MINUTES OF CONVOCATION

Thursday, 21st February, 2008
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Anand, Backhouse, Banack (by telephone), Campion, (by telephone), Caskey, Chahbar (by telephone), Conway, Crowe, Dickson, Dray, Elliott, Epstein, Feinstein, Finlayson, Furlong, Go, Gottlieb, Halajian, Hare (by telephone), Hartman, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Legge, Lewis, McGrath, Millar, Minor, Murray, Pawlitza, Porter, Potter, Pustina (by telephone), Rabinovitch, Robins, Ross (by telephone), Ruby, St. Lewis, Sikand, Silverstein, C. Strosberg, Swaye, Tough, Warkentin and Wright.

…….

Secretary: Katherine Corrick

The Reporter was sworn.

…….

IN PUBLIC

…….

TREASURER'S REMARKS

The Treasurer congratulated Kim Carpenter-Gunn on her appointment to the Superior Court of Justice for Central South Region. Mr. Jack Braithwaite of Sudbury will replace Justice Carpenter-Gunn at Convocation in March.

The Treasurer announced the appointment of Kathleen Waters as LAWPRO's new President and Chief Executive Officer effective March 31, 2008. Ms. Waters fills the vacancy created by the resignation of Michelle Strom. Mr. Ian Croft has been confirmed by the Board as Acting Chair pending the annual meeting on April 23, 2008.

The Treasurer congratulated David Thompson of London and Bruce Hutchinson of Toronto who were elected on February 12th as the Chair and Vice-Chair respectively of the Board of LibraryCo.

The Treasurer expressed condolences to the families of Donald J. Mills, Q.C. who passed away on January 22, 2008 and Charles Seagram, Q.C. who passed away on January 29, 2008.

The Treasurer and benchers congratulated Joanne St. Lewis on receiving the Dreamkeeper Life Achievement Award on January 21, 2008. The award is presented by the

Canadian Martin Luther King Day Coalition to honour an individual who has demonstrated and exemplified the exceptional values that motivated Rev. Dr. Martin Luther King Jr.

The Treasurer reported on his activities since January Convocation.

DRAFT MINUTES OF CONVOCATION

The draft Minutes of Convocation of January 23 and 24, 2008 were confirmed.

MOTION – APPOINTMENTS

It was moved by Mr. Caskey, seconded by Ms. Go, –

THAT Heather Ross, who has resigned as Vice-Chair and member of the Professional Regulation Committee, be appointed to the Professional Development & Competence and Government Relations & Public Affairs Committees.

THAT Doug Lewis be appointed to the Small Firm and Sole Practitioner Working Group.

THAT Christopher Bredt be appointed to the Professional Regulation Committee.

THAT Bonnie Warkentin be appointed to the Priority Planning Committee.

THAT Roy McMurtry be appointed to the Law Society Medal/Lincoln Alexander/Laura Legge Award Committee to replace Susan Elliott, who has resigned.

THAT Christopher Bredt be appointed as the Law Society's representative on the Law Commission of Ontario for the remainder of the term ending November 23, 2009, to replace Neil Finkelstein, who has resigned.

THAT Susan Hare and Paul Henderson be appointed to the Equity and Aboriginal Issues Committee.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, February 21, 2008.

ALL OF WHICH is respectfully submitted

DATED this 21st day of February, 2008

CANDIDATES FOR CALL TO THE BAR

February 21st, 2008

Colin Roger Douglas Graham
Sarita Riad Keirouz
Mimi Marie Rose Lepage
Sabrina Gina Montefiore
Saurabh Nagpal

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

Carried

EQUITY & ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'EQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

Ms. Minor introduced the Report of the Retention of Women in Private Practice Working Group followed by presentations by Ms. Pawlitza and Ms. Warkentin on the Working Group's Consultation Paper.

Report to Convocation
February 21, 2008

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

Committee Members
Janet Minor, Chair

Raj Anand, Vice-Chair
Paul Copeland
Mary Louise Dickson
Avvy Go
Doug Lewis
Judith Potter
Robert Topp

Purposes of Report: Decision and Information

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

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Appointment of Equity Advisory Group members

Equity Public Education Series Calendar 2008

COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on February 7, 2008. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson and Judith Potter attended. Bencher Susan Hare also attended. Cynthia Petersen, Discrimination and Harassment Counsel attended to present her semi-annual report. Milé Komlen, Chair of the Equity Advisory Group (the "EAG"), Ritu Bhasin, Vice-Chair of the EAG, and members of the EAG Kelly Burke, Joseph Cheng and Chantal Morton also attended. Staff members Josée Bouchard and Marisha Roman attended.

FOR DECISION

REPORT OF THE RETENTION OF WOMEN IN PRIVATE PRACTICE WORKING GROUP

MOTION

38. That Convocation approves the dissemination of the *Consultation Report of the Retention of Women in Private Practice Working Group*, presented under separate cover, to the profession, law firms, law schools and legal organizations for the purpose of receiving comments about the proposed recommendations, including with respect to their involvement in the implementation of the proposed recommendations.

39. That the Retention of Women in Private Practice Working Group present a report to Convocation at the earliest possible date following the consultation.

BACKGROUND

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

41. As a result, the Law Society created the Retention of Women Working Group with a mandate to,

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

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

43. The Law Society retained the services of the Gandalf Group to conduct the consultation with women lawyers and managing partners of law firms. The Gandalf Group presented its report to the Law Society in February 2007, which included an overview of the needs of women in private practice and proposed best practices for the legal profession.

44. The Retention of Women Working Group also created an Expert Advisory Group (the "Expert Advisory Group") of women from large, medium and small law firms and from

sole practices across the province to provide advice in developing its recommendations. The Expert Advisory Group is composed of a representative group of women lawyers, including representation based on firm size, membership in Aboriginal, Francophone and/or equality-seeking communities, region, area of practice, age and experience in the legal profession. The Expert Advisory Group provided invaluable advice in developing the recommendations.

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

46. The Expert Advisory Group and the Working Group met throughout 2006 and 2007 to develop recommendations based on extensive consultations undertaken with women lawyers across the province and managing partners from large and medium size firms. The recommendations, presented in the *Consultation Report of the Retention of Women in Private Practice Working Group*, are designed to address the needs identified during the consultation process, and to reflect best practices that have been shown to effectively assist women in their advancement in private practice.

47. It is clear that the effective implementation of the recommendations will necessitate the collaboration of law firms, legal organizations, law schools and the legal profession. Therefore, the Working Group proposes to conduct a consultation with the legal profession to receive comments and advice on the recommendations. The objective of the consultation is to present a fully informed report to Convocation and to begin to collaborate with the interested parties that will be involved with the Law Society in the implementation of the recommendations.

THE CONSULTATION PROCESS

48. As set out in the Report of the Retention of Women in Private Practice Working Group, the recommendations are divided into the following five categories:
    a. recommendations for large (100 lawyers or more) and medium (between 5 and 100 lawyers) firms;
    b. recommendations for small firms (5 lawyers or fewer) and sole practices;
    c. recommendations to work with law schools;
    d. recommendations to create opportunities for women from Aboriginal, Francophone and/or equality-seeking communities;
    e. assessment of effectiveness of programs and identification of further strategies.

49. To effectively implement the recommendations, the Law Society will have to collaborate and work with the following interested parties:
    a. large and medium firms throughout the province;
    b. legal associations and organizations throughout the province;
    c. Ontario law schools.

50. Because this project will have an impact on the legal profession as a whole, the Law Society is also interested in the views of the legal profession.

51. The two first recommendations focus on working with large and medium size firms. In addition to inviting managing partners and their colleagues to provide written

submissions to the Law Society, the Working Group proposes to organize consultation meetings with some managing partners that fall within the following categories:

a. managing partners from firms of 25 lawyers or more;
b. managing partners from the largest firms in regions outside of Toronto.[1]

52. A number of Working Group recommendations will require the close collaboration of legal organizations and of Ontario law schools. Therefore, the Working Group will consult with interested parties, including parties in regions, such as,

a. Ontario law schools;
b. the Ontario Bar Association;
c. the County and District Law Presidents' Association;
d. other legal organizations such as the Advocates' Society;
e. legal organizations that represent the interests of lawyers from Francophone, Aboriginal and equality seeking communities, such as the Law Society's Equity Advisory Group, which is composed of representatives from the Canadian Black Lawyers Association, the Association des juristes d'expression française de l'Ontario, the South Asian Bar Association and the ARCH Disability Law Centre, among others.

53. The Working Group is also interested in receiving feedback from the legal profession as a whole. Therefore, the Working Group will place notices in the Ontario Reports and on its website to seek written input from the profession.

54. The Working Group will consider all the comments received and present a report to Convocation at the earliest possible date following the consultation.

55. The Working Group is hopeful that the profession will take an interest in these important issues and participate in the consultation. In particular, we hope that interested parties will provide feedback about the proposed recommendations.

BUDGET IMPLICATIONS

56. In 2008, $70,000 is allocated to the Retention of Women in Private Practice project and will cover the costs of the consultation, which is expected to be less than $25,000.

FOR INFORMATION
REPORT OF THE ACTIVITIES OF THE DISCRIMINATION AND HARASSMENT COUNSEL

JULY 1, 2007 – DECEMBER 31, 2007 AND SUMMARY OF DATA SINCE JANUARY 1, 2003

57. Subsection 20 (1)(a) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Equity and Aboriginal Issues Committee/Comité

[1] The regions are Northwest, Northeast, East, Central East, Central West, Central South, Southwest.

sur l'équité et les affaires autochtones (the "Committee") directs otherwise, the Discrimination and Harassment Counsel (the "DHC") shall make a report to the Committee not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year.

58. Subsection 20(2) of By-Law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".

59. The DHC Program presents to the Committee, pursuant to Subsection 20(1)(a) of By-Law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period July 1, 2007 to December 31, 2007 (Appendix 5). The report also provides a summary of data since January 1, 2003.

