.

Composition of specialty committee

- (2) A specialty committee shall consist of at least five and not more than nine members appointed by the Board.

Eligibility for appointment

(3) Only the following members may be appointed to a specialty committee:

1. If there are members certified as specialists in the area of law in respect of which a specialty committee has been established, a member certified as a specialist in the area of law.
2. If there are no members certified as specialists in the area of law in respect of which a specialty committee has been established, a member who practises law in the area of law and undertakes to become certified as a specialist in the area of law within three years of certification in the area of law being available.

Term

(4) Subject to subsection (5), a member appointed to a specialty committee shall hold office for a term not exceeding three years and is eligible for reappointment.

Appointment at pleasure

(5) A person appointed to a specialty committee holds office as a member of the specialty committee at the pleasure of the Board.

Chair and vice-chair

11. (1) For each specialty committee, the Board shall appoint,
- (a) one member of the specialty committee as chair of the committee; and
 - (b) one member of the specialty committee as vice-chair of the committee.

Term of Office

(2) Subject to subsection (3), the chair and vice-chair hold office for a term not exceeding three years and are eligible for reappointment.

Appointment at pleasure

(3) The chair and vice-chair hold office at the pleasure of the Board.

Function of specialty committee

12. It is the function of a specialty committee,
- (a) to develop for the Board's approval standards for the certification of members as specialists;
 - (b) to review and accredit continuing legal education programs for purposes of sections 16 and 29;
 - (c) to specify the number of hours of self study and accredited continuing legal education programs to be completed by applicants and certified specialists;
 - (d) to review applications from members for certification as specialists; and
 - (e) to recommend to the Board members for certification as specialists.

Quorum

13. The majority of the members of a specialty committee constitute a quorum for the purposes of the transaction of business.

Meeting

14. (1) A specialty committee shall meet at the call of the chair and in no case shall the committee meet less often than twice a year.

Meeting by telephone conference, etc.

(2) Any meeting of a specialty committee may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Confidentiality

15. (1) A member of a specialty committee shall not disclose any information that comes to his or her knowledge as a result of the performance of his or her duties under this By-Law.

Exceptions

- (2) Subsection (1) does not prohibit,
 - (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
 - (b) disclosure required of a member of a specialty committee under the Society's Rules of Professional Conduct;
 - (c) disclosure of information that is a matter of public record; and
 - (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

PART IV SPECIALIST CERTIFICATION

Requirements for certification

16. (1) A member may be certified as a specialist in an area of law in respect of which certification is available if the member meets the following conditions:

1. The member has engaged in the practice of law for at least seven years immediately before the day on which the member applies for certification.
2. The member has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
 - i. Two years immediately before the day on which the member applies for certification.
 - ii. Any other three years.
3. The member has comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
4. In each of the five years in which the member practised in the area of law, the member has completed in the area of law,
 - i. the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
 - ii. the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.
5. The member is not the subject and has no record, within the five year period immediately before the day on which the member applies for certification, of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction.

6. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law.
7. The member is not, in any jurisdiction in which the member is authorized to practise law, the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence.
8. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no serious claims or substantial number of claims made against the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law.

Same

(2) Despite subsection (1), if a member is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the member is authorized to practise law, the member may not be certified as a specialist in an area of law in respect of which certification is available unless to certify the member as a specialist would not be contrary to the public interest.

Interpretation: practice in area of law

(3) In this section, in any year, a member practises in an area of law if in that year the member practises in the area of law for the time specified by the Board from time to time.

Application for certification

17. (1) A member who wishes to be certified as a specialist shall apply to the certification staff.

Application form

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

Accompanying documents, etc.

(3) An application under subsection (1) shall be accompanied by,

- (a) a certificate of standing from the governing body of the legal profession in each jurisdiction of which the applicant is or was a member issued during the three month period immediately before the day on which the applicant makes the application;
- (b) written references from four members not one of whom is,
 - i. a person whose membership is in abeyance under subsection 31 (1) of the Act,
 - ii. a partner, an associate, a co-worker, an employer or an employee of the applicant,
 - iii. a relative of the applicant,
 - iv. a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;
 - v. a member of the Board,
 - vi. a bencher, or
 - vii. an employee of the Society; and
- (c) an application fee in an amount determined by Convocation from time to time.

Documents, explanations, releases, etc.

(4) For the purpose of assisting the specialty committee and the Board to consider an application under subsection (1), the applicant shall provide,

- (a) to the certification staff, such documents and explanations as may be required; and
- (b) to a person named by the certification staff, such releases, directions and consent as may be required to permit the person to make available to the certification staff such information as may be required.

Application to be considered by specialty committee

18. Every application under section 17, to the extent that the application deals with the conditions set out in paragraphs 1 to 4 of subsection 16 (1), shall be considered by the specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist and the committee shall,

- (a) if satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the applicant be certified as a specialist; or
- (b) if not satisfied that the applicant meets the conditions set out in paragraphs 1 to 4 of subsection 16 (1), recommend to the Board that the member not be certified as a specialist.

Interview

19. (1) Prior to making a recommendation to the Board, a specialty committee may require an applicant to attend an interview.

Same

- (2) An interview under subsection (1) shall be conducted by,
 - (a) three members of the specialty committee selected by the chair of the committee; or
 - (b) three members who are certified as specialists selected by the specialty committee.

Report to committee

(3) If an interview is conducted by three members who are certified as specialists, the members shall prepare a written report on the interview and submit the report to the specialty committee.

Notice

20. If a specialty committee intends to recommend to the Board that the applicant not be certified as a specialist, before making the recommendation the committee shall give the applicant the opportunity,

- (a) to withdraw the application; or
- (b) to submit additional information to the committee.

Application to be considered by Board

21. Every application under section 17 shall be considered by the Board and the Board shall,

- (a) certify the applicant as a specialist if,
 - (i) the specialty committee recommends that the applicant be certified as a specialist;
 - (ii) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); and
 - (iii) the Board is satisfied that,
 - i. the condition set out in subsection 16 (2) is not present; or

- ii. it would not be contrary to the public interest to certify the applicant as a specialist; or
- (b) not certify the applicant as a specialist if,
 - (i) the specialty committee does not recommend that the applicant be certified as a specialist;
 - (ii) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); or
 - (iii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is present; or
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Notice

22. (1) If the Board does not certify the applicant as a specialist under clause 21 (b), the Board shall notify the applicant in writing of its decision.

Re-determination of application

(2) If the Board does not certify the applicant as a specialist under clause 21 (b), the applicant may apply to the Board for a determination as to whether the applicant should be certified as a specialist.

Timing

(3) An application under subsection (2) shall be commenced by the applicant notifying the Board in writing within thirty days after the day on which the applicant receives notice of the Board's decision not to certify the applicant as a specialist.

Determination

- (4) The Board shall consider the application made under subsection (2) and the Board shall,
 - (a) certify the applicant as a specialist if,
 - (i) the Board is satisfied that the applicant meets the conditions set out in subsection 16 (1); and
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
 - (b) not certify the applicant as a specialist if,
 - (i) the Board is not satisfied that the applicant meets the conditions set out in subsection 16 (1), or
 - (ii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is present; or
 - (B) it would be contrary to the public interest to certify the applicant as a specialist.

Decision final

- (5) The decision of the Board on an application under subsection (2) is final.

Issuance of certificate

23. The Board shall issue to an applicant certified as a specialist a certificate of specialty stating the area of law in which the applicant has been certified as a specialist.

Continuation of certification

24. A member certified as a specialist shall continue to be certified as a specialist so long as the member,

- (a) practises in the area of law in which the member has been certified as a specialist within the meaning of subsection 16 (3);
- (b) maintains comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the member has been certified as a specialist;
- (c) is not the subject and has no record of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction;
- (d) has and has had no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law;
- (e) is not, in any jurisdiction in which the member is authorized to practise law the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence;
- (f) has and has had no serious claims or substantial number of claims made against the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law; and
- (g) fulfils all requirements under this By-Law.

PART V CERTIFIED SPECIALISTS

Definition

25. In this Part,

“certified specialist” means a member who is certified as a specialist by the Board under Part IV.

Specialist designation

26. (1) A certified specialist may use the following designation:

Certified Specialist [area of law in which certified as specialist]

Same

(2) A member who is not a certified specialist shall not use any designation from which a person might reasonably conclude that the member is a certified specialist.

Requirement to pay annual fee

27. (1) Every year a certified specialist shall pay to the Society an annual fee in the amount determined by Convocation from time to time and any taxes that the Society is required to collect from the certified specialist in respect of the payment of the annual fee.

Payment due

- (2) Payment of the annual fee is due on January 1 of each year.

Certified specialists

- (3) Subsection (2) applies only to members who are certified specialists on January 1.

Members certified after January 1

- (4) A member who is certified as a specialist after January 1 shall pay, in respect of the year in which the member is certified as a specialist, an amount of the annual fee as determined by the formula,

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

where,

A is the annual fee, and

B is the number of whole calendar months remaining in the year after the month in which the member is certified as a specialist.

Payment due

- (5) Payment of the amount of the annual fee specified in subsection (4) is due on the day on which the member is certified as a specialist.

Requirement to submit annual report

28. (1) A certified specialist shall submit a report to the certification staff by March 31 of each year in respect of the certified specialist's compliance with this By-Law during the immediately preceding year.

Report form

- (2) The report required under subsection (1) shall be in a form provided by the certification staff.

Continuing legal education requirements

29. Every year a certified specialist shall complete in the area of law in which the specialist is certified,
- (a) the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
 - (b) the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.

Proof of compliance

30. (1) A certified specialist shall, upon the request of the certification staff and by not later than the day specified by the staff, provide proof to the satisfaction of the staff of the certified specialist's compliance with this By-Law.

Deemed failure to comply

- (2) A certified specialist who fails to provide proof to the certification staff by the day specified by the staff of the certified specialist's compliance with this By-Law, the certified specialist shall be deemed not to be in compliance with this By-Law.

Notice to Society

- (3) A certified specialist shall notify the Society immediately the certified specialist is not in compliance with this By-Law.

Automatic abeyance

31. (1) A certified specialist's specialist certification is in abeyance while,
- (a) the certified specialist's membership is in abeyance under subsection 31 (1) of the Act;

- (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
- (c) the certified specialist is, in any jurisdiction in which the certified specialized is authorized to practise law, the subject of a review of the certified specialist's practice for the purpose of determining if the certified specialist is meeting standards of professional competence; or
- (d) the certified specialist has serious claims or substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice in any jurisdiction in which the certified specialist is authorized to practise law.

Abeyance by Board: discretion

(2) The Board may place a certified specialist's specialist certification in abeyance if the certified specialist is the subject of a conduct, capacity or competence proceeding in any jurisdiction in which the certified specialist is authorized to practise law and to not do so would be contrary to the public interest.

Abeyance by Board: mandatory

(3) The Board shall place a certified specialist's specialist certification in abeyance if the certified specialist applies to the Board to have the specialist certification placed in abeyance.

Restoration

(4) If the conditions mentioned in subsection (1) are no longer present and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), upon notice to the certification staff of the change in conditions, the certified specialist's specialist certification shall be restored.

Same

(5) If the condition mentioned in subsection (2) is no longer present and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), on the application of the certified specialist, the Board may restore the specialist certification if to do so would not be contrary to the public interest.

Same

(6) If the Board placed a certified specialist's specialist certification in abeyance under subsection (3) and the certified specialist's specialist certification has not been revoked under subsections 32 (1) or (2), on the application of the certified specialist the Board shall restore the specialist certification if,

- (a) none of the conditions in subsection (1) are present; and
- (b) the condition in subsection (2) is not present, or if they are, the Board is satisfied that it would not be contrary to the public interest to restore the specialist certification.

Revocation

32. (1) A certified specialist's specialist certification is automatically revoked immediately,

- (a) the certified specialist ceases to practise law in Ontario;
- (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 16 (3);
- (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
- (d) the certified specialist fails to pay an annual fee or submit an annual report;
- (e) the certified specialist fails to meet the requirement set out in section 29; or

- (f) the certified specialist's specialist certification has been in abeyance for more than 12 months.

Same

(2) The Board may revoke a certified specialist's specialist certification if the certified specialist does not maintain comprehensive knowledge of the substantive law and the practices and procedures in the area of law in which the certified specialist has been certified as a specialist.

Application for certification after revocation

(3) A certified specialist whose specialist certification has been revoked may apply under section 17 for specialist certification only after 12 months from the day on which the certification was revoked.

Surrender of certification

33. (1) A certified specialist who wishes to surrender his or her specialist certification shall submit a request to surrender in writing accompanied by the applicable certificate of specialty to the Board and the Board shall approve the request.

Same

(2) A member ceases to be certified as a specialist immediately the Board approves the member's request to surrender his or her specialist certification under subsection (1).

PART VI TRANSITION

Existing certified specialists

34. (1) Despite sections 16 and 17, if, on the day immediately before the day this By-Law comes into force, a member was certified as a specialist by the Society, the member shall be deemed to be certified as a specialist by the Board under this By-Law on the day on which this By-Law comes into force.