APPOINTMENT OF EQUITY ADVISORY GROUP MEMBERS

60. On February 7, 2008, the Equity and Aboriginal Issues Committee considered the process followed by the Equity Advisory Group/Groupe consultatif en matière d'équité ("EAG"), presented below, to recruit and recommend new members to EAG. It also approved the appointment of the organizations and individuals mentioned below to the EAG.

61. The Terms of Reference for the Equity Advisory Group (EAG) provide that EAG shall make recommendations for appointment as follows:
    a. between 8 and 12 members shall be recommended for appointment at its first meeting (in January 2005); and
    b. between 8 and 12 members shall be recommended for appointment every 18 months thereafter.

62. The membership of EAG consists of organizations and members of the legal profession, including law students. The term of membership is three years. Individual members serve for a maximum of two consecutive terms.

63. In November 2007, pursuant to its Terms of Reference, EAG began an appointment process for appointment of between 8 and 12 members. the notice to the profession regarding the recruitment of new members for the Equity Advisory Group was published in the Ontario Reports in French and English and appeared on November 16, 2007. The submission deadline for applications was Friday, December 7, 2007. Notices were also emailed out through the Equity Initiatives Department's equity contact database and through individual EAG members. As well, the recruitment notice was published on the Law Society website.

64. EAG received applications from 8 organizations and 20 individuals.

65. Pursuant to its Terms of Reference, EAG appointed a selection committee comprised of two members of EAG, Amandi Esonwanne and Ritu Bhasin, and one member of the legal profession, Stefanie Marinich, Employment Equity Advisor for Ryerson University, who is not a member of the EAG.

66. The Selection Committee met on January 7, 2008. The members selected the proposed new organizational members and created a short-list of 5 individual members to be

considered for the three remaining individual seats on EAG. The candidates were interviewed by at least two of the selection committee members and staff.

67. Based on criteria established by the EAG, the selection committee recommended the appointment of the following organizations and individuals. On January 30, 2008, the EAG approved the recommendation and on February 7, 2008, the Equity and Aboriginal Issues Committee appointed the following organizations and individual members:

a. Organizational Members

The Advocates' Society (reappointment)
Representative: Alan D'Silva
The Advocates' Society is a province-wide professional organization that represents 3,700 members who practice in the area of advocacy before courts or tribunals. The Society's mandate includes the advancement of advocacy education and training, legal reform and matters affecting the administration of justice.

Association des juristes d'expressions francaise de l'Ontario (AJEFO) (reappointment)
Representative: Danielle Manton
AJEFO is a non-profit organization with a mandate to promote French language rights within the justice system, to ensure equality between the two official languages before all tribunals in Ontario, and to protect the rights of Francophones within the justice system in Ontario.

Canadian Association of Black Lawyers (CABL) (reappointment)
Representative: Frank Walwyn
CABL works to remove systemic barriers within the legal profession and to promote the advancement of black lawyers within the profession through the creation of support systems for law students and young lawyers, the provision of positive role models and through cultivating and fostering diversity within the profession with an emphasis on mentoring.

Nishnawbe-Aski Legal Services Corp (reappointment)
Representative: Evelyn Baxter
Nishnawbe-Aski Legal Services Corp. is a not-for-profit organization mandated to assist members of the Nishnawbe-Aski First Nations (constituting 49 First Nations communities) in addressing legal and justice issues through various programs, including Legal Aid Ontario, Restorative Justice, Talking Together, Community Legal Workers and Victims Witness Advocacy.

South Asian Bar Association
Representative: Ron Choudhury
SABA represents the interests of those members of the legal community who identify themselves as individuals of South Asian origin or who advocate on legal issues affecting the South Asian community in the Greater Toronto Area. SABA is also a member of the North American South Asian Bar Association of which there are 22 chapters of lawyers across North America.

Women's Law Association of Ontario (reappointment)
Representative: Sheryl Beckford

WLAO was established by women lawyers to assist women lawyers in the practice of law. Its mandate is to advance the interest of women in the legal profession and society through advocacy, professional achievements, success in practice, progressive law reform and equitable policies. WLAO provides mentoring and support to women lawyers and law students, activities for networking and continuing legal education and other training.

b. Individual Members

Laurie Joe
Laurie has been a staff lawyer with West End Legal Services of Ottawa since 1994. She is bilingual and provides legal services in the areas of immigration and refugee protection, disability benefits, tenant protection, creditor-debtor and other areas as well as teaching immigration and refugee protection law at the University of Ottawa in the common and civil law sections part-time. Laurie was called in 1987.

Kirsti McHenry
Kirsti was called in 2004 and has worked as a staff lawyer with Legal Aid Ontario since 2006 after earning her Masters of Law at the University of Michigan. Her areas of study and research have focused on equality and human rights. She has taught as a sessional instructor at Queen's University on domestic human rights and at Humber College in its paralegal program. She is also the French language designate for her department at LAO.

Sandra Nishikawa
Sandra joined the Department of Justice as Counsel in its Business Law Section in 2003 after working for 4 years as an associate at a large law firm in New York. Throughout her career, Sandra has worked to create environments that are welcoming to people of colour, including advocating to create a Diversity Committee at the New York law firm, co-chairing the Advisory Committee on Visible Minorities at the Department of Justice and working as part of the organizing committee for the newly-formed Federation of Asian Canadian Lawyers. Sandra was called in Ontario in 1999.

EQUITY PUBLIC EDUCATION SERIES CALENDAR 2008

Access Awareness - *The International Convention on the Rights of Persons with Disabilities and its Implications in Litigation*

In partnership with ARCH Disability Law Centre
Date: March 3, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

International Women's Day - *Canadian and International Laws and Policies on Abortion and their Impact on Women's Rights*
In partnership with the Women's Law Association of Ontario, the Feminist Legal Analysis Section of the OBA and the Barbra Schlifer Clinic
Date: March 5, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

International Day for the Elimination of Racial Discrimination - *Routes to Freedom: Reflections on the Bicentenary of the Abolition of the Slave Trade*
Date: March 14 to 16, 2008
Location: University of Ottawa, Faculty of Law, 57 Louise Pasteur.
On March 14, from 6:30 to 8:30 p.m., the Law Society will host, in partnership with the Canadian Association of Black Lawyers and the Black Law Students Association of Canada, the law reception. The Reception will be held at the Ottawa Court House.

The Faculty of Law at the University of Ottawa will host a conference on the abolition of the slave trade from March 14-16, 2008. This outstanding conference will feature academics, historians, political economists, writers, artists, students, and community members who have researched the historic realities of the transatlantic slave trade and heightened the awareness of the complexities of current conditions for the descendants of that pivotal historic moment. "Routes to Freedom: Reflections on the Bicentenary of the Abolition of the Slave Trade" will feature a multi-disciplinary symposium, a youth forum, a mini film festival, an art exhibit, and a gala dinner where a scholarship and a fellowship will be announced. This conference will speak to the historic realities of the transatlantic slave trade, celebrate the accomplishments of African peoples, and heighten awareness of the complexities of current conditions for the descendants of that pivotal historic moment. This conference is being organized by Professor Joanne St. Lewis from the University of Ottawa's Common Law Section, who recently received the Dream Keepers' Life Achievement award from the Canadian Martin Luther King Coalition.

A Mini Film Festival featuring several short- and full-length films will precede the conference and will be held from March 1-2, 2008 at the Jock Turcot University Centre at the University of Ottawa. *A Winter Tale, Strange Fruit, Amazing Grace,* and *Return to Gorée Island* are among the documentaries being shown. Admission is $2.

A multi-disciplinary, two-and-a-half-day symposium will feature legal academics, historians, political economists, and writers from Canada, the United States, African, Europe, and Asia. Panel discussions will include the historic realities of the transatlantic slave trade, contemporary forms of resistance, women and slave resistance, culture and identity, as well as functional amnesia. Celebrated author Lawrence Hill will read an extract from his best-selling book, *The Book of Negroes,* on Saturday, March 15, 2008.

The Youth Forum featuring 60 Ottawa-area youth from ages 14 to 18 will take place on March 14. They will share their views on the slave trade and its consequences in both Ontario and Canada. They will watch a film about slavery, become jurors in a mock slave trial, learn about laws affecting child labour, and they will also discuss what can be done on a community level to help children in other countries. Professor St. Lewis will develop a teaching guide for high school teachers based upon the conference materials.

An Art Exhibit, will be held from March 7-22 at the Cube Gallery in Ottawa, situated at 7 Hamilton Avenue North. Ten contemporary African-Canadian artists will be featured in the exhibit whose Honorary Patron is the Honourable Roy McMurtry, former Chief Justice of Ontario.

A Gala, presided over by a well-known human rights activist, will be held on Saturday, March 15 at the Fairmont Château Laurier. A scholarship for an LL.B. student and a fellowship for a Doctoral student from Africa will be announced at the Gala dinner.

For more information, please visit the conference's website at www.abolition1807-2007.uOttawa.ca.

For any other information, please contact:
Amanda Leslie
Communications Officer, Faculty of Law
University of Ottawa
aleslie@uottawa.ca
tel: 613-562-5800 x. 2832

National Holocaust Memorial Day
In partnership with B'nai Brith Canada
Date: April 30, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

South Asian Heritage Month
In partnership with the South Asian Legal Clinic of Ontario
Date: May 12, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

National Aboriginal Day
Date: June 16, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

Pride Week
In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association
Date: June 24, 2008
Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

Louis Riel Day
Date: TBD
Time: Workshop from 4 to 6 p.m., Donald Lamont Learning Centre
Reception: 6 p.m., Convocation Hall

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

Copy of the Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada for the period July 1, 2007 to December 31, 2007.
(Appendix 5, pages 33 – 71)

It was moved by Ms. Pawlitza, seconded by Ms. Warkentin, that Convocation approves the dissemination of the *Consultation Report of the Retention of Women in Private Practice Working Group*, to the profession, law firms, law schools and legal organizations for the purpose of receiving comments about the proposed recommendations, including with respect to their involvement in the implementation of the proposed recommendations.