Annual fee

(2) Despite section 27, the amount of the annual fee payable by a member referred to in subsection (1) in respect of 2003 shall be \$200.00 and any taxes that the Society is required to collect from the member in respect of the payment of the annual fee less any amount of any annual renewal fee paid by the member in respect of 2003 under the policies and procedures for specialist certification in place before this By-Law came into force.

Due date 2003

(3) Despite section 27, payment of the annual fee by a member referred to in subsection (1) in respect of 2003 is due on the day in 2003 on which the member would be required to pay an annual renewal fee under the policies and procedures for specialist certification in place before this By-Law came into force.

Existing applicants

35. (1) If before the day this By-Law comes into force a member applied to the Society to be certified as a specialist, the application shall be considered in accordance with the policies and procedures for specialist certification in place before this By-Law came into force.

Certification of existing applicants

(2) If a member referred to in subsection (1) is certified as a specialist, the member shall be deemed to be certified as a specialist by the Board under this By-Law.

THE LAW SOCIETY OF UPPER CANADA
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT
BY-LAW 38
[SPECIALIST CERTIFICATION]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 24, 2004

THAT By-Law 38 [Specialist Certification], made by Convocation on April 25, 2003, amended on June 26, 2003, be further amended as follows:

1. Clause (b) of subsection 17 (3) of the By-Law is deleted and the following substituted:
 - (b) written references from four members not one of whom is,
 - (i) a person whose membership is in abeyance under subsection 31 (1) of the Act,
 - (ii) a partner, an associate, a co-worker, an employer or an employee of the applicant,
 - (iii) a relative of the applicant,
 - (iv) a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;
 - (v) a member of the Board,
 - (vi) a bencher, or
 - (vii) an employee of the Society; and
2. Subclause (iii) of clause 21 (a) of the By-Law is deleted and the following substituted:
 - (iii) the Board is satisfied that,
 - (A) the condition set out in subsection 16 (2) is not present; or
 - (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
3. Subsections 27 (2), (3) and (4) of the By-Law are amended by deleting “January 1” and substituting “January 31”.
4. Subsection 28 (1) of the By-Law is amended by deleting “March 31” and substituting “January 31”.
5. The By-Law is amended by deleting subsection 32 (3).

APPENDIX 3

Report on Competencies

New Licensing Process for Admission to the Bar in Ontario

CONVOCATION FOR INFORMATION

Prepared by:

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June 2004

Competencies for the New Licensing Process

Objective

1. To define and approve the competencies expected of an entry-level practitioner, which will be used to establish two Licensing Examinations, a solicitors' examination and a barristers' examination, and a Skills and Professional Responsibility Program including instruction and assessments.

Defining Competencies

2. Competencies form the most basic building blocks for examinations and assessments and in turn a licensure program. Any valid test must be based on the results of a competency study.
3. Competencies refer to the knowledge, skills, abilities, attitudes and judgments required to safely and effectively fulfill the requirements of the profession at entry-level.
4. In the past four months the PD&C Department has conducted a comprehensive competency development study for the purpose of deriving a competency profile for the profession.
5. These competencies will form the foundation of all subsequent examination, instruction and assessment development activities and will contribute significantly to the standardization, reliability, validity, fairness, defensibility and even the practicality of the Law Society's new licensure program.

6. Competencies are being determined in two streams: 1) for the Licensing Examinations including substantive law, professional responsibility and ethics competencies; and 2) for the Skills and Professional Responsibility Program including professional responsibility, ethics, practice skills and practice management competencies. The competencies for professional responsibility and ethics will be tested and or taught and assessed in both components of the licensing process.

Understanding the Validity of the Development Process for Defining Competencies

7. For Convocation's information, the following outlines the processes that have taken place to date to define a fully validated and defensible licensing system.
8. The most critical component of a competency validation exercise undertaken to support the new licensing process for admission to the bar in Ontario is the involvement of the profession. Subject matter experts must be involved and will bring a comprehensive and valid perspective to competency identification.
9. To facilitate the development process, lawyers were recruited to participate in competency development teams, focus groups and in surveys.
10. To find lawyer participants, the Director of Professional Development & Competence made formal written requests of approximately 181 consultation groups and or individuals asking for the provision of names of exemplar legal professionals to be involved in the development processes.
11. In response to the request for exemplar names the Director received (as at June 1, 2004) the names of 384 proposed participants from the profession. Conduct reviews were completed on potential participants. It is from this list, which continues to grow as we receive continuing input from the various organizations, that members of the profession are being invited to provide their input for the many design, development and validation exercises.
12. Exemplars were asked to participate in substantial one on one group work, such as advisory/development groups, focus groups and panels. These sessions involved many days of focused effort on the part of our exemplars.
13. For surveys and other more broadly based validation activities, the selection of members was random and made in accordance with demographic representation in the profession including geography, size of firm and type of practice.
14. Given the number of lawyers involved in the process, the broad demographic spectrum of lawyer participants and the amount of dedicated time and effort by these individuals to work with our consultant experts to define competencies, it is appropriate to state that the competencies derived through these development processes are beyond debate.
15. All activity by legal professionals assisting in this process was completed on a volunteer basis. The Law Society reimburses participant expenses such as travel, lodging and food.
16. The following synopsis outlines the stages of development undertaken to define and validate the competencies for the Licensing Examinations and for the Skills and Professional Responsibility Program. The number of practitioners involved in each step is indicated:

Validation Process for the Licensing Examinations

Stage of Development	Type of Activity	Number of Practitioners
Defining Competencies	Two groups of practitioners representing one group of solicitors and one group of barristers were selected.	19

	<p>The groups each met for four (4) full days of discussion and derived, from a blank slate, the core competencies expected of an entry-level barrister and solicitor.</p> <p>*For activities defining and validating competency profiles lawyers were chosen to ensure that:</p> <ul style="list-style-type: none"> • most practice areas with the barristers and solicitors segments were represented; • candidates from various parts of the province were involved; • differing levels of experience were represented; • lawyers from equity seeking communities were represented 	
Validation of Competencies Step 1	<p>Focus groups were held across the province, each for one (1) full day. At each location, a barristers group and a solicitors group met, for a total of six (6) groups.</p> <p>Locations: Toronto, Ottawa and London.</p> <p>Each group was provided with the draft competencies derived by the competency assessment groups above (see Defining Competencies) to undertake further discussion.</p> <p>This validation ensures members agree with the purpose and scope of the competencies and permits additional refinements to be made prior to using the competencies as the basis for future examinations.</p>	46
Validation of Competencies Step 2	<p>A further group of practitioners including both barristers and solicitors met for two (2) full days and engaged in a full discussion of competencies across the entry-level profession, exchanged viewpoints, reviewed and discussed the focus group comments and suggestions.</p> <p>The competency profiles were revised and prepared for final validation</p>	12
Final Validation of Competencies Step 3	<p>Membership Survey</p> <p>4000 members, randomly chosen and representative of the demographics of the profession, were sent the validation survey.</p> <p>Members provided input into the process of developing an effective licensure process for entry-level lawyers.</p> <p>All ratings and comments were aggregated to preserve anonymity.</p> <p>The information gathered was used to validate the competency profiles and will also be used to facilitate the development of test specifications that will direct the development of the licensing examinations (blueprint).</p> <p>Validation related to professional responsibility and ethics competencies will also be used in the Skills and Professional Responsibility Program development.</p>	421 returned surveys as at June 1, 2004

	<p>In the survey, members were asked to provide ratings for each competency related to:</p> <ul style="list-style-type: none"> a) relevance/applicability of the competency for entry-level lawyers; b) consequence if entry-level lawyers fail to perform the competency appropriately; c) frequency with which the entry-level lawyers perform the competency. <p>The survey response rate was 11% - considered to be an average response rate for a survey of this complexity.</p>	
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Validation Process for the Skills and Professional Responsibility Program

Stage of Development	Type of Activity	Number of Practitioners
Collection of Field Data	<p>A series of focus groups, barristers groups and solicitors groups, each met for one (1) full day.</p> <p>Meetings were held across the province to determine the practice skills, professional responsibility, ethics and practice management issues for entry-level lawyers.</p> <p>These results were then combined with: information on the teaching and assessment of professional responsibility, ethics and practice skills from Canadian provinces and other common law jurisdictions; the competencies for professional responsibility and ethics that were defined in the validation for the licensing examinations.</p> <p>Locations: Thunder Bay, Windsor, Toronto, Ottawa</p> <p>Total of seven (7) focus groups.</p>	39
Validation of Competencies	<p>Delphi panels have been developed to review the competencies derived from the field data and validate their applicability in practice.</p> <p>The “Delphi” technique uses panels of subject matter experts to review and appraise competencies. Each member is provided with the draft of skills and micro-skills drawn from the focus groups and research.</p> <p>Panel demographics are as follows: Panel 1 – sole practitioners/small firms (less than 5 lawyers) Panel 2 – firms with between 6 and 29 lawyers Panel 3 – firms with between 30 and 99 lawyers Panel 4 – firms with more than 100 lawyers Panel 5 – Judicial panel</p>	50

Next Steps: Licensing Examinations

17. The competencies for the two Licensing Examinations will now receive a rating of relevance in a process referred to as blueprinting. The blueprinting process will once again see practitioners coming together to review all of the competencies to determine the relative importance to be attached to each single competency for an entry-level lawyer.
18. Importance of a competency is determined by the applicability, frequency and consequence (risk factor) of each competency as applied to an entry-level practitioner. Based on the levels of importance and risk, the competencies will be assigned ratings, which will translate into the level and amount of testing that will be established for each competency in the licensing examination process. The higher the rating of importance and risk for the entry-level practitioner, the more that particular competency will be tested in the examination.
19. Blueprinting will also take the competencies that have been defined and determine the types of test questions that will be used. The blueprinting process is the most important process in the derivation of licensing examination test items and is used to determine the basis for test specifications (types of questions, length of examinations, scoring methodology), to provide direction to developers who will derive content for the tests so that their efforts are not wasted, and as a way of verifying that the questions on the examinations are valid and representative of practice. The test questions on an examination may vary, but they will always be linked to the competencies.
20. The competency profiles that are being presented for Convocation's information in this report at Tabs 1 and 2 will form the backbone of the Licensing Examinations. The information presents the competencies in order of increasing specification: from the general competency categories; through the sub-categories; to the particularized listing of all knowledge, skills, abilities, attitudes and judgments expected of an entry-level lawyer.
21. Blueprinting of the Licensing Examinations must begin immediately to meet the deadlines for completion of the new licensing process. Once the blueprinting process is begun, the competencies cannot be revised unless the entire validation process is repeated. Such an activity would come at considerable cost both in volunteer lawyer time and project development expenses.
22. It is important for Convocation to understand that we are committing ourselves to the competencies outlined in Tabs 1 and 2 and to provide direction to the Director, PD&C to proceed to the blueprinting stage using these profiles as the basis for all further validation activities.
23. The final blueprints, which will outline not only the weighted competencies but also the test specifications and format of the examinations, will be presented to Convocation in September of 2004 for approval. Once approved, PD&C staff will proceed immediately to implement all design and operational aspects of the Licensing Examinations.

Next Steps: Skills and Professional Responsibility Program

24. The validation process for the skills and professional responsibility program is also underway and a taxonomy of competencies has been completed following extensive focus group work. The taxonomy is attached at Tab 3 for Convocation's information.
25. The taxonomy is the culmination of information gathered from: 1) focus groups; 2) the validation exercise on professional responsibility and ethics competencies undertaken for the Licensing Examinations; 3) information from other common law jurisdictions on the training and assessment of professional responsibility, ethics, practice skills and practice management; and 4) supporting research.

26. The next step in the validation of skills and professional responsibility competencies involves a series of Delphi (confirmation/validation) panels. These groups of lawyers will work toward a consensus on the final list of the most important competencies to be taught and assessed in the Skills and Professional Responsibility Program. This activity is currently underway.
27. Following the Delphi panel work we will proceed immediately to the development of a curriculum, which will dictate the length of the Skills and Professional Responsibility Program. The length of the Program met with some debate when the Task Force presented its final plan for approval. The recommendation for the length of the program (anticipated to be approximately 4 weeks) will be presented to Convocation for approval in January of 2005 along with the curriculum design.
28. Following that approval, PD&C staff will proceed immediately to implement all design and operational aspects of the Skills and Professional Responsibility Program.

Total Practitioner Participation to Date

29. Up to this point in the process 587 lawyers in Ontario have had substantial input into the determination and validation of the competencies that will form the basis of testing for the Barristers' and Solicitors' Licensing Examinations and the basis of instruction and assessment in the Skills and Professional Responsibility Program for the new Licensing Process.
30. A demographic breakdown of participants involved in the group work to date is set out at Tab 4. Note that the demographics for the 421 respondents to the survey are not included in this chart. The survey also queried on demographic information and that information will be available for the September 2004 Report.

Update on the Critical Path for Development of Licensing Process

31. The following updates the critical path of Reports to Committee and Convocation:

Report Due Date	Focus of Report
September 2004	Committee and Convocation Report <ul style="list-style-type: none"> • Blueprint for Licensing Examinations <ul style="list-style-type: none"> ➤ Defined competencies ➤ Structure (test question formats, length, presentation) ➤ Context (lawyer practice realities – clients, practice types) ➤ Translation
November 2004	Committee and Convocation Report <ul style="list-style-type: none"> • Articling Program <ul style="list-style-type: none"> ➤ Results of a survey of Articling Principals ➤ Recommendation on the length of the articling term ➤ Presentation of plan of development for enhancements proposed for the Articling Program
January 2005	Committee and Convocation Report <ul style="list-style-type: none"> • Curriculum Design Plan for Skills and Professional Responsibility Program • Recommendation for length of the Program
February 2005	Committee and Convocation Report <ul style="list-style-type: none"> • Final schedule for all components of the new licensing process, from entry into the Skills and Professional Responsibility Program, dates of Licensing Examination sittings, through to proposed Call to the Bar dates for 2007 and onward • Required by-law revisions to facilitate new policies and processes

TAB 1

Competency Categories for
Entry-Level Barristers

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Competency Categories for Barristers

1	<p>Ethical and Professional Responsibilities</p> <p>The barrister acts ethically and professionally at all times in dealing with clients, colleagues, courts, tribunals and the public in order to effectively represent clients, maintain the standards of the profession, and ensure public confidence in the legal system.</p>
2	<p>Knowledge of the Law: Ontario and Federal Legislation and Case Law</p> <p>The barrister knows and applies general and case-specific legal principles when acting as an advocate in order to effectively represent the client.</p>
3	<p>Establishing and Maintaining the Barrister-Client Relationship</p> <p>The barrister determines the ability to act for a prospective client, negotiates a retainer agreement, obtains instructions and communicates effectively in order to define and achieve the client's objectives.</p>
4	<p>Problem/Issue Identification, Analysis, and Application of Expert Knowledge</p> <p>The barrister identifies the client's problem and the relevant factual and legal issues, obtains and analyses information, and generates options and recommendations in order to develop a theory of the case and a litigation strategy.</p>
5	<p>Dispute Resolution</p> <p>The barrister identifies opportunities for and, when appropriate, engages in negotiation and dispute resolution in order to achieve early and cost-effective resolution of a client's dispute.</p>
6	<p>Litigation Process</p> <p>The barrister initiates and/or responds to litigation proceedings as appropriate within time limitations by drafting required documents, taking necessary preliminary steps, preparing for and conducting all stages of the proceeding, seeking appropriate remedies, and initiating appellate proceedings where appropriate in order to effectively represent the client.</p>
7	<p>Practice and Management Skills</p> <p>The barrister uses time and file management systems, technology, proper financial record keeping and</p>

	accounting systems, conflict of interest systems, knowledge management systems and continuously learns in order to maintain competence and manage all aspects of practice.
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Competency Categories & Sub-Categories

1	<p>Ethical and Professional Responsibilities</p> <ul style="list-style-type: none"> • Ethics & Professionalism
2	<p>Knowledge of the Law: Ontario and Federal Legislation and Case Law</p> <ul style="list-style-type: none"> • Jurisdiction and Fundamentals • Limitation Periods • Evidence • Principles of Statutory Interpretation • Public Law • Criminal Law • Family Law • Civil Litigation
3	<p>Establishing and Maintaining the Barrister-Client Relationship</p> <ul style="list-style-type: none"> • Identifying the Client • Conflicts of Interest • Interviewing Principles • The Retainer • Client Communications
4	<p>Problem/Issue Identification, Analysis, and Application of Expert Knowledge</p> <ul style="list-style-type: none"> • File Administration • Information Gather, Case Analysis and Planning • Notice to Affected Parties • Theory of the Case • Litigation Strategy
5	<p>Options for Alternative Dispute Resolution</p> <ul style="list-style-type: none"> • Negotiation • Mediation and Dispute Resolution •
6	<p>Litigation Process</p> <ul style="list-style-type: none"> • Initiating Litigation • Court or Tribunal Documents • Disclosure, Production and Discovery • Trial or Hearing Preparation • Applications to Court, Judicial Reviews and Prerogative Remedies • Conduct of the Trial or Hearing • Appeals • Post Disposition of Matter
7	<p>Practice and Management Skills</p>

	<ul style="list-style-type: none"> • Time and Risk Management • Technological Proficiency • Financial Management • File Management • Trust and General Accounting • Knowledge Management • Continuing Legal Education (CLE) • Claims Reporting • Practice Arrangements
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Working Document for the
Barrister Competency Validation Project

Category 1
Ethical and Professional Responsibilities

The barrister acts ethically and professionally at all times in dealing with clients, colleagues, courts, tribunals and the public in order to effectively represent clients, maintain the standards of the profession, and ensure public confidence in the legal system.

Ethics & Professionalism

The barrister:

1. declines to act or seeks appropriate assistance when the matter is beyond own abilities
2. accepts only retainers that are reasonable and capable of performance under law
3. completes all contractual obligations under the retainer
4. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members)
5. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds)
6. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege)
7. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation)
8. ensures staff understands and adheres to relevant rules of professional conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, dishonesty or fraud by the client, title insurance rule)
9. delegates and supervises appropriately (e.g., provides opportunities for juniors to learn, enhances cost efficiencies for the client, does not delegate where inappropriate)
10. withdraws from representation in compliance with the rules of the LSUC, the court or tribunal (i.e., optional withdrawal, mandatory withdrawal, client request for withdrawal)
11. understands the obligation to keep the client informed and operates with a client-focused perspective
12. fulfils all undertakings and shall not give an undertaking that cannot be fulfilled
13. avoids engaging in sharp practice
14. recognizes and fulfils fiduciary obligations
15. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness)
16. recognizes issues involving the LSUC books and records bylaws (e.g., preserves the clients' property)
17. recognizes all obligations to the court under the Rules and as an officer of the court

18. recognizes any other issues involving the LSUC rules of professional conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate)
19. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the LSUC, responsibility to other lawyers)
20. demonstrates an understanding of the obligation to represent for the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client)
21. markets and advertises ethically as per LSUC Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services)
22. approaches ethical issues in accordance with the LSUC model (e.g., follow the law, look to the rules, seek guidance from senior Barristers or practice advisory, exercise caution when in "gray areas", fearlessly represents the interest of the client)
23. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client)

Category 2

Knowledge of the Law: Ontario and Federal Legislation and Case Law

The barrister knows and applies general and case-specific legal principles when acting as an advocate in order to effectively represent the client.

Jurisdiction and Fundamentals

The barrister:

1. identifies the appropriate jurisdiction (e.g., federal/provincial, statutory/regulatory)
2. identifies the appropriate forum
3. identifies issues related to the Canadian Charter of Rights and Freedoms
4. identifies issues related to the Constitution Act, 1867 (e.g., division of powers) and the Constitution Act, 1982 (e.g., Aboriginal rights)
5. applies the Ontario Courts of Justice Act
6. applies the Federal Court Act

Limitation Periods

The barrister:

1. demonstrates an understanding of the Limitations Act 2003
2. recognizes current and applicable limitation periods at the commencement of and during the course of the proceedings

Evidence

The barrister:

1. applies the appropriate statutory rules of evidence (e.g., federal and provincial legislation)
2. applies the appropriate common law rules of evidence (e.g., hearsay)
3. demonstrates an understanding of different rules of evidence for different tribunals

Principles of Statutory Interpretation

The barrister:

1. demonstrates an understanding of the principles of statutory interpretation (e.g., federal and provincial Interpretation Acts, subordinate legislation, and common law, Charter)

2. applies the principles of statutory interpretation (e.g., federal and provincial Interpretation Acts and common law)

Public Law

The barrister:

1. demonstrates an understanding of the Constitution Act 1982 and the Constitution Act 1867 and the related case law
2. demonstrates an understanding of the Charter of Rights and Freedoms and the related case law
3. demonstrates knowledge of primary public law including the following statutes and related regulations and case law:
 - a. Crown Liability and Proceedings Act
 - b. Federal Court Act
 - c. Human Rights Legislation
 - d. Judicial Review Procedures Act
 - e. Proceedings Against the Crown Act
 - f. Public Authorities Protection Act
 - g. Statutory Powers Procedures Act
4. demonstrates knowledge of secondary public law including the statutes and related regulations and case law (e.g., Access to Information Act; Competition Act; Employment Standards Act 2000; Freedom of Information and Protection of Privacy Act; Immigration and Refugee Protection Act; Ombudsman Act; PIPEDA)
5. demonstrates an understanding of the basic principles of administrative law (e.g., procedure: natural justice and fairness, substantive review of public decision making)
6. demonstrates an understanding of practice before administrative tribunals (e.g., advocacy before administrative tribunals)
7. demonstrates an understanding of the review of federal administrative action (e.g., jurisdiction, practice and procedure)
8. demonstrates an understanding of standing to sue or to apply for judicial review
9. demonstrates an understanding of appeals, judicial review and standard of review
10. demonstrates an understanding of civil procedure in Charter litigation
11. demonstrates an understanding of litigating Charter claims (i.e., legal, factual, evidentiary and procedural foundations)
12. demonstrates an understanding of Charter remedies (e.g., available remedies, tactical considerations)
13. provides appropriate notice to the Attorneys General with Notice of Constitutional Question

Criminal Law

The barrister:

1. demonstrates knowledge of primary criminal law including the following statutes and related regulations and case law:
 - a. Charter of Rights and Freedoms
 - b. Controlled Drugs and Substances Act
 - c. Criminal Code
 - d. National Defense Act and Regulations
 - e. Youth Criminal Justice Act
2. demonstrates knowledge of secondary criminal law and quasi criminal law including the statutes and related regulations and case law (e.g., Corrections Act; Extraditions Act; Firearms Act; Highway Traffic Act; Occupational Health and Safety Act; Pardons Act; Provincial Offences Act, Safe Schools Act)
3. demonstrates knowledge of the interrelationship of the criminal law consequences and other legislation (e.g., family and immigration)
4. demonstrates competence in case management and case preparation

5. demonstrates an understanding of professional responsibilities in criminal practice (e.g., representation of the guilty, duty to the client, duty to the court, duty to society)
6. demonstrates an understanding of the role of the police and crown in the judicial system
7. demonstrates an understanding of the classification of offences and trial jurisdiction
8. demonstrates an understanding of investigatory powers (e.g., search and seizure, investigation and questioning of suspects)
9. demonstrates an understanding of judicial interim release and bail review procedures
10. demonstrates an understanding of crown and third-party disclosure
11. demonstrates an understanding of pretrial conferences
12. demonstrates an understanding of the various Rules of Court
13. demonstrates an understanding of diversion options
14. demonstrates an understanding of pleas (e.g., voluntary, informed, secondary consequences)
15. demonstrates an understanding of the preliminary inquiry
16. demonstrates an understanding of compelling witnesses
17. demonstrates an understanding of pre-trial applications in criminal proceedings
18. demonstrates an understanding of representing clients with psychiatric issues
19. demonstrates an understanding of the criminal trial (e.g., modes of trial, pre-hearing conference, trial procedure, jury selection)
20. demonstrates an understanding of sentencing (e.g., purpose and objectives, principles of sentencing, sentencing powers and restrictions, distinction between provincial and federal sentences, availability of conditional sentences, DNA orders, weapons prohibitions)
21. demonstrates an understanding of appeals and bail pending appeals (e.g., indictable appeals, the sentence hearing, summary conviction appeals)
22. demonstrates an understanding of aboriginal peoples and the criminal justice system (e.g., jurisdiction - on reserve and off reserve)
23. understands Crown briefs are the property of the Crown

Family Law

The barrister:

1. demonstrates knowledge of primary family law including the following statutes and related regulations and case law:
 - a. Child and Family Services Act
 - b. Children's Law Reform Act
 - c. Child Support Guideline Regulations
 - d. Divorce Act
 - e. Family Law Act
2. demonstrates knowledge of secondary family law including the statutes and related regulations and case law (e.g., Change of Name Act; Family Responsibility and Support Enforcement Act; Income Tax Act, Indian Act; Marriage Act, Pension Benefits Division Act; Succession Law Reform Act; The Partition Act)
3. demonstrates an understanding of the conduct of an action in family law proceedings
4. demonstrates an understanding of the Family Law Rules (e.g., motions, conferences, offers to settle, costs, case management, timelines)
5. demonstrates an understanding of divorce law and procedure
6. demonstrates an understanding of the law relating to the recognition of foreign divorce decrees
7. demonstrates an understanding of custody and access and the enforcement of a custody order (e.g., mobility rights)
8. demonstrates an understanding of law relating to matrimonial property
9. demonstrates an understanding of the law relating to spousal support
10. demonstrates an understanding of the law relating to child support
11. demonstrates an understanding of the law relating to cohabitation
12. demonstrates an understanding of the law relating to same-sex relationships and marriages
13. demonstrates an understanding of financial disclosure in family law matters
14. demonstrates an understanding of enforcement of support orders

15. demonstrates an understanding of tax principles of family law
16. demonstrates an understanding of domestic contracts
17. drafts domestic contracts
18. demonstrates an understanding of representing clients who have been exposed to violence or are accused of perpetrating violence
19. demonstrates an understanding of child protection law
20. demonstrates an understanding of aboriginal law in a family context
21. demonstrates an understanding of all options available for the resolution of family law disputes
22. demonstrates an understanding of the office of the role of the Children's Lawyer
23. demonstrates an understanding of the emotional context of a marriage breakdown and creates strategies to manages its effect
24. demonstrates knowledge of the interrelationship of family law consequences and other areas of the law (e.g., criminal, real estate)
25. demonstrates an understanding of appeals under the Family Law Rules and Rules of Civil Procedure
26. demonstrates an understanding of the valuation of specific assets (e.g., pension, share options)
27. demonstrates an understanding of non-legal issues that influence clients to settle or not settle (e.g., does not want to negatively affect children, wants to punish spouse)