That the Retention of Women in Private Practice Working Group present a report to Convocation at the earliest possible date following the consultation.

Carried

Copies of the detailed Consultation Plan (2008) were distributed to the benchers.

Items for Information

- Report of the Activities of the Discrimination and Harassment Counsel
- Equity Advisory Group Appointments
- Public Events

FINANCE COMMITTEE REPORT

Mr. Millar presented the Finance Report.

Report to Convocation
February 21, 2008

Finance Committee

Committee Members
Derry Millar, Chair
Brad Wright, Vice-Chair
Melanie Aitken
Jack Ground
Susan Hare
Carol Hartman
Janet Minor
Jack Rabinovitch
Paul Schabas
Gerald Swaye

Purposes of Report: Decision

Prepared by Wendy Tysall,
Chief Financial Officer – 416-947-3322

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on February 7, 2008. Committee members in attendance were: Derry Millar(c.), Brad Wright (vc.), Jack Ground, Susan Hare, Carol Hartman and Janet Minor. Laurie Pawlitza, Bonnie Warkentin and Paul Dray also attended

2. Staff in attendance were Malcolm Heins, Wendy Tysall, Josee Bouchard, Fred Grady and Andrew Cawse.

FOR DECISION

PARALEGAL 2008 BUDGET

Motion

1. The Finance Committee recommends Convocation approve the draft paralegal 2008 budget which results in an annual levy of $700.

2. This draft paralegal 2008 budget was approved by the Paralegal Standing Committee at their meeting in January.

3. Convocation approved the 2008 Budget for the Law Society's General and Compensation Funds in October 2007. With the addition of paralegal regulation to the Law Society mandate, an annual operating budget for that purpose has been developed.

4. A table showing the proposed budget is attached as Appendix 1. The first page of the Appendix shows the overall summary, while the second page shows the numbers in more detail.

5. The proposed budget would require an annual fee of $700 per paralegal licensee, including the $75 capital levy applied to all licensees.

6. This annual fee would be in addition to the annual Compensation Fund levy. In a separate section of this report is a motion to approve a Compensation Fund levy for

paralegals of $145, resulting in a total levy of $845. The issue of a county law library levy is still to be finalised.

7. The paralegal operating budget for 2008 has been prepared assuming 2,100 licensed paralegals and 150 transitional student applications for the paralegal licensing process. Application fees and examination fees are assumed to be the same as those charged to grandparent applicants.

8. October 31, 2007, was the deadline for the Law Society to receive applications from experienced paralegals and graduates of post-secondary legal courses to write the licensing examination. Approximately 2,200 applications were received by the deadline. Approximately 1,900 applicants took the licensing examination on January 17, 2008. Applicants who failed the January exam may rewrite on February 27.

9. As of November 1, 2007, new, potential paralegal applicants are not able to provide legal services, but are eligible to apply to become licensed as a paralegal if they have graduated within three years prior to the application - or will be graduating from an approved legal services education program. To be eligible to write the exams in August 2008 for the 2008/09 licensing period, new applications must have reached the Law Society by January 14, 2008. Approximately 212 applicants had paid their fee by the deadline.

10. In the budget materials before Convocation, an amount of $505,000 has been allocated to the paralegal fund. This allocation, approved by Convocation in October 2007 as part of the 2008 Operating Budget for the Law Society's General Fund, is used for all the Law Society's programs, to ensure adequate provision of administrative overhead.

11. The Law Foundation of Ontario has approved the Law Society's request for funding to assist with the paralegal licensing process, in the amount of $300,600 for the 2008 year. This grant will help fund the ongoing costs of the regular licensing process for graduates of paralegal college programs. It is anticipated that the Society will continue to seek the financial assistance of the LFO in future years in support of the paralegal licensing process.

12. The draft budget includes the direct cost of regulatory activities and the operation, maintenance and delivery of the paralegal licensing exam. Also included is a contingency of $175,000 to allow for unanticipated costs that may arise during the year, or for any potential shortfall in projected fee revenue.

13. Since the first group of paralegal licensees will receive their licences partway through 2008, they will not be billed for the whole annual fee. By-law 5 provides that fees are to be pro-rated according to the number of whole months left in the year after the month in which the licence is received. This means, for example, that paralegals receiving their licences in March 2008 would pay a 2008 fee of $525.

14. The annual operating budget is distinct from the paralegal start-up budget approved in February 2007. Spending to date against the start-up budget is less than budgeted. However, until all the work associated with start-up is complete, particularly the licensing hearings, it is too early to project a final budgetary surplus/deficit position for the start-up budget. If the $500,000 provision included in regulatory expenses in the start-up budget is sufficient to cover the costs of licensing hearings, the start-up budget process could

end in a small surplus position of approximately $300,000. The extension of the start-up budget at Tab B was approved by the Committee in January and is now before Convocation for approval.

FOR DECISION

EXTENSION OF PARALEGAL START-UP BUDGET

Motion

15. The Committee recommends Convocation approve the extension of the paralegal start-up budget to the end of 2008.

16. This matter has also been approved by the Paralegal Standing Committee.

Background

17. The start-up budget for paralegal regulation approved in February 2007 estimated total costs at just over $3.4 million and projected implementation to be completed by the spring of 2008. The approved budget is shown in the first three columns of the chart at Appendix 8.

18. The assumptions used in preparing the start-up budget were an estimated 1,200 grandparent and transitional applicants with 1,000 of these being approved to write the licensing examination. These assumptions generated estimated revenues of $1.9 million from application and examination fees, leaving a projected deficit of approximately $1.5 million. It was assumed that this deficit would be recovered from paralegal licensees over a number of years.

19. In fact, when the grandparent 'window' closed on October 31, 2007, close to 2,200 individuals had applied, and it is now estimated that about 2,100 of these will be approved to take the paralegal licensing examination. This positive level of response has affected the process in two significant ways,

- First, with the vast majority of applications being submitted in the last two weeks of October, processing has taken longer than expected, causing a projected delay in completing the expected licensing hearings. This will mean the start-up process, and its associated costs, will continue beyond the March 31, 2008 completion date assumed in the approved start-up budget.

- Second, revenues generated by the 2,200 applicants should exceed the $3.4 million in budgeted expenses and eliminate the forecast deficit.

Licensing Hearings

20. With the high volume of applications, it is anticipated that licensing hearings will not be completed until well into 2008. It would therefore be appropriate to extend the projected use of the start-up budget until at least the end of September 2008, depending on the number and complexity of the hearings. This approach is recommended over the alternative of blending start-up costs with annual operations, as it will be important to be

able to distinguish development costs from the expected annual cost of paralegal licensing and regulation.

21. Spending to date against the start-up budget is less than budgeted. However, until all the work associated with start-up is complete, particularly the licensing hearings, it is too early to project a final budgetary surplus/deficit position for the start-up budget. If the $500,000 provision included in regulatory expenses in the start-up budget is sufficient to cover the costs of licensing hearings, the start-up budget process could end in a small surplus position of approximately $300,000.

FOR DECISION

PARALEGAL COMPENSATION FUND 2008 LEVY

Motion

22. The Finance Committee recommends Convocation approve a Paralegal Compensation Fund levy of $145 for 2008.

23. The Paralegal Standing Committee and the Compensation Fund Committee have also reviewed the materials and approve the levy of $145.

24. The options underlying the Compensation Fund levy are set out in Appendix 6 (attached). The Committee is recommending Option 1 (per claimant limit of $10,000) and 75 practice audits a year resulting in an annual levy of $145 per paralegal comprising:

Provision for claims	$50	
Allocation of regulatory costs	$18	
Practice Audits @ $2,100 each	$75	
TOTAL	$143	- Rounded to $145

25. Option 1, the per claimant limit of $10,000, is recommended as a reasonable initial amount, since it reflects the current jurisdiction of the Small Claims Court and the fact that most paralegals will not have large trust accounts.

26. 75 practice audits per year is the recommended number of audits, as this will provide adequate coverage of the paralegal population.

Background

27. In 1953, the Law Society of Upper Canada established a Compensation Fund to relieve the hardship of clients who have suffered financial loss due to their lawyer's dishonesty. A fund is required because errors and omission insurance covers potentially negligent conduct but does not cover dishonest conduct, such as theft.

28. The amended Law Society Act of 2006 governs both lawyer and paralegal licensees. The Act provides for a single Compensation Fund (with separate pools of money) for both lawyers and paralegal licensees. The Paralegal Standing Committee is therefore

recommending that the same policies and procedures, with minor exceptions, be adopted for claims relating to both lawyer and paralegal licensees.

Legal Authority: The Law Society Act

29. The Compensation Fund is established pursuant to section 51 of the Law Society Act. The act provides that Convocation, in its absolute discretion, may make grants from the Fund as follows:
51(5) Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person in consequence of,
    a) dishonesty on the part of a person, while a licensee, in connection with his or her professional business or in connection with any trust of which he or she was or is a trustee; or
    b) dishonesty, before the amendment day, on the part of a person, while a member, in connection with his or her law practice or in connection with any trust of which he or she was or is a trustee. 2006, c.21, Sched.C, s. 71 (4)

Factors in Setting the Levy

<u>Compensation Fund Guidelines</u>

30. Convocation has established a set of "Guidelines for the Determination of Grants from the Fund" pursuant to its authority in subsection 51(5). The Guidelines indicate the circumstances in which a grant usually will or will not be awarded from the Compensation Fund, when the claim relates to a lawyer licensee. The Guidelines provide consistency and certainty for staff and decision makers when determining if a grant should be awarded.