Civil Litigation

The barrister:

1. *demonstrates an understanding of the rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998)*
2. *applies the appropriate rules of civil procedure (e.g., Ontario Rules of Civil Procedure, Federal Rules of Court, 1998)*
3. *demonstrates an understanding of the jurisdiction and organization of the courts of Ontario*
4. *demonstrates an understanding of managing case files*
5. *demonstrates an understanding of preliminary matters to be considered before commencing proceedings*
6. *demonstrates an understanding of persons or entities who can sue and be sued (e.g., crown immunity, unions)*
7. *demonstrates an understanding of parties and joinder*
8. *demonstrates an understanding of the commencement of proceedings (e.g., statement of claim, notice of action, application)*
9. *demonstrates an understanding of service of process*
10. *demonstrates an understanding of pleadings (e.g., content, time for delivery, form of pleadings)*
11. *demonstrates an understanding of disposition without trial (e.g., summary judgment, determination of an issue before trial)*
12. *demonstrates an understanding of subsidiary claims (e.g., counterclaims, cross claims, third party claims)*
13. *demonstrates an understanding of interlocutory proceedings and their purpose*
14. *demonstrates an understanding of discovery and its purpose*
15. *demonstrates an understanding of offers to settle and costs*
16. *demonstrates an understanding of pre-trial procedures*
17. *demonstrates an understanding of simplified procedure under Rule 76*
18. *demonstrates an understanding of capacity and parties under disability*
19. *demonstrates an understanding of the enforcement of judgments (e.g., examination in aid of execution, writs of seizure and sale, garnishment)*
20. *demonstrates an understanding of the appeal process*
21. *demonstrates an understanding of dispute resolution including court-directed mediation*
22. *demonstrates an understanding of the law of remedies*
23. *demonstrates an understanding of the relevant legal principles and case law applicable to torts (e.g., negligence, and other principal torts)*
24. *demonstrates an understanding of the relevant legal principles and case law relevant to the law of contract (e.g., breach of contracts, the doctrines of frustration, rescission, repudiation, anticipatory breach, fundamental breach)*

25. demonstrates an understanding of other relevant legal principles and case law in civil litigation (e.g., breach of fiduciary duty)
26. demonstrates an understanding of the relevant legal principles and case law relevant to estate and trust law litigation (e.g., capacity)
27. demonstrates an understanding of the relevant legal principles and case law relevant to business law litigation (e.g., oppression remedies, director's liability)
28. demonstrates an understanding of the relevant legal principles and case law relevant to real and personal property litigation (e.g., aboriginal title, mortgage remedies, chattel mortgage remedies)

Category 3 Establishing and Maintaining the Barrister-Client Relationship

The barrister determines the ability to act for a prospective client, negotiates a retainer agreement, obtains instructions and communicates effectively in order to define and achieve the client's objectives.

Identifying the Client

The barrister:

1. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/shareholders vs. corporation, authority to bind)
2. takes appropriate steps to determine who is NOT the client

Conflicts of Interest

The barrister:

1. uses a conflict of interest checking system
2. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties)
3. declines retainer or properly withdraws when a conflict of interest has been identified
4. takes appropriate action in situations where a potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, takes appropriate steps to terminate the retainer if the potential conflict of interest becomes a conflict of interest)
5. monitors for conflicts of interest on an ongoing basis and acts accordingly
6. identifies conflicts of interest between clients
7. identifies conflicts of interest between lawyers

Interviewing Principles

The barrister:

1. uses relevant information to prepare for client interviews
2. establishes rapport with the client
3. uses active and passive listening skills
4. obtains relevant information from the client
5. determines the client's goals, objectives and expectations
6. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions in a cost effective manner and whether the expectations are realistic
7. conducts the interview in a manner to ensure the Barrister is understood by the client
8. takes and retains an appropriate interview record (e.g., written notes)

9. asks questions to determine whether or not the client is capable of giving instructions where appropriate (e.g., mental capacity, authority, duress, undue influence)
10. asks questions to determine critical issues that might affect the resolution of the problem
11. defines the critical issues
12. obtains and retains client documents or copies
13. summarizes and documents the responsibilities of each party with the client at the conclusion of the interview (e.g., documents to be obtained/provided)

The Retainer

The barrister:

1. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions)
2. identifies the instructing client
3. confirms the actions to be taken by the parties in the retainer
4. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for different personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements)
5. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client)
6. confirms the acceptable forms of client communication in the retainer (e.g., medium and timeframes)
7. addresses privacy concerns in the retainer (e.g., addresses solicitor-client privilege issues such as distribution of e-mails, sharing information with other advisors)
8. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent, disclosure to the insurer of the lawyer or subsequent counsel of the client)
9. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence, conflicts of interest)
10. confirms the retainer and any limitations in writing
11. obtains a monetary retainer where appropriate (including proper accounting for same)
12. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes)
13. demonstrates an understanding of legal aid procedures

Client Communications

The barrister:

1. communicates with clients in a timely and effective manner (e.g., returns phone calls in a timely manner, copies the client on correspondence as appropriate, advises on developments)
2. reports to clients in a timely and effective manner throughout and at the conclusion of the matter
3. manages and updates the client's expectations with respect to timeframes, results, and costs
4. recognizes, and is sensitive to, clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanor)
5. explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, email)

Category 4

Problem/Issue Identification, Analysis, and Application of Expert Knowledge

The barrister identifies the client's problem and the relevant factual and legal issues, obtains and analyses information, and generates options and recommendations in order to develop a theory of the case and a litigation strategy.

File Administration

The barrister:

1. maintains an electronic and written record for each matter for which the Barrister is retained
2. prepares and uses checklists for appropriate areas of law (e.g., litigation, immigration, divorce)
3. maintains an orderly client file (e.g., correspondence brad, evidence section, research, documents, searches, pleadings)

Information Gathering, Case Analysis and Planning*The barrister:*

1. obtains relevant facts and documents
2. takes emergency steps where necessary
3. reviews relevant facts and documents
4. ascertains the completeness of the documentation provided by the client
5. identifies the factual and legal issues
6. identifies and obtains additional information and/or resources as needed and as authorized by the client including the responsibility for payment of fees and expenses (e.g., experts, legal research, specialized counsel)
7. conducts or delegates research and investigations related to the matter as appropriate
8. identifies the other parties in the matter
9. confirms whether or not the client's goals, objectives, and expectations can be met through legal processes in a timely and cost effective manner
10. complies with all privacy legislation

Notice to Affected Parties*The barrister:*

1. identifies third parties who may be entitled to notice of the proceedings (e.g., Attorneys General, municipality, insurers,
2. provides appropriate notice to the identified third parties and other relevant parties (e.g., Libel and Slander Act, trier of fact)

Theory of the Case*The barrister:*

1. develops an informed theory of the case based on the barrister's assessment of the facts and law
2. reassesses the theory of the case as the case evolves, where necessary

Litigation Strategy*The barrister:*

1. develops an appropriate plan and strategies in consultation with the client to achieve desired results
2. considers and communicates to the client the costs and consequences of various courses of action
3. recommends and obtains instructions from the client regarding the most effective tools the client can afford to achieve desired results
4. remains flexible to appropriately respond to developing issues

Category 5 Dispute Resolution

The barrister identifies opportunities for and, when appropriate, engages in negotiation and dispute resolution in order to achieve early and cost-effective resolution of a client's dispute.

Negotiation

The barrister:

1. demonstrates an understanding that negotiation is an integral part of the conduct of the matter from inception to completion
2. identifies disputed versus undisputed issues
3. identifies issues that can be negotiated
4. explains to the client the potential adverse consequences of not negotiating
5. obtains consents to engage in negotiations normal to the case
6. explores opportunities to negotiate or otherwise resolve issues short of litigation
7. identifies the strategy and tactics to be used in negotiation
8. prepares the client for the negotiation process
9. negotiates effectively
10. explains to the client the outcomes of negotiation
11. documents the resolution of issues through negotiation

Mediation and Dispute Resolution

The barrister:

1. demonstrates an understanding of various dispute resolution mechanisms (e.g., mediation, arbitration)
2. identifies issues appropriate for dispute resolution
3. explains to the client the potential adverse consequences of not mediating
4. obtains consents to engage in mediation normal to the case
5. identifies additional remedies that may be uniquely available through dispute resolution
6. considers appropriate dispute resolution options (e.g., mediation, arbitration)
7. identifies the strategy and tactics to be used during dispute resolution
8. prepares the client for the dispute resolution process
9. represents the client effectively during dispute resolution processes
10. explains to the client the outcomes of dispute resolution
11. documents the resolution of issues through dispute resolution
12. proceeds in accordance with the client's committed resources

Category 6 Litigation Process

The barrister initiates and/or responds to litigation proceedings as appropriate within time limitations by drafting required documents, taking necessary preliminary steps, preparing for and conducting all stages of the proceeding, seeking appropriate remedies, and initiating appellate proceedings where appropriate in order to effectively represent the client.

Initiating Litigation

The barrister:

1. develops a plan for the conduct of the litigation
2. determines the appropriate litigation forum
3. considers trier of fact (e.g., judge or jury)
4. identifies the relevant requirements of the litigation forum

Court or Tribunal Documents

The barrister:

1. drafts the necessary court/tribunal documents in consultation with the client in a manner consistent with the rules of practice and the theory of the case to advance the client's case (e.g., pleadings, motions, affidavits, forms, applications, facta, orders, agreements)
2. drafts document using persuasive, clear, and simple language appropriate to all potential readers
3. uses precedent pleadings as appropriate to the individual case
4. integrates relevant facts, statutory and common law principles
5. takes appropriate action to finalize, execute and process the document effectively

Disclosure, Production, and Discovery

The barrister:

1. demonstrates an understanding of applicable document disclosure and discovery requirements
2. obtains timely disclosure, production and discovery as required
3. provides timely and organized disclosure and discovery as required
4. advises the client of disclosure obligations (e.g., full and complete disclosure; ensuring the preservation of relevant documents for disclosure, knowledge of privilege issues)
5. prepares for the conduct of any discovery process (e.g., preliminary inquiry, examination for discovery)
6. prepares the client for any discovery process
7. takes appropriate steps, where appropriate, to enforce disclosure and discovery rights
8. demonstrates an understanding of production, disclosure rights and obligations in criminal matters (e.g., remedies, third-party record applications, Charter applications)

Trial or Hearing Preparation

The barrister:

1. allocates sufficient time for preparation
2. meets timelines for trial or hearing
3. determines the evidence required to support the theory of the case
4. marshals evidence (e.g., obtains witness statements, expert reports, preserves evidence)
5. obtains discovery or other relevant transcripts
6. reviews relevant transcripts
7. manages trial or hearing related documents
8. determines the evidence to be called
9. identifies the order of the evidence to be called
10. demonstrates an understanding of Requests to Admit (e.g., facts and documents)
11. demonstrates an understanding of the notice and delivery requirements for specific documentary evidence (e.g., business records, medical and other expert reports)
12. demonstrates an understanding of the requirements of a family law trial for the filing of updated financial statements and net family property statements and other calculations
13. demonstrates an understanding of the purpose of direct examination (e.g., tell the story, form of questions)
14. prepares own witnesses for direct examination
15. ensures the attendance of witnesses (e.g., subpoena/summons to witness)
16. demonstrates an understanding of the purpose of cross examination (e.g., impeachment, eliciting evidence helpful to own case, form of questions)
17. prepares own witnesses for cross-examination
18. prepare for cross-examination of witnesses of other parties

19. demonstrates an understanding of the purpose of re-examination (e.g., rehabilitate the credibility of the witness, clarify evidence)
20. explains to witnesses the purpose of re-examination
21. prepares any applications for relief under the Charter and service on the Crown
22. anticipates objections and possible motions
23. considers issues of admissibility of evidence
24. understands the need to confront the opponent with the client's position before presenting it as part of the lawyer's own case
25. prepares opening statement
26. prepares draft of closing statement
27. prepares submissions on costs, where applicable
28. prepares submissions on sentence, where applicable
29. demonstrates an understanding of how to tender and admit evidence (e.g., prior inconsistent statement, expert notices)
30. prepares the statutory and jurisprudential authorities

Applications to Court, Judicial Reviews and Prerogative Remedies

The barrister:

1. demonstrates an understanding of the rules and tests for applications, judicial reviews and prerogative remedies
2. considers if applications, judicial reviews and prerogative remedies are warranted
3. meets applicable timelines for applications, judicial reviews and prerogative remedies
4. reviews the merits of applications, judicial reviews and prerogative remedies with the client
5. obtains client instructions regarding applications, judicial reviews and prerogative remedies
6. ensures applications, judicial reviews and prerogative remedies are taken to the proper forum
7. prepares all the necessary documents for conduct of applications, judicial reviews and prerogative remedies (e.g., application for judicial review, application records, preparation of facts, order transcript)
8. makes oral submissions concerning applications, judicial reviews and prerogative remedies
9. demonstrates an understanding of costs principles relating to applications, judicial reviews and prerogative remedies where available and appropriate