31. A similar set of Guidelines for claims relating to paralegals is now required, to establish the parameters of coverage by the Fund for claims relating to paralegal licensees. The Paralegal Standing Committee is bringing the draft guidelines to Convocation for approval in their separate report. Set out below are the key provisions of the recommended guidelines relating to paralegal claims, based on the Guidelines for claims against lawyers.

Coverage
To be eligible for compensation from the fund,

- The loss must be in consequence of the paralegal's dishonesty (not incompetence or negligence);
- The loss must arise in connection with the paralegal's professional business (i.e. the licensee must be providing an authorized legal service);
- The licensee must receive money or property from a claimant which is not returned or otherwise accounted for;
- The Fund is a remedy of last resort. This means that the claimant must try to recover their money from the paralegal first and in some instances will be asked to sue the paralegal and/or others in the court system before a grant will be made from the Fund.

Exclusions
Claims that will not be compensated from the fund include

- Losses arising out of a business venture between a paralegal and a client
- Loans to paralegals (or a paralegal's spouse or corporation)
- Claims for damages (i.e. not a defined/liquidated sum of money), legal costs, court costs and interest
- Grants to financial institutions or claimants who are engaged in the business of lending money

Recommended Situations in which a Grant will be Reduced
Claims will not generally be paid in full,

- Where a claimant has acted carelessly and this has contributed to the loss
- Where there is a valid claim for legal fees and/or disbursements owing to the paralegal
- Hardship experienced by the claimant is a factor that may be considered when determining the amount of a grant.

32. A draft of the guidelines for claims relating to paralegals, based on the points set out above, is attached at Appendix 3.

Claims Handling Process

33. For information, a description of the proposed process for the handling of claims is set out at Appendix 4.

Per Claimant Limit and Annual Compensation Fund Levy

34. To ensure that the fund remains solvent, it is necessary to establish a 'per claimant limit'. A per claimant limit means that claimants may receive only the set limit applicable to their claim, regardless of how large their actual losses are. To determine an appropriate per claimant limit, we consider the revenue generated by the annual levy, which will form the corpus of the Fund, and the anticipated expenses from the fund, which will primarily depend on the number and size of claims. The amount of the annual levy that each paralegal licensee will be required to pay and the projected expenses of the fund must be considered together, as they must remain in approximate balance over time. The per claimant limit for grants will be one of the main determinants of the expenses from the fund. Unlike the current pool of funds for lawyers, there is no accumulated capital amount to generate investment income.

35. By way of background, the current per claimant limit for claims involving lawyers is $100,000.00. This has been the limit since May 25, 1990. Since paralegals will not typically have access to such large sums of clients' money as lawyers, the appropriate limit will be lower than is the case for lawyers.

36. There is no limit to the amount that may be claimed per lawyer and none is recommended for paralegals.

Estimating Possible Claims on the Fund

37. Since this is a new programme, there is no historical data on probable claims on the fund. It is therefore necessary to make some general estimates of the extent of the fund's exposure to claims involving paralegals. This will be generally determined by the sums of money being handled by paralegals in the course of their work. Such sums will generally be of two kinds:
    1. Fees paid in advance, and
    2. Awards from courts and tribunals where the licensee receives the money on the client's behalf.

38. With regard to retainer fees in paralegal trust accounts, some analysis has been provided by Craig Allen of LawPRO. His report is attached at Appendix 5. His calculations assume a cap of $1,500 per paralegal retainer. On this basis, he projects the annual claims costs for retainers at $4,326. His estimate for non-retainer claims, based on past history of cases involving lawyers, ranges from $99,687 to $196,455 depending on the per claimant limit.

Annual Levy

39. Subsection 51 (3) of the Law Society Act provides that 'Every licensee, other than those of a class exempted by the by-laws, shall pay to the Society, for the fund, such sum as is prescribed from time to time by the by-laws.'

40. Lawyers currently pay $200 per year, and it would be reasonable for the paralegal levy to be less than that, as the claims are likely to be smaller.

Audit Programme

41. The cost of the audit programme for lawyers is currently paid for out of the lawyers' compensation fund levy. For example, the projection for 2008 is that, for lawyers, the Compensation Fund will have total expenses of $7.9 million, of which $2.9 million will be for the audit programme. The rationale for this is that practice audits help to protect the fund from claims.

42. Following this model, it will be necessary to take audit costs into account in setting the levy for paralegals. It has been calculated that the probable cost of a practice audit is about $2,100. Since there will be about 2,100 paralegal licensees, this works out to about $1 per paralegal per year, for each audit.

Options

43. From the above, it can be seen that there is a range of options for the annual levy, the per-claimant limit and the audit programme. A summary chart setting out three options is attached at Appendix 6. The chart indicates that with a range of per-claimant limit from $10,000 to $25,000, the annual levy varies from a low of $93 to a high of $ 214, depending on the number of practice audits planned. (It would of course be possible to consider other amounts for the limit to claims).

44. The financial analysis used in the preparation of the chart, together with background on the current financial status of the Fund and draft procedures, is attached at Appendix 7.

Appendix 4

The Compensation Fund Relating to Paralegals – Proposed Procedure

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Procedure for Making a Claim to the Compensation Fund Relating to Paralegals

A claim is initiated by the claimant writing to the Fund (or other department of the Law Society) briefly describing:

- The nature of the claim
- Identifying the paralegal claimed against
- The monetary amount of the loss

If the matter is an appropriate claim for the Fund, an application (which is in the form of a Statutory Declaration), Guidelines and section 51 of the Law Society Act are sent to the claimant. The claimant must fully complete the application form, have it sworn before a Commissioner for taking Affidavits and return it to the Fund before a claim can be opened.

Processing A Claim to the Compensation Fund Relating to Paralegals

It is anticipated that the existing staff of the Fund will process all claims relating to paralegals and that the following steps will be taken before a grant is determined.

- Send paralegal copy of the completed application for a grant and request comments
- Fund Staff review application and all supporting documents
- Fund Staff examine whether paralegal is being investigated for professional misconduct
- Fund Staff review copies of relevant Investigation Report and communicate with investigator(s) and/or Complaints Resolution staff
- Fund Staff review information (Trusteeship, bankruptcy, frozen trust accounts etc.) with other LSUC departments such as Trustee Services and Monitoring and Enforcement
- Fund Staff review Discipline materials (Conduct Application, Agreed Statement of Facts etc) and communicate with Discipline counsel
- Fund Staff determine whether the claim meets the Guidelines and determine the quantum of the grant in accordance with the Guidelines (i.e. Deductions for risk/carelessness, no payment for damages, interests or legal costs)
- Fund Staff agree on proposed grant amount with claimant/claimant's counsel or agent (send letter setting out proposed grant and why)
- Fund Staff obtain Release of LSUC and Direction from claimant
- Fund Staff send grant recommendation memorandum to paralegal for comments
- Fund Staff send grant recommendation memorandum to senior staff for approval
- Fund Staff send grant recommendation (over $5,000.00) memorandum to Review Sub-Committee for approval

- Review Sub-Committee approval (over 5K)/Staff recommendation (under 5K) and other relevant materials are sent to LSUC Finance department and grant cheque is requisitioned
- LSUC Finance department reviews materials and if satisfied, sends grant cheque to claimant/claimant's counsel or agent
- Fund Staff advise paralegal that grant has been paid and request repayment

A. Approval of Grant Recommendations by the Review Sub-Committee

Claims over $5000.00

If a claim meets the guidelines and the value of the proposed grant is over $5,000.00, staff will recommend to the Compensation Fund Review Sub-Committee that a grant be paid from the Fund. The Review Sub-Committee approves or rejects the grant recommendation and their decision is final.

B. Claims under $5,000

If a claim meets the guidelines and the proposed value of the grant is under $5,000.00, staff can authorize that a grant be paid from the Fund without the approval of the Review Sub-Committee. The grant proposal must receive approval from the Manager of the Fund and Senior Management of the Law Society before payment is made.

All grant payments are reported regularly to the Committee as a whole and to Convocation.

Appendix 5

TO: Law Society of Upper Canada

FROM: Craig Allen
Vice President & Actuary

DATE: December 14, 2007

RE: Estimated Annual Claims for a Paralegal Compensation Fund

This memorandum estimates the annual cost of claims for a compensation fund that would provide compensation to clients for defalcations by paralegals.

For the purpose of this report, and as a departure point for discussion, three different limits per claimant are considered: $10,000, $15,000 and $25,000. This compares to the current limit for the Compensation Fund of $100,000 per claimant.

The number of paralegals who have applied for licensing to date is 2,100. The estimates of claims cost assume that number of paralegals.

Approach

The estimates are based on the experience of the Law Society's Compensation Fund over the 1997-2007 period.

The Compensation Fund claims are identified as to the area of law practiced by the lawyer, and the nature of the missing funds (i.e. retainers, trust funds, investments, etc). It is assumed that the monies in paralegal practice that would be exposed to loss in a manner comparable to that for lawyers would be

- retainers, and
- settlement funds, from representation before administrative tribunals.

The approach taken here is to average the annual grants to claimants for these two categories of loss over an experience period (Jan. 1, 1997 through Sept. 30, 2007), and to divide this by the average number of lawyers in private practice over the period. This cost of claims, per lawyer, adjusted for the lower cap or limit, is assumed to be equal to the cost of claims per paralegal for a similar fund. This cost is then projected over the estimated 2,100 paralegals to be licensed in the first year.
In both categories of claims, the amounts are taken from claims closed in each year. As the Compensation Fund claims have shown no discernible trend over the experience period, the amounts paid on claims closed in a year will approximate the value of claims reported in a year.

Retainers

For retainers, the approach is to gather all grants identified as retainer claims over the period. In the deliberations of the Working Group on Trust Accounts for Paralegals, as part of the Paralegal Standing Committee, it was determined that the overwhelming majority of retainers for paralegals would be under $1,500. Thus, this report caps the historic Compensation Fund claims for retainers at $1,500 per claimant.

The table below illustrates the pertinent amounts over each year, for the 1997-2007 period.