Conduct of the Trial or Hearing

The barrister:

1. deals with any preliminary matters (e.g., jurisdictional, pretrial motion, exclusion of witnesses and publication bans, jury selection)
2. delivers a carefully planned opening statement that presents the theory of the case
3. plans the delivery of evidence to support the closing argument
4. examines own witnesses in chief:
 - a. asks open-ended, non-leading questions in relation to disputed matters
 - b. introduces documentary evidence
5. re-examines own witnesses where appropriate:
 - a. limits re-examination to issues raised in cross-examination of the witness
 - b. asks appropriate questions during re-examination
6. cross-examines the witnesses of other parties where appropriate:
 - a. asks carefully planned questions to control the witness
 - b. cross-examines on affidavits on applications or motions when appropriate
7. adduces admissions (e.g., introduces excerpts of transcripts where applicable, presents agreed statements of fact)
8. initiates and responds to motions as appropriate
9. makes legal arguments as appropriate

10. presents a closing statement designed to persuade the decision maker to accept the client's theory of the case
11. documents potential grounds for appeal
12. raises objections on the record
13. considers whether to call a particular witness (e.g., the accused in a criminal trial)
14. presents the statutory and jurisprudential authorities
15. presents submissions on cost following the decision if appropriate

Appeals

The barrister:

1. demonstrates an understanding of the rules and tests for an appeal of the decision
2. considers if an appeal is warranted (e.g., substantive and cost-benefit analysis)
3. meets the timelines for appeals
4. reviews the merits of an appeal with the client
5. obtains client instructions regarding appeals
6. ensures appeals are taken to the proper forum
7. prepares all the necessary documents for conduct of an appeal (e.g., notices of appeal, order transcript, appeal books, compendium, preparation of facts)
8. conducts research related to the appeal on an ongoing basis
9. prepares and argues the appeal
10. demonstrates an understanding of costs principles relating to an appeal
11. considers the viability of further appeal and takes instructions from the client for any necessary steps
12. demonstrates awareness of the procedure to file a legal aid notice of appeal to preserve time limits without getting the lawyer on record
13. demonstrates awareness of the availability of settlement conferences and the ongoing availability dispute resolution in appeals

Post-Disposition of Matter

The barrister:

1. ensures the matter has been disposed of appropriately (e.g., minutes of settlement, judgment entered by the court, final releases, dismissal order)
2. provides final reports and accounting to clients
3. conducts a final review of the file prior to closing the file

Category 7 Practice and Management Skills

The barrister uses time and file management systems, technology, proper financial record keeping and accounting systems, conflict of interest systems, knowledge management systems and continuously learns in order to maintain competence and manage all aspects of practice.

Time and Risk Management

The barrister:

1. employs a tickler system (e.g., for tracking limitation periods, court dates, and other relevant dates)
2. maintains a calendar (e.g., for appointments)
3. uses a time docketing or recording system
4. identifies and prioritizes tasks

Technological Proficiency

The barrister:

1. maintains and uses technology to deliver client services effectively (e.g., recognizes the benefits of email, on-line research tools, court and tribunal filings, advocacy, practice specialty software)
2. manages the risks and information associated with the use of technology (e.g., sending or receiving confidential email messages, attachments and faxes)
3. establishes and secures a reliable network system where appropriate

Financial Management

The barrister:

1. maintains a system for generating bills at appropriate stages in the proceedings
2. reviews “stale trust balances” on a monthly basis
3. follows up on accounts receivable
4. satisfies financial obligations to third parties on a timely basis
5. demonstrates an understanding of appropriate and ethical collection procedures
6. obtains appropriate insurance coverage (e.g., fire, property, liability, E&O)
7. understands the coverage, exclusions and exceptions under E&O primary policy and excess coverage

File Management

The barrister:

1. uses systems to store and retrieve key information regarding clients and opposing parties
2. uses systems to open and organize files with reference to the LSUC Practice Management Guidelines
3. closes files with reference to the LSUC Practice Management Guidelines
4. retains files with reference to the LSUC Practice Management Guidelines (e.g., insurance, timelines, secure storage, confidentiality, recoverability, backups as appropriate)
5. destroys files with reference to the LSUC Practice Management Guidelines
6. safeguards and monitors valuable client documents and/or property (e.g., Bylaw 18)
7. maintains systems to list and monitor clients’ property and original documents (e.g., vault for client wills and powers of attorney)
8. establishes the conditions under which valuable client documents and/or property are retained and released
9. uses systems to manage personal information and comply with applicable legal requirements (e.g., as per PIPEDA)
10. documents meetings, conversations and communications contemporaneously
11. ensures staff understands and maintains the file management system
12. establishes a disaster recovery plan (e.g., backup systems)
13. keeps electronic and/or hard copies of correspondence as appropriate (e.g., e-mail, voicemail)

Trust and General Accounting

The barrister:

1. maintains trust account records in accordance with the Law Society of Upper Canada’s record and bookkeeping requirements including Bylaws 18 & 19
2. maintains general account records in accordance with the Law Society of Upper Canada’s record and bookkeeping requirements including Bylaws 18 & 19
3. maintains books of original entry in accordance with the Law Society of Upper Canada’s record and bookkeeping requirements including Bylaws 18 & 19
4. maintains trust reconciliation records in accordance with the Law Society of Upper Canada’s record and bookkeeping requirements including Bylaws 18 & 19

5. maintains a valuable property record in accordance with Bylaw 18
6. completes all necessary filings with the LSUC and LAWPRO

Knowledge Management

The barrister:

1. maintains and makes discriminate use of precedent material and a retrieval system applicable to practice area where appropriate (e.g., pleadings, opinions, facta, research memos, contracts, licenses, offers to settle, minutes of settlement, disclosure demands)
2. demonstrates awareness of, and accesses relevant electronic databases and print material

Continuing Legal Education (CLE)

The barrister:

1. stays current regarding important developments in own area of practice (e.g., attends seminars, subscribes to professional publications, maintains memberships in professional associations)
2. monitors continuing legal education (CLE) hours completed (e.g., self study, courses taught)
3. seeks and participates in coaching and mentoring

Claims Reporting

The barrister:

1. promptly reports claims and potential claims to LawPro in accordance with the LSUC Rules of Professional Conduct (Rule 6.09)
2. informs clients of their rights in situations where the Barrister may have made a reportable error, being careful not to prejudice any rights of indemnity (Rule 6.09)
3. seeks appropriate counsel on issues dealing with potential claims (e.g. practice advisory)

Practice Arrangements

The barrister:

1. demonstrates an understanding of the strengths and limitations of various practice arrangements (e.g., sole practitioner, partnership, limited liability partnership, professional corporations, multi-disciplinary practices or partnerships, associations, and affiliations)

TAB 2

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Competency Categories for Entry-Level Solicitors

1	<p>Ethical and Professional Responsibilities</p> <p>The solicitor acts ethically and professionally at all times in dealing with clients, colleagues, courts, tribunals and the public in order to effectively represent clients, maintain the standards of the profession, and ensure public confidence in the legal system.</p>
2	<p>Knowledge of the Law: Ontario and Federal Legislation and Case Law, Policy, Procedures and Forms</p> <p>The solicitor knows and applies general and case-specific legal principles when representing and providing advice to clients.</p>
3	<p>Establishing and Maintaining the Solicitor-Client Relationship</p> <p>The solicitor determines the ability to act for a prospective client, obtains a retainer and instructions and communicates effectively in order to achieve the client's objectives.</p>
4	<p>Solicitor's Retainer</p> <p>The solicitor administers the file, gathers facts and analyzes legal issues, develops and executes an action plan and takes appropriate action regarding the file at conclusion in order to manage the file and achieve the client's objectives.</p>
5	<p>Practice and Management Skills</p> <p>The solicitor uses time and file management systems, technology, proper financial record keeping and accounting systems, conflict of interest systems, knowledge management systems and continuously learns in order to maintain competence and manage all aspects of practice.</p>

Competency Categories and Sub-Categories

1	<p>Ethical and Professional Responsibilities</p> <ul style="list-style-type: none"> • Ethics & Professionalism
2	<p>Knowledge of the Law: Ontario and Federal Legislation and Case Law, Policy, Procedures and Forms</p> <ul style="list-style-type: none"> • Knowledge of General Statutes, Common Law, Policy, Procedures and Forms • Real Estate • Wills, Trusts, and Estate Administration and Planning • Business Law
3	<p>Establishing and Maintaining the Solicitor-Client Relationship</p> <ul style="list-style-type: none"> • Identifying the Client • Conflicts of Interest • Interviewing Principles • The Retainer • Client Communications
4	<p>Solicitor's Retainer</p> <ul style="list-style-type: none"> • File Administration

	<ul style="list-style-type: none"> • Information Gathering, Case Analysis and Planning • Developing the Action Plan • Executing the Action Plan • Closing the Transaction • Post-Closing Actions
5	<p>Practice and Management Skills</p> <ul style="list-style-type: none"> • Time and Risk Management • Technological Proficiency • Financial Management • File Management • Trust and General Accounting • Knowledge Management • Continuing Legal Education (CLE) • Claims Reporting • Practice Arrangements

Working Document for the
Solicitor Competency Validation Project

Category 1
Ethical and Professional Responsibilities

The solicitor acts ethically and professionally at all times in dealing with clients, colleagues, courts, tribunals and the public in order to effectively represent clients, maintain the standards of the profession, and ensure public confidence in the legal system.

Ethics & Professionalism

The solicitor

1. declines to act or seeks appropriate assistance when the matter is beyond own abilities
2. accepts only retainers that are reasonable and capable of performance under law
3. completes all contractual obligations under the retainer
4. avoids or manages conflicts of interest (e.g., clarifies joint retainers, acting against a client, dealing with self-represented persons, doing business with a client [e.g., borrowing from a client], acting for family members)
5. charges fair and reasonable fees and disbursements (e.g., division of fees and referral fees, full disclosure of fees, appropriation of funds)
6. recognizes and fulfils duties relating to confidentiality and disclosure (e.g., solicitor-client privilege)
7. obtains all necessary consents at the time of the retainer, respecting reasonable disclosure to third parties (e.g., pursuant to relevant privacy legislation)
8. ensures staff understands and adheres to relevant rules of professional conduct (e.g., confidentiality, solicitor-client privilege, justified disclosure, integrity, dishonesty or fraud by the client, title insurance rule)
9. delegates and supervises appropriately (e.g., provides opportunities for juniors to learn, enhances cost efficiencies for the client, does not delegate where inappropriate such as searches of title)
10. withdraws from representation in compliance with the rules of the LSUC, the court or tribunal (i.e., optional withdrawal, mandatory withdrawal, client request for withdrawal)
11. understands the obligation to keep the client informed and operates with a client-focused perspective
12. fulfils all undertakings and shall not give an undertaking that cannot be fulfilled

13. avoids engaging in sharp practice
14. recognizes and fulfils fiduciary obligations
15. recognizes duties to the administration of justice (e.g., encourages respect for the administration of justice, dealing with the media, public statements, lawyer as a witness)
16. recognizes issues involving the LSUC books and records bylaws (e.g., preserves the clients' property)
17. recognizes all obligations to the court under the Rules and as an officer of the court
18. recognizes any other issues involving the LSUC rules of professional conduct (e.g., dishonesty or fraud by the client, administration of justice, reporting other lawyers' conduct where appropriate)
19. demonstrates integrity (e.g., honesty, meeting financial obligations, duty to report misconduct, responsibility to the LSUC, responsibility to other lawyers)
20. demonstrates an understanding of the obligation to represent for the client within the limits of the law (e.g., takes appropriate steps to ensure that the lawyer maintains professional distance from the client)
21. demonstrates awareness of issues involving electronic registration (e.g., not sharing diskettes, privacy issues, understanding technology)
22. markets and advertises ethically as per LSUC Rules (e.g., making services available, law firm name, letterhead, advertising, offering professional services)
23. approaches ethical issues in accordance with the LSUC model (e.g., follow the law, look to the rules, seek guidance from senior Solicitors or practice advisory, exercise caution when in "gray areas", fearlessly represents the interest of the client)
24. maintains appropriate professional relationships with lawyers, students, employees and others (e.g., treats others with courtesy and respect, avoids sexual harassment and human rights violations, respects multi-cultural issues, respects the relationship of opposing counsel and their client)

Category 2

Knowledge of the Law: Ontario and Federal Legislation and Case Law, Policy, Procedures and Forms

The solicitor knows and applies general and case-specific legal principles when representing and providing advice to clients.