Year	Lawyers in Private Practice	Count of Retainer Claims	Retainer Claims, in Dollars	Severity of Retainer Claims, in Dollars	Retainer Claims, in Dollars, Capped at $1,500 per Claim	Severity of Retainer Claims, in Dollars, Capped at $1,500 per Claim
1997	17,000	23	41,308	1,796	22,908	996
1998	17,200	28	36,743	1,312	28,318	1,011
1999	17,500	33	94,799	2,873	39,175	1,187
2000	17,900	54	329,536	6,103	64,200	1,189
2001	18,000	29	106,822	3,684	33,982	1,172
2002	18,400	44	138,391	3,145	55,537	1,262
2003	19,200	35	177,973	5,085	35,714	1,020
2004	19,800	29	48,721	1,680	28,054	967

2005	20,200	42	193,621	4,610	44,834	1,067
2006	20,600	36	221,496	6,153	44,850	1,246
2007	20,900	23	74,994	3,261	29,465	1,281
Average	18,800	34	133,128	3,609	38,822	1,127

The average severity of the uncapped claims ($3,609) demonstrates that the average retainer for a lawyer is well above the amount identified as appropriate for paralegals, thus showing the need for the cap in these calculations.

The average annual retainer claim cost per lawyer is $38,822 divided by the average of 18,800 lawyers for the 1997-2007 period. This amount is $2.06. Extended to 2,100 paralegals, the annual claim cost for retainers would thus be $4,326.

Settlement Funds

Paralegal activity representing clients before administrative tribunals is most similar to the civil litigation area of practice for lawyers.

It should be noted, though, that the lawyers responsible for claims arising from civil litigation have historically also been responsible for claims arising from other categories of loss (e.g. mortgage funds) as well as claims arising from areas of practice other than civil litigation. This report assumes that once a professional has acted dishonestly, that all funds under that professional's care will be at risk of loss. Thus, while paralegals are not permitted to engage in such solicitor functions as real estate conveyancing, it is assumed here that there is an equal likelihood of dishonesty in the paralegal licencees to that seen in the lawyer population.

Thus, it is presumed that the historic record of Compensation Fund claims, excluding retainer claims, capped at the limits considered ($10,000, $15,000 and $25,000 per claim), and compared to the average number of lawyers in practice, is representative of the costs that would arise in a paralegal compensation fund.

The table below presents the count and dollar value of these claims and the number of lawyers exposed.

Year	Lawyers in Private Practice	Count of Non-Retainer Claims	Non-Retainer Claims, in Dollars, Capped at $10,000 per Claim	Non-Retainer Claims, in Dollars, Capped at $15,000 per Claim	Non-Retainer Claims, in Dollars, Capped at $25,000 per Claim
1997	17,000	161	1,314,599	1,867,033	2,802,240
1998	17,200	151	1,168,760	1,612,264	2,306,856
1999	17,500	166	1,471,858	2,102,744	3,194,368
2000	17,900	120	890,808		1,687,053

				1,203,848	
2001	18,000	111	807,730	1,101,893	1,586,544
2002	18,400	51	343,967	466,884	661,401
2003	19,200	85	604,675	831,844	1,226,571
2004	19,800	91	633,841	883,007	1,218,915
2005	20,200	154	1,038,287	1,309,992	1,725,567
2006	20,600	140	1,164,922	1,626,340	2,325,597
2007	20,900	51	377,428	481,972	612,114
Average	18,800	116	892,443	1,226,166	1,758,839

The average settlement funds claim cost per lawyer at each limit of $10,000, $15,000 and $25,000 is determined by dividing the average annual claim cost, $892,443, $1,226,166 and $1,758,839 respectively, by the average of 18,800 lawyers for the 1997-2007 period. The corresponding costs per lawyer are $47.47, $65.22 and $93.55. Extended over 2,100 paralegals, the costs are $99,687, $136,962 and $196,455 respectively.

Total Cost

Adding the retainer component of $4,326 per practitioner to the settlement funds component at each of the limits considered yields the estimated total annual claims cost amounts in the table below:

	Limit $10,000	Limit $15,000	Limit $25,000
Retainers	$4,326	$4,326	$4,326
Settlement Funds	$99,687	$136,962	$196,455
Total	$104,013	$141,288	$200,781

It should be noted that this estimate is subject to the following sources of variability and uncertainty:

- The variation in annual experience for lawyers is noticeable. The number of retainer claims varies from a low of 23 in 1997 to 54 in 2000, while the retainer dollars (capped at $1,500) vary from low of under $23,000 in 1997 to over $64,000 in 2000. The number of non-retainer claims varies from 51 in 2002 to 166 in 1999, while the non-retainer dollars (capped at $25,000) vary from $661,000 in 2002 to $3.2 million in 1999.

- The number of paralegals, 2,100, is small relative to the number of lawyers. Thus, the variation from one year to the next in the number and cost of claims will be higher than that for lawyers

- It is uncertain the extent to which experience for the lawyer population is comparable to paralegal practice before administrative tribunals.

As a point of comparison, the table below presents the numbers of claims and lawyers involved by year in the above estimates.

Year	Lawyers in Private Practice	Count of Retainer Claims	Count of Lawyers Involved in Retainer Claims	Count of Non-Retainer Claims	Count of Lawyers Involved in Non-Retainer Claims
1997	17,000	23	12	161	40
1998	17,200	28	17	151	46
1999	17,500	33	18	166	44
2000	17,900	54	20	120	28
2001	18,000	29	17	111	32
2002	18,400	44	21	51	28
2003	19,200	35	21	85	38
2004	19,800	29	19	91	29
2005	20,200	42	27	154	31
2006	20,600	36	23	140	31
2007	20,900	23	11	51	24
Average	18,800	34	19	116	34

Pro-rated from 18,800 lawyers to 2,100 paralegals, the average of 19 lawyers per year generating a total of 34 retainer claims would be comparable to 2.1 paralegals per year generating 1.8 retainer claims each. Similarly, the average of 34 lawyers per year producing a total of 116 other-than-retainer claims would be comparable to 3.8 paralegals per year generating 3.4 non-retainer claims each.

It can be seen that the number of individuals and claims implied by the dollar estimates of $104,013 to $200,781 is relatively small. Thus, a small increase in the number of individuals and matters involved could generate a significant increase in the costs.

Appendix 7

Overview of the Budget and Financial Status of the Compensation Fund

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Financial Overview

The Compensation Fund has a current fund balance of approximately $21 million and investments of approximately $31 million. These investments generate income, budgeted at $1.2 million for 2008. The income earned is utilized to reduce the levy that would otherwise be required to fund the operations of the Compensation Fund.

Expenses of the Fund

For 2008 the Fund has direct operating expenses budgeted at $549,500, including salaries and benefits for the five staff dedicated to the Fund's operations. In addition, using the Society's full cost allocation process, the Compensation Fund is charged proportionately for allocated administration costs including information systems, human resources, finance, facilities, communications and bencher related expenses. For 2008 this allocation is budgeted at $425,500.

Each year, with actuarial assistance from LawPro, a provision for expected claims incurred is made. For 2008, this estimate was set at $2.7 million.

In addition to the Fund's direct operations, it also provides for funding for certain regulatory functions of the Law Society including 25% of the direct cost of investigations and 6% of the direct cost of discipline. For 2008, these allocations are $1,077,000 and $230,000 respectively. Convocation introduced the Spot Audit program in 1998, and since that time the full cost of the program has been funded from the Compensation Fund. For 2008, this amount is $2.9 million.

Actuarial Analysis of Options for Levy to Support the Paralegal Fund

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The regime for paralegals is expected to be similar to that for lawyers. Given the relatively small number of paralegal licensees, it is not expected that direct operating expenses for the Fund as whole would increase in the first year that paralegal claims are covered. In future this would have to be assessed as part of the annual budget process and, if warranted, a proportion of the combined Fund's direct operating expenses could be allocated to the paralegal Compensation Fund levy.

In order to have consistent application of costs between lawyers and paralegals, it is recommended that 25% of the cost of paralegal investigations and 6% of the cost of paralegal discipline be allocated to the Compensation Fund. This will have the effect of increasing the paralegal Compensation Fund levy but will be offset by a corresponding reduction in the paralegal general levy.

Consideration should be given to the operation of a practice audit programme for paralegals funded from the paralegal Compensation Fund levy, to be consistent with the current practice for lawyers. Based on cost estimates provided by the Director of Professional Development and Competence, the practice audits would cost approximately $1,593 in direct costs and $510 in allocated administrative costs for a total of $2,103 per audit or approximately $1 per paralegal per practice audit.

Undertaking such a program would require the use of experienced staff currently employed by the Society and their positions would be filled either by contract staff or by independent contractors.

For the purpose of setting the per claimant limits and the annual levy, actuarial estimates have been provided by Craig Allen of LawPro with claim limits at $10,000, $15,000 and $25,000.

The paralegal Compensation Fund levy for 2008 would be based on one of these actuarial estimates for grants plus allocated regulatory costs for investigations and discipline plus the full cost of practice audit programme introduced for paralegals.

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

(1) Copy of the Draft Paralegal 2008 Operating Budget Summary and Draft Paralegal 2008 Operating Budget Detail.

(Appendix 1, pages 7 – 8)

(2) Copy of the Proposed Amendment to Paralegal Start Up Budget Summary.

(Appendix 2, page 11)

(3) Copy of the Law Society of Upper Canada Guidelines for the Determination of Grants from the Compensation Fund relating to Paralegals.

(Appendix 3, pages 18 – 20)

(4) Copy of Paralegal Compensation Fund – Options.

(Appendix 6, page 28)

Re: Paralegal 2008 Budget

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve the draft paralegal 2008 budget which results in an annual levy of $700.

Carried

Re: Extension of Paralegal Start-up Budget

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve the extension of the paralegal start-up budget to the end of 2008.