Knowledge of General Statutes, Common Law, Policy, Procedures and Forms

The solicitor:

1. demonstrates knowledge of statutes of general application and principles of statutory interpretation
2. demonstrates knowledge of fundamental common law (e.g., law of contracts, agency law, trust law, torts law, law of property, secured transactions)
3. demonstrates knowledge of purposes, procedures and forms related to substantive law
4. demonstrates a general awareness of specialty areas (e.g., environmental law, employment and labour law)

Real Estate

The solicitor:

1. demonstrates knowledge of substantive real estate law including the following primary statutes and related regulations and case law:
 - a. Commercial Tenancies Act
 - b. Condominium Act, 1998
 - c. Construction Lien Act
 - d. Conveyancing and Law of Property Act
 - e. Estate Administration Act
 - f. Family Law Act
 - g. Land Registration Reform Act
 - h. Land Titles Act
 - i. Land Transfer Tax Act

- j. Real Properties Limitations Act
 - k. Mortgages Act
 - l. Ontario New Home Warranties Plan Act
 - m. Planning Act
 - n. Registry Act
 - o. Tenant Protection Act, 1997
 - p. Vendor and Purchasers Act
 - q. Succession Law Reform Act
2. demonstrates knowledge of secondary real estate statutes and related regulations and case law (i.e., Beds of Navigable Water Act; Building Code Act, 1992; Business Corporations Act (Ontario and Federal); Certification of Titles Act; Section 347 of the Criminal Code; Conservation Authorities Act; Excise Tax Act (i.e., GST provisions); Execution Act; Fire Marshall's Act; Income Tax Act (Federal and Provincial); Indian Act; Interest Act; Municipal Act, 2001; Municipal Tax Sales Act; Personal Property Security Act; Power Corporation Act; Public Utilities Act; Road Access Act; Technical Standards and Safety Act; Statute of Frauds; Surveys Act; Tax Sales Confirmation Act)
 3. demonstrates an understanding of agreements of purchase and sale and conveyancing (e.g., new and used residential, condominiums, commercial and vacant land)
 4. demonstrates an understanding of estate conveyancing
 5. demonstrates an understanding of rural, agricultural and waterfront conveyancing
 6. demonstrates an understanding of property insurance issues
 7. demonstrates an understanding of the land registration systems in Ontario
 8. demonstrates an understanding of title searching in a non automated system
 9. demonstrates an understanding of title searching in an electronic system
 10. demonstrates an understanding of off-title due diligence
 11. demonstrates an understanding of subdivision control: Section 50 of the Planning Act
 12. demonstrates an understanding of plans and surveys
 13. demonstrates an understanding of requisitions on title and other matters
 14. demonstrates an understanding of the standard loan transaction
 15. demonstrates an understanding of enforcement of mortgage security
 16. demonstrates an understanding of preparation for closing, closing and post-closing procedures
 17. demonstrates an understanding of special concerns for residential rental properties (e.g., single unit and multiple unit)
 18. demonstrates an understanding of remedies (e.g., vendors and purchasers applications, conditions, repudiation, rescission, specific performance, damages, rectification)
 19. demonstrates an understanding of title insurance (e.g., strengths and weaknesses)
 20. demonstrates an understanding of GST and real estate
 21. demonstrates an understanding of commercial transactions
 22. demonstrates an understanding of electronic registration
 23. demonstrates an understanding of construction liens
 24. demonstrates an understanding of aboriginal property issues
 25. demonstrates an understanding of the use of trusts and related liability and Planning Act issues
 26. demonstrates an understanding of commercial leasing (e.g., priority issues and non disturbance agreements)
 27. demonstrates an understanding of leasehold interests including life leases
 28. demonstrates an understanding of priority of claims
 29. demonstrates an understanding of municipal law applications (e.g., zoning, minor variances)
 30. demonstrates an understanding of relevant document drafting

Wills, Trusts, and Estate Administration and Planning

The solicitor:

1. demonstrates knowledge of substantive will and estate law including the following primary statutes and related regulations and case law:
 - a. Accumulations Act
 - b. Estates Act

- c. Estates Administration Act
 - d. Family Law Act
 - e. Health Care Consent Act, 1996
 - f. Income Tax Acts
 - g. Perpetuities Act
 - h. Rules of Civil Procedure (Rules 74 & 75)
 - i. Substitute Decisions Act, 1992
 - j. Succession Law Reform Act
 - k. Trustee Act
 - l. Variation of Trusts Act
2. demonstrates knowledge of secondary wills, trusts, and estate statutes and related regulations and case law (i.e., Child and Family Services Act; Children's Law Reform Act; Crown Administration of Estates Act; Estate Administration Tax Act, 1998; Insurance Act; Mental Health Act; Powers of Attorney Act; Trillium Gift of Life Network Act [formerly Human Tissue Gift Act])
 3. demonstrates an understanding of trusts and estate planning
 4. demonstrates an understanding of will, trust, and power of attorney drafting and execution (e.g., multiple wills, alter-ego trusts, inter vivos trusts, Hensen trusts, powers of attorney for property, and power of attorney for personal care)
 5. demonstrates an understanding of capacity law (e.g., powers of attorney, guardianship applications, mental health law)
 6. demonstrates an understanding of taxation at death
 7. demonstrates an understanding of same-sex issues
 8. demonstrates an understanding of the impact of the Family Law Act on estate planning and administration
 9. demonstrates an understanding of taxation of trusts
 10. demonstrates an understanding of administration of estates (e.g., testate, intestate, estates, estate trustee duties, asset administration, income tax, estate administration tax, and accounting)
 11. demonstrates an understanding of estate litigation (e.g., will challenges, interpretation applications, variation of trusts, dependent support, and claims against an estate, equalization applications)
 12. demonstrates an understanding of estate law relating to aboriginal peoples
 13. demonstrates an understanding of fiduciary law
 14. demonstrates an awareness of cross-border issues (e.g., income and other tax issues)

Business Law

The solicitor:

1. demonstrates knowledge of substantive business law including the following primary statutes and related regulations and case law:
 - a. Assignments and Preferences Act
 - b. Bankruptcy and Insolvency Act
 - c. Bulk Sales Act
 - d. Business Corporations Act (Ontario)/Canada Business Corporations Act
 - e. Business Names Act
 - f. Corporations Information Act
 - g. Creditors Relief Act
 - h. Fraudulent Conveyances Act
 - i. Income Tax Acts
 - j. Limitations Act
 - k. Limited Partnerships Act
 - l. Partnerships Act
 - m. Personal Property Security Act
 - n. Securities Act
2. demonstrates knowledge of secondary business law statutes and related regulations and case law (i.e., Arthur Wishart Act; Bank Act; Canada Corporations Act; Competition Act; Corporations Act (Ontario); Criminal Code; Employment Standards Act; Excise Tax Act; Extra Provincial Corporations Act;

- Investment Canada Act; Interest Act; Personal Information Protection and Electronic Documents Act; Retail Sales Tax Act; The Companies' Creditors Arrangement Act)
3. demonstrates an understanding of the advantages and disadvantages of the different methods of carrying on business (e.g., sole proprietorship, partnership, corporations, co-ownerships, joint ventures)
 4. demonstrates an understanding of partnership agreements
 5. demonstrates an understanding of taxation of corporations and their shareholders
 6. demonstrates an understanding of the advantages and disadvantages of incorporating in other jurisdictions)
 7. demonstrates an understanding of income tax administration (e.g., assessment and appeals, administration and enforcement)
 8. demonstrates an understanding of the impact of employment and labour law on transactions
 9. demonstrates an understanding of the creation and maintenance of the corporation (e.g., incorporation procedure, organization, amendments)
 10. demonstrates an understanding of the roles of directors, officers, and shareholders of a corporation (e.g., fiduciary duty, standard of care, election, rights and powers, meetings, shareholder remedies)
 11. demonstrates an understanding of shareholder agreements
 12. demonstrates an understanding of the corporate capital structure: share capitalization (e.g., paid up capital; rights, conditions and restrictions on shares)
 13. demonstrates an understanding of effecting corporate changes (e.g., asset purchases from shareholders, Section 85 rollover, Section 86 reorganization; amalgamations, arrangements and reorganizations, windup, dissolution)
 14. demonstrates an understanding of securities law implications
 15. demonstrates an understanding of due diligence in corporate and commercial transactions (e.g., appropriate searches, inquiries and investigations)
 16. demonstrates an understanding of debt financing and secured transactions
 17. demonstrates an understanding of debtor and creditor's rights and remedies (e.g., secured and unsecured)
 18. demonstrates an understanding of aboriginal business law
 19. demonstrates an understanding of the purchase and sale of the business (shares or assets)
 20. demonstrates an understanding of GST and RST on commercial transactions
 21. demonstrates an understanding of charities and not-for-profit law
 22. demonstrates an understanding of franchising and licensing
 23. demonstrates an awareness of cross-border issues (e.g., International Sale of Goods Act; Sale of Goods Act, income tax, business immigration)
 24. demonstrates an awareness of patents, copyrights, and trade marks
 25. demonstrates an understanding of the licensing of intellectual property
 26. demonstrates an understanding of relevant document drafting

Category 3

Establishing and Maintaining the Solicitor-Client Relationship

The solicitor determines the ability to act for a prospective client, obtains a retainer and instructions and communicates effectively in order to achieve the client's objectives.

Identifying the Client

The solicitor:

1. takes appropriate steps to determine the client and the client's role (e.g., multiple parties, spouses/family members, business partners, trustee vs. beneficiary, officers/directors/shareholders vs. corporation, authority to bind)
2. takes appropriate steps to determine who is NOT the client
3. obtains identification from the client where appropriate (e.g., follows the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, takes steps to identify fraudulent transactions)

Conflicts of Interest

The solicitor:

1. uses a conflict of interest checking system
2. identifies potential conflicts of interest before acquiring confidential information (e.g., multiple parties)
3. declines retainer or properly withdraws when a conflict of interest has been identified
4. takes appropriate action in situations where a potential conflict of interest is identified (e.g., referral for independent legal advice, decline to act, disclose the conflict to the client and obtain consent, establish firewall procedures where appropriate, advises the client of the consequences in the event the potential conflict materializes, takes appropriate steps to terminate the retainer if the potential conflict of interest becomes a conflict of interest)
5. monitors for conflicts of interest on an ongoing basis and acts accordingly
6. identifies conflicts of interest between clients
7. identifies conflicts of interest between lawyers

Interviewing Principles*The solicitor:*

1. uses relevant information to prepare for client interviews
2. establishes rapport with the client
3. uses active and passive listening skills
4. obtains relevant information from the client
5. determines the client's goals, objectives and expectations
6. makes an initial assessment of whether or not the client's goals, objectives, and expectations can be met through legal processes and ethical solutions in a cost effective manner and whether the expectations are realistic
7. conducts the interview in a manner to ensure the Solicitor is understood by the client
8. takes and retains an appropriate interview record (e.g., written notes)
9. asks questions to determine whether or not the client is capable of giving instructions where appropriate (e.g., mental capacity, authority, duress, undue influence)
10. asks questions to determine critical issues that might affect the resolution of the problem
11. defines the critical issues
12. obtains and retains client documents or copies
13. summarizes and documents the responsibilities of each party with the client at the conclusion of the interview (e.g., documents to be obtained/provided)

The Retainer*The solicitor:*

1. establishes the scope of the retainer (e.g., confirms the identity of the client, outlines the capacities being represented, explains any limitations related to client instructions)
2. identifies the instructing client
3. confirms the actions to be taken by the parties in the retainer
4. sets out and explains the basis for fees and disbursements in the retainer (e.g., special or extraordinary disbursements, rates for different personnel performing the work, hourly versus alternative rates, periodic rate increases, contingency arrangements)
5. outlines the delegation of responsibilities in the retainer (e.g., within the firm, external consultants, client)
6. confirms the acceptable forms of client communication in the retainer (e.g., medium and timeframes)
7. addresses privacy concerns in the retainer (e.g., addresses solicitor-client privilege issues such as distribution of e-mails, sharing information with other advisors)
8. addresses conflict of interest issues in the retainer (e.g., termination, confidentiality, consent, disclosure to the insurer of the lawyer or subsequent counsel of the client)
9. addresses termination issues in the retainer (e.g., non-payment of fees, no instructions, loss of confidence, conflicts of interest)
10. confirms the retainer and any limitations in writing

11. obtains a monetary retainer where appropriate (including proper accounting for same)
12. confirms changes to the retainer as appropriate (e.g., new client instructions, method/channels for making changes)

Client Communications

The solicitor:

1. communicates with clients in a timely and effective manner (e.g., returns phone calls in a timely manner, copies the client on correspondence as appropriate, advises on developments)
2. reports to clients in a timely and effective manner throughout and at the conclusion of the matter
3. manages and updates the client's expectations with respect to timeframes, results, and costs
4. recognizes, and is sensitive to, clients' circumstances, special needs, and intellectual capacity (e.g., multi-cultural, language [need for interpreters], gender, disability, socioeconomic status, demeanor)
5. explains to clients the risk of communicating the details of the case by means of electronic media (e.g., cell phones, email)

Category 4 Solicitor's Retainer

The solicitor administers the file, gathers facts and analyzes legal issues, develops and executes an action plan and takes appropriate action regarding the file at conclusion in order to manage the file and achieve the client's objectives.