Carried

Re: Paralegal Compensation Fund 2008 Levy

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve a Paralegal Compensation Fund levy of $145 for 2008.

Carried

Re: J. S. Denison Fund (In Camera)

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve the grants from the J. S. Denison Trust Fund set out in the Report in camera.

Carried

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PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Ruby introduced the Report of the Professional Regulation Committee.

Report to Convocation
February 21, 2008

Professional Regulation Committee

Committee Members
Clayton Ruby, Chair

Julian Porter, Vice-Chair
Heather Ross, Vice-Chair
Linda Rothstein, Vice-Chair
Melanie Aitken
Tom Conway
Brian Lawrie
George Finlayson
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Decision and Information

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

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For Information.....TAB C

Professional Regulation Division Quarterly Report

COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on February 7, 2008. In attendance were Clay Ruby (Chair), Heather Ross and Julian Porter (Vice-chairs), Tom Conway (by telephone), George Finlayson, Patrick Furlong, Gary Gottlieb, Brian Lawrie (by telephone), Ross Murray. Robert Aaron, Nicholas Pustina, Alan Silverstein and Bradley Wright and lawyers Greg Mulligan and Don Thomson also attended by telephone. Staff attending were Naomi Bussin, Caterina Galati, Malcolm Heins, William

Holder, Terry Knott, Lisa Mallia, Stephen McClyment, Dulce Mitchell, Zeynep Onen, Tanus Rutherford, Jim Varro and Sheena Weir.

AMENDMENTS TO THE *RULES OF PROFESSIONAL CONDUCT* RESPECTING THE REQUIREMENT FOR TWO LAWYERS FOR A REAL ESTATE TRANSFER AND RESPONSIBILITY FOR REAL ESTATE TRANSFER DOCUMENTS

Motion

2. That Convocation:

a. amend the *Rules of Professional Conduct* by adding rule 2.04.1 to require that there be two lawyers for a transaction involving a transfer of title of real property, as follows:

2.04.1 LAWYERS ACTING FOR TRANSFEROR AND TRANSFEREE IN TRANSFERS OF TITLE

2.04.1 (1) Subject to subrule (3), an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.

(2) Subrule (1) does not prevent a law firm of two or more lawyers from acting for or otherwise representing a transferor and a transferee in a transfer of title to real property so long as the transferor and transferee are represented by different lawyers in the firm and there is no violation of rule 2.04.

(3) So long as there is no violation of rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

(a) *[the applicable statutory instrument under authority of the Director of Titles]* permits the lawyer to sign the transfer on behalf of the transferor and the transferee,

(b) the transferor and transferee are “related persons” as defined in section 251 of the *Income Tax Act (Canada)*, or

(c) the lawyer practises law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

and

b. amend rule 5.01 by adding subrules (5) through (7) to clarify the lawyer’s responsibility with respect to title insurance and for documents in the electronic system for registration of title documents, as follows:

Title Insurance

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

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

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

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

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

Signing E-Reg™ Documents

5.01 (6) A lawyer who electronically signs a document using the system for the electronic registration of title documents – e-reg™ – assumes complete professional responsibility for the document.

5.01 (7) A lawyer retained to act in a real estate matter or transaction

(a) may only authorize a non-lawyer to sign for completeness any e-reg™ document that may be signed by a non-lawyer if the non-lawyer is registered under and signs under the lawyer's or law firm's e-reg™ account, and

(b) assumes complete professional responsibility for a document signed by a non-lawyer under the lawyer's or law firm's e-reg™ account.

Introduction and Background

3. In the spring of 2005, through the efforts of the Law Society's Chief Executive Officer (CEO), the Working Group on Real Estate Issues was formed to focus on issues arising in real estate practice that relate to the Law Society's regulatory responsibilities. Mortgage fraud, standards of practice and facilitating the public's access to lawyers knowledgeable about real estate law are examples of the issues being addressed in this forum. The aim was to deal with these matters in a more comprehensive way through the united efforts of the organized bar and the Law Society.

4. Given the important issues the Working Group was considering, Convocation agreed that the Working Group should be more formally organized. On June 28, 2007, Convocation designated the Working Group as a working group of the Professional Development & Competence Committee and the Working Group's membership was confirmed by Convocation on October 25, 2007.

5. Current members of the Working Group are Bradley Wright and Don Thomson, a Toronto practitioner, as co-chairs, Robert Aaron, Alan Silverstein, Nicholas Pustina, Sally Burks, an Ottawa practitioner, Greg Mulligan, an Orillia practitioner, Clare Brunetta for the County and District Law Presidents' Association (CDLPA) and Ray Leclair for the Ontario Bar Association. Relevant Law Society staff assist the Working Group.

6. The Working Group's first initiative concerned practice guidelines for residential real estate transactions and new *Rules of Professional Conduct* intended to assist in preventing mortgage fraud. Following consultations with the profession, new Rules were developed by the Working Group, which reported the proposed Rule changes to the Committee and the Professional Development & Competence Committee. These Committees then proposed the Rule changes to Convocation, which adopted them in February 2007. The Guidelines, reported to Convocation for information at the same time, are now in place.

7. The Working Group then addressed issues that arose as a result of the reforms to the *Land Titles and Land Registration Reform Act* in Bill 152, *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006.* The Bill is part of the government's initiative to combat current problems with real estate fraud. The government has been particularly concerned about cases of title fraud[1], where innocent homeowners could lose title to their homes or have fraudulent mortgages registered against their title. The government is proposing a range of fraud-prevention and consumer protection measures through the Bill.

8. One of the reforms requires that the registration of a transfer of real property involve two lawyers, one for the transferor and one for the transferee. This government requirement prompted the Law Society, through the Working Group, to consider amendments to the Law Society's *Rules of Professional Conduct*.

9. This report includes the Committee's recommendations, based on the Working Group's unanimous resolution, for
   a. a new "two lawyer" rule, and
   b. amendments to rule 5.01 with respect to title insurance and a lawyer's responsibility for documents in the system for electronic registration of title documents.

10. The report includes background information on the government's initiative, input received from the Law Society consultations with the profession on proposals for new rules of conduct, a discussion of the alternatives for implementing amendments to the Rules to address the regulatory issues, and the Committee's proposals.

11. Although the Working Group is connected to the Professional Development and Competence Committee, the chair of that Committee has agreed that these matters be reported through the Professional Regulation Committee, given their regulatory focus.

12. The proposed rules in the motion at paragraph 2, which are shown within rule 2.04 and rule 5.01 at Appendix 1, have been reviewed by the Society's Rules drafter, Don Revell.

Fraud in Real Estate Transactions and the Law Society's Initiatives

13. Title fraud has been a high profile issue for much of the past two years, as a result of heightened consumer awareness of the issue through media coverage of several cases

[1] Value fraud, discussed later in this report, also occurs, where the true value of the property is artificially inflated to deceive the mortgage lender. This is accomplished in one of two ways, either through "flip" deals or misrepresentations of the original purchase price.

that have progressed through the courts in Ontario[2]. The Government of Ontario, in responding to these developments, is particularly concerned with the problem of title fraud, in which innocent homeowners could lose title to their homes or have fraudulent mortgages registered against their title without being aware that there is a problem until it is too late.

14. In the fall of 2006, the Minister of Government Services (Ministry) announced a two-phased program of reform. The first phase, which was reflected in Bill 152, clarified the effect of registration of fraudulent documents, increased the Ministry's ability to suspend or revoke electronic registration credentials and clarified who could seek reimbursement from the Land Titles Assurance Fund (LTAF). The second phase includes a range of fraud-prevention and consumer protection measures, including restricting access for the purposes of registration to the electronic land registration system, ensuring faster payments to innocent homeowners and purchasers from the LTAF, establishing standards of due diligence by mortgage lenders and other applying to the LTAF, and other initiatives to protect the public and promote public education and awareness.

15. With respect to the second phase, the Law Society's interest in these developments have revolved around access to the electronic registration system for registration of transfers, charges and other documents, due diligence surrounding real estate deals and protection for innocent owners whose property has been affected by a fraud.

16. In this latter respect, the Law Society and LAWPRO recently implemented a requirement for lawyers wishing to practice real estate to have additional insurance, which would respond to claims arising out of registration of a fraudulent instrument. This is included in the 2008 insurance program set out in LAWPRO's report to and approved by Convocation on September 20, 2007 Convocation.

17. The Law Society has stressed that 'value fraud' should also be addressed, which is an increasingly common and expensive type of fraud. Value fraud occurs when the value of a property is artificially increased to deceive a mortgage lender to obtain a higher mortgage amount than would otherwise be available.

18. The Law Society has already taken steps to address this particular issue as a matter of professional regulation. As noted earlier, in February 2007, Convocation approved new rules of professional conduct on reporting on mortgage transactions and disclosure of information in lending transactions.[3] Convocation agreed with the Committee's view in proposing these rules that lawyers remain as the best protection for the interests of borrowers and lenders in real estate transactions, and as competent professionals, are required to be vigilant to ensure that these transactions are not used as vehicles for frauds.

19. As noted above, the Ministry's proposal with respect to restrictions on transfers of property revolves around improving the integrity of the system by tightening the rules

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[2] *Household Realty Corp. Ltd. v. Liu, Susan Lawrence & Thomas Wright v. Maple Trust Co.,Rabi v. Rosu & Toronto Dominion Bank.* A very recent case is *Reviczky v. Meleknia*, 2007 CanLII 56494 (ON S.C.)

[3] The amendments were to rules 2.02 (Quality of Service) and 2.04 (Conflicts of Interest)

governing the electronic registration of documents in the Land Titles system. For the electronic registration of transfers of property,

a. only lawyers will be able to register transfers of title and they will be required to sign the transfer for completeness, and
b. every registration of a transfer of title must involve two lawyers, one for the transferor (e.g. vendor) and one for the transferee (e.g. purchaser).

There will be very few exceptions to these rules.