File Administration

The solicitor:

1. maintains an electronic and written record for each matter for which the Solicitor is retained
2. prepares and uses checklists for appropriate areas of law (e.g., real estate, wills, transactions)
3. maintains an orderly client file (e.g., correspondence, research, documents, searches)

Information Gathering, Case Analysis and Planning

The solicitor:

1. obtains relevant facts and documents
2. takes emergency steps where necessary
3. reviews relevant facts and documents
4. ascertains the completeness of the documentation provided by the client
5. identifies the factual and legal issues
6. identifies and obtains additional information and/or resources as needed and as authorized by the client including the responsibility for payment of fees and expenses (e.g., experts, legal research, specialized counsel)
7. conducts or delegates research and investigations related to the matter as appropriate
8. identifies the other parties in the matter
9. confirms whether or not the client's goals, objectives, and expectations can be met through legal processes in a timely and cost effective manner
10. complies with all privacy legislation

Developing the Action Plan

The solicitor:

1. generates options and recommendations

2. identifies the risks and costs of various options
3. presents options and recommendations to the client
4. confirms client instructions with respect to options and recommendations

Executing the Action Plan

The solicitor:

1. conducts due diligence as appropriate for the client
2. prepares and/or reviews documentation, searches, and plans as appropriate for the transaction
3. communicates with the other parties in a timely manner (e.g., other solicitors, title insurers)
4. utilizes and revises LSUC and other checklists where appropriate
5. determines third party requirements (e.g., property insurance, title insurance, lender requirements, appropriate consents and clearances, environmental evaluations)
6. identifies problems, solutions/options and obtains client instructions (e.g., conflicts, title search issues)
7. conducts negotiations related to the matter as appropriate (e.g., ADR)

Closing the Transaction

The solicitor:

1. prepares a closing agenda as appropriate
2. provides interim reports on a timely basis as required (e.g., to the lender, title insurance)
3. reviews documentation with the client and obtains signatures as appropriate
4. updates searches and certificates and obtains necessary preclosing clearances and consents as appropriate
5. supervises staff or others involved in the closing
6. arranges closing logistics (e.g., transfer of funds, execution page delivery and third party consents)
7. arranges for appropriate undertakings (e.g., to discharge mortgages)
8. conducts a final review of the checklist
9. takes appropriate steps when the transaction fails to close (e.g., tender)
10. completes the transaction in a timely and appropriate manner (e.g., exchange of deliverables [e.g., documents, property], complete registrations)

Post-Closing Actions

The solicitor:

1. ensures appropriate undertakings, both given and received, are completed (e.g., discharges mortgages)
2. advises all necessary parties of the closing
3. obtains documents to complete the file (e.g., title insurance policies)
4. provides final reports and accounting to clients and third parties
5. conducts a final review of the file prior to making the file inactive

Category 5 Practice and Management Skills

The solicitor uses time and file management systems, technology, proper financial record keeping and accounting systems, conflict of interest systems, knowledge management systems and continuously learns in order to maintain competence and manage all aspects of practice.

Time and Risk Management

The solicitor:

1. employs a tickler system (e.g., for tracking limitation periods, undertakings, post-closing obligations, registration requirements)
2. maintains a calendar (e.g., for appointments)
3. uses a time docketing or recording system
4. identifies and prioritizes tasks

Technological Proficiency

The solicitor:

1. maintains and uses technology to deliver client services effectively (e.g., recognizes the benefits of e-mail, on-line research tools, electronic registration, practice specialty software)
2. manages the risks and information associated with the use of technology (e.g., sending or receiving confidential email messages, attachments and faxes)
3. establishes and secures a reliable network system where appropriate

Financial Management

The solicitor:

1. maintains a system for generating bills at appropriate stages in the proceedings
2. reviews “stale trust balances” on a monthly basis
3. follows up on accounts receivable
4. satisfies financial obligations to third parties on a timely basis
5. demonstrates an understanding of appropriate and ethical collection procedures
6. obtains appropriate insurance coverage (e.g., fire, property, liability, E&O)
7. understands the coverage, exclusions and exceptions under E&O primary policy and excess coverage

File Management

The solicitor:

1. uses systems to store and retrieve key information regarding clients and opposing parties
2. uses systems to open and organize files with reference to the LSUC Practice Management Guidelines
3. closes files with reference to the LSUC Practice Management Guidelines
4. retains files with reference to the LSUC Practice Management Guidelines (e.g., insurance, timelines, secure storage, confidentiality, recoverability, backups as appropriate)
5. destroys files with reference to the LSUC Practice Management Guidelines
6. safeguards and monitors valuable client documents and/or property (e.g., Bylaw 18)
7. maintains systems to list and monitor clients’ property and original documents (e.g., vault for client wills and powers of attorney)
8. establishes the conditions under which valuable client documents and/or property are retained and released
9. uses systems to manage personal information and comply with applicable legal requirements (e.g., as per PIPEDA)
10. documents meetings, conversations and communications contemporaneously
11. ensures staff understands and maintains the file management system
12. establishes a disaster recovery plan (e.g., backup systems)
13. keeps electronic and/or hard copies of correspondence as appropriate (e.g., e-mail, voicemail)

Trust and General Accounting

The solicitor:

1. maintains trust account records in accordance with the Law Society of Upper Canada’s record and bookkeeping requirements including Bylaws 18 & 19

2. maintains general account records in accordance with the Law Society of Upper Canada's record and bookkeeping requirements including Bylaws 18 & 19
3. maintains books of original entry in accordance with the Law Society of Upper Canada's record and bookkeeping requirements including Bylaws 18 & 19
4. maintains trust reconciliation records in accordance with the Law Society of Upper Canada's record and bookkeeping requirements including Bylaws 18 & 19
5. maintains records regarding mortgage transactions in accordance with the Law Society of Upper Canada's record and bookkeeping requirements including Bylaw 18 (e.g., forms 18A & 18B)
6. maintains appropriate accounts for electronic registration in accordance with the Law Society of Upper Canada's record and bookkeeping requirements including Bylaws 18 & 19
7. maintains a valuable property record in accordance with Bylaw 18
8. completes all necessary filings with the LSUC and LawPro

Knowledge Management

The solicitor:

1. maintains and makes discriminate use of precedent material and a retrieval system applicable to practice area where appropriate (e.g., opinions, research memos, contracts, disclosure demands, wills, agreements)
2. demonstrates awareness of, and accesses relevant electronic databases and print material

Continuing Legal Education (CLE)

The solicitor:

1. stays current regarding important developments in own area of practice (e.g., attends seminars, subscribes to professional publications, maintains memberships in professional associations)
2. monitors continuing legal education (CLE) hours completed (e.g., self study, courses taught)
3. seeks and participates in coaching and mentoring

Claims Reporting

The solicitor:

1. promptly reports claims and potential claims to LawPro in accordance with the LSUC Rules of Professional Conduct (Rule 6.09)
2. informs clients of their rights in situations where the Solicitor may have made a reportable error, being careful not to prejudice any rights of indemnity (Rule 6.09)
3. seeks appropriate counsel on issues dealing with potential claims (e.g. practice advisory)

Practice Arrangements

The solicitor:

1. demonstrates an understanding of the strengths and limitations of various practice arrangements (e.g., sole practitioner, partnership, limited liability partnership, professional corporations, multi-disciplinary practices or partnerships, associations, and affiliations)

Skills and Professional Responsibility Program
For New Licensing Process for Admission to the Bar in
Ontario

Taxonomy of Skills and Professional Responsibility
Competencies

Taxonomy of Skills and Professional Responsibility Competencies

The following (DRAFT) is the consolidation of (i) the information collected via focus groups (ii) the information collected via workshops by Performance Assessment Group (iii) taxonomies created for the purposes of skills training in other common law jurisdictions.

A. Legal Research

- i. conducting electronic research
- ii. conducting library/paper-based research
- iii. analyzing results
- iv. sorting cases, legislation and secondary legal materials according to relevance
- v.i identifying leading cases and trends in the law

B. Writing

- i. writing Plain English
- ii. writing for a purpose (letters, memos, presentations, drafting contracts and corporate documents)
- iii. drafting written advocacy (affidavits, pleadings, mediation briefs, case settlement briefs, facta)

C. Client contact

- i. interviewing to understand problem and gather relevant information
- ii. advising the client about decisions that must be made
- iii. establishing a business relationship with your client
- iv. communicating with clients
- v.i identifying the fraudulent client
- vi. managing client expectations
- vii. dealing with troubled or difficult clients

D. Managing a Client File (Dispute Resolution)

- i. investigating and understanding the facts
- ii. developing a theory of the file
- iii. evaluating and revising the theory of the file
- iv. developing a dispute resolution strategy with the client (including making choices)
- v. preparing for the different forms of dispute resolution (stages of the case and options available)
 - a. negotiation
 - b. mediation

- c. case settlement conferences
- d. arbitration
- e. motions
- f. discoveries
- g. pre-trial
- h. trial/hearing
- i. sentencing
- j. appeal

- vi. implementing the dispute resolution strategy
- vii. keeping the entire process open to new ideas and new information

E. Managing a Client File (Transactions and Applications)

- i. investigating and understanding the facts
- ii. developing a theory of the transaction/application
- iii. evaluating and revising the theory of the transaction/application
- iv. with the client, developing a strategy for successfully completing the transaction/application
- v. identifying the appropriate documentation
- vi. completing and filing the appropriate documentation
- vii. identifying the appropriate forum/parties/players
- viii. identifying and determining any third party requirements (eg insurance)
- ix. reaching an agreement OR
- x. preparing for dispute resolution (see (D))
- xi. keeping the entire process open to new ideas and new information

F. Practice Management

- i. time management and priority setting
- ii. docketing
- iii. securing a retainer
- iv. billing and collecting
- v. trust accounting
- vi. using a tickler system
- vii. opening a file
- viii. closing a file
- ix. managing (including recruiting) staff
- x. dealing with insurance and liability issues

G. Ethical Issues

- i. identifying professional ethical dilemmas as and when they arise in practice and dealing with these appropriately, in particular
 - a. identifying and responding appropriately to conflicts of interest
 - b. understanding and respecting the extent and limits of the confidentiality obligation
- ii. knowing the Rules of Professional Conduct
- iii. articulating his or her own ethical framework for making choices that respond to ethical dilemmas
- iv. dealing ethically with members of the profession
- v. dealing ethically with members of the public

H. Professionalism

This section strictly speaking deals with professional values rather than skills.
The competent lawyer, at the outset of her or his career, should:

- i. demonstrate a commitment to civility
- ii. demonstrate a commitment to collegiality
- ii. demonstrate a commitment to public service (including pro bono work)
- iv. deal with staff, colleagues, clients and courts with courtesy and respect
- v. demonstrate a commitment to continuing professional education and development
- vi. demonstrate a commitment to the promotion of justice.

Competency Development Participant Demographics*

Gender	Practice Area	Location	Firm Size	Equity-Seeking Communities
Men = 87 Women = 71	Aboriginal Law = 2 Administrative = 11 Bankruptcy = 3 Business = 18 Civil Litigation = 41 Construction = 1 Criminal = 15 Employment/Labour = 8 Environmental = 2 Family Law = 23 General Practice = 15 Immigration = 2 Intellectual Property = 2 Mediation = 4 Public Law = 6 Real Estate = 20 Securities = 2 Tax = 2 Wills/Estates = 10 Other* = 10 *Includes judiciary, academy, professional development	GTA = 11 Kingston = 2 London = 17 Ottawa = 32 Thunder Bay/ Sudbury/North Bay = 16 Toronto = 64 Windsor = 6 Other* = 10 *Includes, for example: Nepean, Niagara Falls, Owen Sound, Goderich, Port Colborne, Guelph, Stittville	Sole = 27 Small (2 to 5) = 29 Medium (6 to 29) = 29 Large (30 plus) = 39 Non-private practice* = 34 *Includes: judiciary, academy, in-house counsel, legal clinic lawyers, government lawyers	Aboriginal African- Canadian Asian Disability Francophone Sexual Orientation South Asian
158 participants	20 practice areas	6 city centres plus several smaller communities	4 firm sizes plus several non-private practice scenarios	32 participants from equity-seeking communities

* Does not include survey participants

Professional Regulation Committee
June 24, 2004

Report to Convocation

Purposes of Report: Decision

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

OVERVIEW OF POLICY ISSUE

AMENDMENTS TO BY-LAW 34 ON PROFESSIONAL CORPORATIONS

Request to Convocation

1. Convocation is requested to make housekeeping amendments to By-Law 34 on Professional Corporations resulting from the amendments made to rule 3.02 of the Rules of Professional Conduct on law firm names. The motion to amend By-Law 34 appears on page 6.

Summary of the Issue

2. On May 28, 2004, Convocation approved amendments to rule 3.02 of the Rules of Professional Conduct on law firm names. Section 1 of By-Law 34 on Professional Corporations, part of which is based on rule 3.02, describes the permitted forms of the corporate name of a professional corporation. As rule 3.02 has now been amended, the By-Law must be amended to reflect the changes made to rule 3.02.

THE REPORT

Terms of Reference/Committee Process

3. The Committee met on June 15, 2004 by conference call. Committee members in attendance were Laurie Pattillo (Acting Chair), Mary Louise Dickson, Anne Marie Doyle, Sy Eber, Patrick Furlong and Allan Gotlib. Staff attending were Dulce Mitchell and Jim Varro.
4. The Committee is reporting on the following matter:

For Decision

- Amendments to By-Law 34 on Professional Corporations resulting from amendments to rule 3.02 of the Rules of Professional Conduct

AMENDMENTS TO BY-LAW 34 ON PROFESSIONAL CORPORATIONS

A. INTRODUCTION

5. On May 28, 2004, Convocation approved amendments to rule 3.02 of the *Rules of Professional Conduct* on law firm names. The amended rule permits Ontario law firms to use descriptive or trade names and the names of lawyers qualified in non-Canadian jurisdictions.
6. Section 1 of By-Law 34 on Professional Corporations describes the permitted form of a professional corporation's corporate name (see Appendix 1 for a copy of By-Law 34). Currently, section 1, which is

based in part on rule 3.02 on law firm names, reflects the provisions of rule 3.02 as it existed prior to May 28, 2004 (see Appendix 2 for amended rule 3.02).