Law Society Consultation on the Proposed Rules

20. The Working Group decided that the views of the profession on the Law Society's response to these developments, in terms of new regulatory requirements, should be sought before any proposals are referred through the Committee to Convocation.

21. To that end, the Society published a request for input on the "two lawyer" rule for real estate transfers and rules on the lawyer's responsibility in a real estate transaction. The call for input appeared on the Society's website and was the subject of a broadcast e-mail to real estate practitioners who provided an e-mail address to the Society for such purposes. The deadline for responses was November 30, 2007. A copy of the material prepared for the consultation appears at Appendix 2.

22. As the consultation document reflects, the Society sought comment on two alternatives for the "two lawyer" requirement: a rule requiring two lawyers to act, and a rule requiring two lawyers from different firms (i.e. the "two firm" rule) to act. A proposed rule to permit a variation of this requirement for real estate transactions handled by lawyers in remote locations was also included.

23. Amendments to rule 5.01 with respect to certain responsibilities in the e-reg™ system were also drafted.

<u>Results of the Consultation</u>

24. The Society received over 100 responses to the consultation, and most offered thoughtful and focussed comment on the issue. The following is some statistics from and a summary of some of the comments and issues raised in the consultation:

a. 51 responses were from firms;
b. 46 responses were from sole practitioners;
c. the responses represented 1589 lawyers from 31 counties;
d. five responses were received from other institutions or organizations (e.g. LAWPRO, title insurance companies);
e. some of the lawyers who provided responses did not comment on the two law firm rule. Some of these lawyers advocated for or requested that exceptions be created;
f. 38 responses were received from sole practitioners regarding the two law firm rule or two lawyer requirement, and they included the following:
    i. eight were in favour of the two law firm requirement;
    ii. 14 were against the two law firm rule and 13 of these were also opposed to the government's two-lawyer requirement.
    iii. 16 did not comment specifically on the two law firm requirement, but requested that exceptions to the two-lawyer requirement be created, such as inter-family transfers and corporate transactions among related parties;

g. 46 responses were from small firms (50 lawyers or less) commenting on the two law firm or two-lawyer requirement, as follows:
h. eight large firms (more than 50 lawyers) responded, and all of these firms were against the two law firm requirement.

A summary of the results of the consultation (without attribution) appears at Appendix 3.

25. In addition to the consultation, feedback to the proposals was also received through the CDLPA representative on the Working Group and from the CDLPA plenary meeting, which was held in November 2007.

Discussion of the Two-Lawyer Requirement

Two Lawyer Rule

26. The primary options considered by the Committee were,
    a. The "two-lawyer" approach: permit two lawyers from the same law firm to act for the transferor and transferee respectively in a real estate transaction, and
    b. The "two-law firm" approach: create a requirement that the lawyer for the transferee and the lawyer for the transferor must be from different firms.

The Two-Lawyer Approach

27. A lawyer is currently permitted to act for both a vendor and purchaser in a real estate transaction under rule 2.04(6).

28. In smaller communities, it is not unusual for two clients of the same firm to enter into an agreement of purchase and sale and to retain the firm to act for both. The prevalence of this practice in certain locations in Ontario was confirmed in the province-wide consultations in April and May 2006[4] in which the Society engaged as part of the Working Group's previous Rules initiative (prior to Bill 152)[5], and in the comments received in the November 2007 consultation above. This consultation disclosed that, outside of the greater Toronto area and Ottawa, a lawyer or law firm acting for both sides is extremely prevalent. Thirty to 50% of the members who attended the consultations outside of Toronto, Brampton and Ottawa advised that they sometimes or regularly act for both vendor and purchaser in a real estate transaction. Within the GTA and in Ottawa, the number of transactions where one lawyer acted was insignificant (two in Toronto, one in Brampton, and six in Ottawa) for most arm's length transactions. However, in these areas and others, lawyers act on both sides in certain types of

[4] The consultations were conducted in April and May of 2006 in a number of locations across Ontario – Hamilton, Kitchener-Waterloo, Thunder Bay, Ottawa, Toronto, Brampton, Sudbury, Windsor, Aurora, London and Kingston. Meetings were held by satellite in additional locations - Kenora, Fort Frances, Sault Ste. Marie, Timmins, North Bay and Parry Sound. Leading the consultations were Law Society benchers, staff and representatives from the OBA Real Property Section, CDLPA and the Ontario Real Estate Lawyers Association (ORELA).

[5] Part of this consultation was on a two-lawyer rule, which was understood to mean a two-law firm rule. This proposal was withdrawn for consideration by the Committee and the Professional Development and Competence Committee.

transactions, such as non-arm's length transfers, tax planning matters, corporate re-organizations and estate planning matters.

29. A requirement for two lawyers, not two law firms, would be consistent with the *status quo* in the Rules as it would permit one law firm, albeit with a different lawyer acting for the transferor and transferee, to act on the transaction. As noted above, rule 2.04(6) permits this type of joint retainer, given that for the purposes of this rule and the conflicts rules generally, a lawyer means a law firm. An amendment to the rule would state that the same lawyer could not act for both parties, but that a firm of two or more lawyers would be permitted to do so.

30. The requirement for two lawyers as described above could not be fulfilled by a sole practitioner who has no associates or employed lawyers. The lawyer in such a practice would be required to send one of the parties to a lawyer outside the practice who would represent that party in the transaction.

31. The Working Group's suggestion for a "remote location" rule, described in the consultation material, acknowledged that there may be certain situations where it might not be feasible to have two lawyers representing the parties to the transfer.

The Two-Law Firm Approach

32. A two-law firm requirement would mean that the transferor and transferee must each be represented in a real estate transaction by a different lawyer in different law practices.

33. From a conflicts perspective, a two-law firm rule may be the best protection for the interests of the clients (rule 2.04(6)). However, as a matter of regulatory policy, the Society permits a joint retainer, including for the purposes of a real estate transaction. In such situations, the lawyer or law firm must fulfil certain obligations to address the issue of a conflict of interest. The Society's additional guidance to the profession through its Resource Centre web information on this issue is as follows:

> Although the *Rules of Professional Conduct* do not specifically prohibit a lawyer from acting for both the vendor and the purchaser in a real estate transaction, it would not be prudent for a lawyer to accept such a retainer.
>
> Subrule 2.04(3) prohibits a lawyer from acting in a matter where there is or is likely to be a conflicting interest unless certain conditions are met. In order to act in such circumstances, the lawyer must make disclosure to the client or prospective client that is adequate to allow the client to make an informed decision with respect to the retainer. Following this disclosure the client or prospective client must consent.
>
> Even if the parties consent, a lawyer should avoid acting for more than one client when it is likely that a contentious issue will arise or their interests, rights or obligations will diverge as the matter progresses. The probability of a conflict of interest arising between a purchaser and vendor in a real estate transaction is high. The interests of each of these clients will likely differ and the advice that the lawyer would give to each will likely not be the same, and in fact, may be conflicting. In addition, where there

is a pre-existing relationship between the lawyer and one of the clients, the lawyer may tend to prefer the interests of that client to the other.

Conflicts very often arise unexpectedly. If a conflict between the parties were to arise on the date of closing there may be insufficient time for each of the parties to retain separate lawyers and their rights may be prejudiced. All of these potential issues should be considered by the lawyer prior to accepting the retainer.

34. A two-law firm rule for real estate transfers may be considered more appropriate if it was determined that another risk – that of real estate fraud – could be addressed in a significant way through such a rule. Of interest is that the government's requirement is only for two lawyers, not two law firms.

35. A two-law firm rule would level the field, so to speak, between law firms with two or more lawyers and sole practices. Every law practice could only act for one party in a real estate transaction.

36. As with the two-lawyer option, the Working Group's "remote location" rule suggestion acknowledged that there may be certain types of transfers where it might not be practical to have two law firms representing the parties to the transfer.

The Working Group's and Committee's Views and Proposal

37. The Working Group acknowledged that the two-lawyer approach met the government's requirement for two lawyers for each real estate transfer. It also noted that it is consistent with current regulatory policy as reflected in rule 2.04(6) on joint retainers, and would be consistent with the practice in many smaller communities where a law firm acts for both transferor and transferee.

38. The two-lawyer approach, however, would be disadvantageous to sole practitioners who practise alone and are not in a remote location. They would be prevented from representing both transferor and transferee.

39. While the two-law firm approach would also meet the government's requirements and would address at the outset any conflicts issues that might arise in the course of the retainer, a significant concern was the disruption it may cause to the practices of many lawyers in smaller communities who routinely act for both transferor and transferee. It may also increase the client's cost of a lawyer's services in a real estate transaction, and may make access to legal services difficult for consumers in smaller communities. Large law firms would also be disadvantaged, especially those who service builders and developers in large-scale real estate transactions.

40. The Working Group determined that the two-law firm approach would be unnecessarily onerous as a Law Society regulation. A rule requiring two separate firms runs the risk of creating difficulties for real estate practitioners which would ultimately impact on the public interest in obtaining accessible, affordable legal services.

41. The Working Group decided that to alleviate concerns about the *two-lawyer* approach, primarily from the perspective of sole practitioners, a proposal should be made to the Ministry that further exemptions be made to the two-lawyer requirement. To this end, the Working Group requested that the Ministry consider adding one new law statement to a

transfer that would allow one lawyer to indicate that he or she was acting for the transferor and the transferee in accordance with an exception set out in the *Rules of Professional Conduct.* The Rules would then specify the three new exceptions, as follows:

a. Transfers between individual parties who are not at "arms length" as defined in the *Income Tax Act (Canada);*
b. Transfers between related corporations; and
c. Transfers where the lawyer practices in a remote location where there are no other lawyers that either party could conveniently retain for the transfer (remoteness to be defined from the perspective of the client).