7. As the By-Law and Rules should be consistent with respect to the relevant firm name provisions, the By-Law requires amendment.

B. NATURE OF THE AMENDMENTS

8. The specific amendments to section 1 of By-Law 34 are included in the motion to amend the By-Law on page 6. In addition to a reorganization of the section, the key amendments relating to the amendments to rule 3.02 are as follows:
 - a. The requirement that the name of a professional corporation must include the name of at least one shareholder who will be practising law through the corporation is deleted. Subsection 1(3) now refers to “shareholders or persons” practicing law in the professional corporation whose names may be included.
 - b. The prohibition on a trade name, commercial name or figure of speech is deleted, and replaced by subsection 1(8) that describes the trade and descriptive names now permitted under rule 3.02.
9. As no new policy issues arise from these proposed amendments, they are effectively “housekeeping” amendments, which Convocation is requested to approve.

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 34 [PROFESSIONAL CORPORATIONS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON JUNE 24, 2004

MOVED BY LAURIE PATTILLO

SECONDED BY CAROLE CURTIS

THAT By-Law 34 [Professional Corporations], made by Convocation on May 24, 2001 and amended by Convocation on September 28, 2001, be further amended as follows:

1. Subsection 1 of By-Law 34 [Professional Corporations] is deleted and the following substituted:

Prohibition: general

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

Prohibition: identical or similar name

- (2) A professional corporation shall not use a name,
 - (a) that is used by another professional corporation; or
 - (b) that so nearly resembles the name used by another professional corporation that is likely to confuse or mislead the public.

Names of shareholders or persons

(3) Subject to subsection (4), the name of a professional corporation may include the name of any person who practises law through the corporation or any shareholder.

Prohibition: shareholder or person holding office as member of tribunal

(4) The name of a professional corporation shall not include the name of any of the following persons who hold office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law:

1. Any person who, prior to taking office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law, practised law through the corporation.

2. Any shareholder.

Deceased shareholder or person

(5) A professional corporation may retain in its name the name of a deceased person who practised law through the corporation or a deceased shareholder.

Use of honorific "Q.C."

(6) If a professional corporation has one shareholder, the one shareholder practises law through the corporation and the name of the corporation is the name of the one shareholder, the corporation may include in its name the honorific "Q.C." properly attributable to the one shareholder of the corporation.

Use of certain phrases

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

Use of trade name, etc.

(8) The name of a professional corporation may include a descriptive or trade name that is in keeping with the dignity, integrity, independence and role of the legal profession in a free and democratic society and in the administration of justice.

Use of past firm name

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

Interpretation: name of shareholder or person

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

Interdiction : dispositions générales

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

Interdiction : dénomination sociale identique ou semblable

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

a) est utilisée par une autre société professionnelle;

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

Nom des actionnaires ou de personnes

(3) Sous réserve du paragraphe (4), la dénomination sociale d'une société professionnelle peut comprendre le nom de toute personne qui exerce le droit par l'intermédiaire de la société professionnelle ou le nom de n'importe lequel ou laquelle des actionnaires.

Interdiction : actionnaire ou personne qui occupe la charge de membre d'un tribunal administratif

(4) La dénomination sociale d'une société professionnelle ne doit pas comprendre le nom de n'importe laquelle des personnes suivantes qui occupent la charge de membre d'un tribunal administratif ou toute autre charge incompatible avec l'exercice du droit :

1. toute personne qui, avant d'occuper la charge de membre d'un tribunal administratif ou toute autre charge incompatible avec l'exercice du droit, a exercé le droit par l'intermédiaire de la société professionnelle.
2. tout actionnaire.

Actionnaire défunt ou personne décédée

(5) La société professionnelle peut conserver dans sa dénomination sociale le nom d'une personne décédée qui exerçait le droit par l'intermédiaire de la société professionnelle ou le nom d'un ou d'une actionnaire défunt.

Utilisation du titre honorifique « c.r. »

(6) Si une société professionnelle a un seul ou une seule actionnaire, si celui-ci ou celle-ci exerce le droit par l'intermédiaire de la société professionnelle et si son nom est le même que celui de la société, la société peut inclure, dans sa dénomination sociale, le titre honorifique « c.r. » dont est dûment titulaire cette personne.

Utilisation de certaines expressions

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

Utilisation d'un nom commercial, etc.

(8) La dénomination sociale d'une société professionnelle peut comprendre un nom descriptif ou commercial qui respecte la dignité, l'intégrité, l'indépendance et le rôle de la profession juridique dans une société libre et démocratique et l'administration de la justice.

Utilisation de l'ancienne raison sociale

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

Interprétation : nom d'un actionnaire ou d'une personne

(10) Pour l'application du présent article, le nom d'une personne qui exerce le droit par l'intermédiaire d'une société professionnelle ou le nom d'un ou d'une actionnaire s'entend du nom de cette personne ou actionnaire et, au choix de la personne ou de l'actionnaire, de son prénom ou de ses initiales.

APPENDIX 1

BY-LAW 34

Made: May 24, 2001

Amended: September 28, 2001

PROFESSIONAL CORPORATIONS

CORPORATE NAME

Names of shareholders

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

Deceased shareholder

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

Use of certain phrases

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

Use of honorific “Q.C.”

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

Prohibition: trade name, etc.

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

Prohibition: shareholder

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

Prohibition: general

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

Prohibition: identical or similar name

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

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

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

Use of past firm name

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

Interpretation: name of shareholder

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

Corporate name certificate

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

Decision of Society official

- (2) A Society official shall consider every application made under subsection (1) and shall,
- (a) if the official is satisfied that the proposed name complies with section 1, issue a certificate to the member; or
 - (b) if the official is not satisfied that the proposed name complies with section 1, reject the application.

Notice to member and application for review

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

CERTIFICATE OF AUTHORIZATION

Application for certificate

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

Same

- (2) An application under subsection (1) shall include,
- (a) a completed application form provided by the Society;
 - (b) a copy of,
 - (i) the corporation's articles of incorporation and the certificate of incorporation, the corporation's articles of amalgamation and the certificate of amalgamation or the corporation's articles of continuance and the certificate of continuance, as the case may be, and
 - (ii) the corporation's articles of amendment, if any, and the certificate of amendment; and
 - (c) an application fee in an amount determined by Convocation from time to time.

Consideration by Society official

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

Issuance of certificate

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

order made under section 35 or section 40 or other persons who are authorized to practise law under the Law Society Act and the by-laws made thereunder.

Refusal to issue certificate

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

Same

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

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

Notice and appeal

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

Same

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

Duration of certificate

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

Renewal

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

Application

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

Consideration by Society official

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

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

Refusal to renew

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

Notice and appeal

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

Duration of renewal

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

Expiry of certificate

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

Time for applying for renewal

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

Revocation of certificate

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

Renewal of revoked permit

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

Erroneous or incomplete certificate of authorization

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

Replacement certificate

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

No interruption in holding of certificate

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

Duration of replacement certificate

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

Correction, etc. following report of change

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

Loss or destruction of certificate

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

Society official may issue replacement certificate

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

Replacement certificate

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

Duration of replacement certificate

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

Form 34A

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

Surrender of certificate

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

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

Same

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

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

Same

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

Publication of notice of intention to surrender certificate

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

Exemption from requirement to publish notice

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

Notice of intention to surrender certificate

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

Proof of publication of notice of intention to surrender certificate

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

Society official to consider application

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

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

Acceptance of application

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

Society official not to consider application

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

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

Documents, explanations

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

Rejection of application

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

CHANGE OF INFORMATION

Change of information

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

Information required

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

COMMITTEE OF BENCHERS: REVIEWS AND APPEALS

Committee of benchers

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

Term of office

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

Consideration of review or appeal: quorum

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

Time for making application for review

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

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

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

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

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

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

Extension of time for commencing appeal

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

When notice given

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

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

Procedure: review and appeal

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

Same

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

Powers on review

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

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

Powers on appeal: appeal under subs. 4 (3)

(2) After considering an appeal made under subsection 4 (3), the committee of benchers appointed under section 11 shall,

- (a) if it determines that the requirement has been met, direct a Society official to issue a certificate of authorization to the corporation; or
- (b) if it determines that the requirement has not been met, notify the corporation that the requirement has not been met and that the Society shall not issue a certificate of authorization to the corporation.

Powers on appeal: appeal under subss 4 (5), (6)

(3) After considering an appeal made under subsection 4 (5) or (6), the committee of benchers appointed under section 11 shall make such decision as it considers proper in the circumstances.

Powers on appeal: appeal under subs. 5 (6)

(4) After considering an appeal made under subsection 5 (6), the committee of benchers appointed under section 11 shall,

- (a) direct a Society official to renew the professional corporation's certificate of authorization if it is satisfied that,
 - (i) the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2), and
 - (ii) despite the fact that the situation mentioned in subsection (5) is present, it is appropriate to renew the corporation's certificate of authorization; or
- (d) refuse to renew the professional corporation's certificate of authorization if,
 - (i) it is not satisfied that the corporation continues to meet the requirements for the issuance of a certificate of authorization mentioned in subsection 4 (2); or
 - (ii) it determines that it is inappropriate to renew the corporation's certificate of authorization because the situation mentioned in subsection (5) is present.

Decisions final

- (5) The decisions of the committee of benchers appointed under section 11 are final.

GENERAL

Register

15. The following information shall be contained in the register of professional corporations required under section 61.0.2 of the Act:

1. The name of the professional corporation.
2. The address of the professional corporation's registered office.
3. The business address of the professional corporation, if different from the address of its registered office.
4. The number of the certificate of authorization issued to the professional corporation.
5. The date on which the certificate of authorization was issued to the professional corporation.
6. The terms, conditions, limitations or restrictions that apply to the professional corporation's certificate of authorization.

7. The date on which the professional corporation's certificate of authorization was suspended, made subject to a term, condition, limitation or restriction, revoked or surrendered.

Application of by-laws

16. (1) The following by-laws, with necessary modifications, apply to a professional corporation:

1. By-Law 17 [Filing Requirements].
2. By-Law 18 [Record Keeping Requirements].
3. By-Law 19 [Handling of Money and Other Property].
4. By-Law 25 [Multi-Discipline Practices].
5. By-Law 29 [Payment of Costs].
6. By-Law 35 [Bankruptcy of Member].

No voluntary winding up or dissolution

17. The shareholders of a professional corporation shall not require the corporation to be wound up voluntarily and shall not authorize the voluntary dissolution of the corporation until the corporation has received permission under section 9 to surrender its certificate of authorization.

Interpretation: "Society official"

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

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

19. An officer or employee of the Society who holds the office of Director, Client Service Centre may exercise the powers and perform the duties of the Secretary under subsection 61.0.2 (1) and section 61.0.3 of the Act.

APPENDIX 2

LAW SOCIETY OF UPPER CANADA RULES OF PROFESSIONAL CONDUCT

3.02 LAW FIRM NAME

Permissible Names

- 3.02 (1) A law firm name shall not include any name that is not
 - (a) a name of a current, a retired from practice, or a deceased member of the firm who is or was qualified to practice law
 - (i) in Ontario or in any other province or territory of Canada where the law firm carries on its practice, or
 - (ii) in a jurisdiction outside of Canada where the law firm carries on its practice, or
 - (b) a descriptive or trade name that is in keeping with the dignity, integrity, independence, and role of the legal profession in a free and democratic society and in the administration of justice.
- (2) A lawyer who purchases a practice may, for a reasonable length of time, use the words "Successor to _____" in small print under the lawyer's own name.

Restrictions

- (3) A law firm name shall not include a descriptive or trade name that is misleading about

- (a) the identities, responsibilities, or relationships of the lawyers practicing under the firm name, or
- (b) the association or relationship of the law firm with other lawyers or non-lawyers.

(4) The name of a law firm shall not include the use of phrases such as “John Doe and Associates,” “John Doe and Company,” or “John Doe and Partners” unless there are in fact, respectively, two or more other lawyers associated with John Doe in practice or two or more partners of John Doe in the firm.

(5) When a lawyer retires from a law firm to take up an appointment as a judge or master or to fill any office incompatible with the practice of law, the lawyer's name shall not be included in the firm name.

(6) A lawyer or law firm may not acquire and use a firm name unless the name was acquired along with the practice of a deceased or retiring member who conducted a practice under the name.

Limited Liability Partnership

(7) If a law firm practices as a limited liability partnership, the phrases “limited liability partnership” “société à responsabilité limitée” or the letters “LLP,” “L.L.P.” or “s.r.l.” shall be included as the last words or letters in the firm name.

Professional Corporation

(8) If a lawyer practices law through a professional corporation, the name of the corporation shall include the words “Professional Corporation” or “Société professionnelle”.

CONVOCATION ROSE AT 1:30 P.M.

Confirmed in Convocation this 23rd day of September, 2004

Treasurer