42. These additional exemptions would address to a fair extent the concerns of sole practitioners. In particular, they address the circumstances where many sole practitioners in smaller communities routinely act for both transferor and transferee under the joint retainer rules, representing family members or related businesses in the same real estate transaction. Sole practitioners would still, however, not be able to act for both the transferor and the transferee who are at arm's length.

43. Subject to the exceptions in the proposed rule, the rule prohibits an individual lawyer from acting for both the transferor and the transferee in a real estate transfer. The rule would permit a law firm of two of more lawyers in practice to act for the transferor and transferee as long as each party is represented by a different lawyer in the firm.

44. The proposed rule references the exceptions already permitted by the Ministry[6] and two new exceptions, which the Ministry would reference if it approves the new exceptions. As a drafting matter, the first two of the three exceptions noted above (inter-family and inter-corporate) have been combined under the definition of "related persons", which includes both individuals and corporations.

2.04.1 LAWYERS ACTING FOR TRANSFEROR AND TRANSFEREE IN TRANSFERS OF TITLE

2.04.1 (1) Subject to subrule (3), an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.

(2) Subrule (1) does not prevent a law firm of two or more lawyers from acting for or otherwise representing a transferor and a transferee in a transfer of title to real property so long as the transferor and transferee are represented by different lawyers in the firm and there is no violation of rule 2.04.

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[6] These exceptions are for the following transfers of title:

1. Transfers where the transferor and the transferee are the same and the transfer is being made to effect a change in legal tenure;
2. Transfers where the transferor and the transferee are the same and the transfer is being made to effect a severance of land prior to the expiry of consent granted under the *Planning Act* or pursuant to a municipal by-law;
3. Transfers from an estate trustee, executor or administrator to a person who is beneficially entitled;
4. Transfers where the land is being acquired or disposed of by the Crown.

A fifth exception, although not a transfer of title, is transfers involving the creation of an easement.

(3) So long as there is no violation of rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

(a) *[the applicable statutory instrument under authority of the Director of Titles]* permits the lawyer to sign the transfer on behalf of the transferor and the transferee,

(b) the transferor and transferee are "related persons" as defined in section 251 of the *Income Tax Act (Canada)*, or

(c) the lawyer practises law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

45. The Committee is of the view that this rule sufficiently reflects the government's standard, and as a matter of regulating lawyers in the public interest, will contribute to fraud prevention.

Amendments to Rule 5.01[7]

46. The purpose of the proposed amendments to rule 5.01 is to ensure that lawyers remain responsible for the work on the real estate matter for which they are retained by a client.

47. The amendments reflect the policy that underlies the requirements of By-Law 7.1 (Operational Obligations and Responsibilities), referenced in rule 5.01. That policy provides that lawyers are obliged to "assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client." (By-Law 7.1, s. 4(1) – see Appendix 4).

Comments from the Consultation

48. Several lawyers responded to the proposed amendments to rule 5.01. One lawyer, with support from others, thought that the requirement in 5.01(9)(c) was unnecessary as currently the Acknowledgement and Direction provides that the lawyer explain the effect of the transfer document. The primary objection in this respect was that explaining the client's legal rights and obligations was more onerous than this prevailing standard of practice.

The Working Group's and Committee's View and Proposal

49. The Committee, based on the Working Group's recommendation, determined that the amendments to rule 5.01 are appropriate and are needed to address the issues of responsibility for the matter and appropriate supervision.[8]

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[7] The numbers of the subrules in rule 5.01 published for the consultation predated amendments to this rule in the fall of 2007. The current proposed subrules would be numbered 5.01(6) and (7).

[8] The Committee, based on the Working Group's view, determined that the client identification amendments in rule 5.01 should not be pursued at this time, as separate requirements for client identification are being considered by the Law Society.

50. The amendments will prevent real estate lawyers from practising law anonymously, which is currently possible under the e-reg™ system. The Committee learned that some lawyers send their work to freelance conveyancers, who process documents using their own accounts, under their own names, and not under the account, or under the name of, the lawyers for whom they are working.

51. In those occasions when the Law Society must investigate a lawyer with respect to a real estate matter, difficulties are encountered because of anonymous practice, including connecting real estate lawyers with their work product through the Teraview system, as it would not bear their names in such situations.

52. Lawyers are currently required to sign Transfers, letters of requisition (Commentary to Rule 5.01(2)), title opinions (Commentary to Rule 5.01(2)) and reporting letters (Commentary to Rule 5.01(2)). The proposed rule would be consistent with the requirements that the lawyer's name and signature on other real estate documents, and would have no effect on lawyers whose commendable practice is to personally sign and register e-reg™ documents.

53. As the proposed rule would require all activity by a freelance conveyancer to have been conducted under the lawyer's account, the rule will enable a lawyer to confirm whether, and which, searches and registrations were actually performed by the freelance conveyancer.[9]

54. One additional amendment is being proposed relating to the lawyer's supervisory responsibilities over non-lawyers with respect to title insurance products. In rule 5.01, as it existed before October 2007, language addressing this issue appeared at subrule 5.01(4). It was removed when By-Law 7.1, based on the rule, was made in October 2007 and the bulk of rule 5.01 was repealed. Rule 5.01 was re-created and adopted by Convocation in November 2007, but did not include these provisions. At this stage, the Committee's view is that they should be included in the rule as subrule 5.01(5).

55. The proposed amendment to rule 5.01 in its entirety is as follows:

RULE 5: RELATIONSHIP TO STUDENTS, EMPLOYEES, AND OTHERS

Title Insurance

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

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

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

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

[9] With respect to the impact of the rule on conveyancers, in order to perform registrations for lawyers, the lawyers will be required to obtain credentials for the conveyancers under the lawyer's account.

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

Signing E-Reg™ Documents

5.01 (6) A lawyer who electronically signs a document using the system for the electronic registration of title documents – e-reg™ – assumes complete professional responsibility for the document.

5.01 (7) A lawyer retained to act in a real estate matter or transaction

(a) may only authorize a non-lawyer to sign for completeness any e-reg™ document that may be signed by a non-lawyer, if the non-lawyer is registered under and signs under the lawyer's or law firm's e-reg™ account, and

(b) assumes complete professional responsibility for a document signed by a non-lawyer under the lawyer's or law firm's e-reg™ account.

APPENDIX 1

Rule 2 Relationship To Clients

2.04 AVOIDANCE OF CONFLICTS OF INTEREST

Definition

2.04 (1) In this rule

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

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

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

Commentary

Conflicting interests include, but are not limited to, the financial interest of a lawyer or an associate of a lawyer, including that which may exist where lawyers have a financial interest in a firm of non-lawyers in an affiliation, and the duties and loyalties of a lawyer to any other client, including the obligation to communicate information. For example, there could be a conflict of interest if a lawyer, or a family member, or a law partner had a personal financial interest in the client's affairs or in the matter in which the lawyer is requested to act for the client, such as a partnership interest in some joint business venture with the client. The definition of conflict of interest, however, does not capture financial

interests that do not compromise a lawyer's duties to the client. For example, a lawyer owning a small number of shares of a publicly traded corporation would not necessarily have a conflict of interest, because the holding may have no adverse influence on the lawyer's judgment or loyalty to the client.

Where a lawyer is acting for a friend or family member, the lawyer may have a conflict of interest because the personal relationship may interfere with the lawyer's duty to provide objective, disinterested professional advice to the client.

[Amended - May 2001, March 2004, October 2004]

Avoidance of Conflicts of Interest

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

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

Commentary

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

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

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

A conflict of interest may arise when a lawyer acts not only as a legal advisor but in another role for the client. For example, there is a dual role when a lawyer or his or her law firm acts for a public or private corporation and the lawyer serves as a director of the corporation. Lawyers may also serve these dual roles for partnerships, trusts, and other organizations. A dual role may raise a conflict of interest because it may affect the lawyer's independent judgment and fiduciary

obligations in either or both roles, it may obscure legal advice from business and practical advice, it may invalidate the protection of lawyer and client privilege, and it has the potential of disqualifying the lawyer or the law firm from acting for the organization. Before accepting a dual role, a lawyer should consider these factors and discuss them with the client. The lawyer should also consider rule 6.04 (Outside Interests and Practice of Law).

If a lawyer has a sexual or intimate personal relationship with a client, this may conflict with the lawyer's duty to provide objective, disinterested professional advice to the client. Before accepting a retainer from or continuing a retainer with a person with whom the lawyer has such a relationship, a lawyer should consider the following factors:

a. The vulnerability of the client, both emotional and economic;

b. The fact that the lawyer and client relationship may create a power imbalance in favour of the lawyer or, in some circumstances, in favour of the client;

c. Whether the sexual or intimate personal relationship will jeopardize the client's right to have all information concerning the client's business and affairs held in strict confidence. For example, the existence of the relationship may obscure whether certain information was acquired in the course of the lawyer and client relationship: Whether such a relationship may require the lawyer to act as a witness in the proceedings;

d. Whether such a relationship will interfere in any way with the lawyer's fiduciary obligations to the client, his or her ability to exercise independent professional judgment, or his or her ability to fulfill obligations owed as an officer of the court and to the administration of justice.

There is no conflict of interest if another lawyer of the firm who does not have a sexual or intimate personal relationship with the client is the lawyer handling the client's work.

While subrule 2.04(3) does not require that a lawyer advise the client to obtain independent legal advice about the conflicting interest, in some cases, especially those in which the client is not sophisticated or is vulnerable, the lawyer should recommend such advice to ensure that the client's consent is informed, genuine, and uncoerced.

[Amended – March 2004, October 2004]

Acting Against Client

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

(a) in the same matter,

(b) in any related matter, or

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

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

Commentary

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

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

b. the former client consents to the lawyer's partner or associate acting,

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

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

Commentary

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

Joint Retainer

(6) Except as provided in subrule (8.2), where a lawyer accepts employment from more than one client in a matter or transaction, the lawyer shall advise the clients that

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

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

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

[Amended – February 2007]

Commentary

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

A lawyer who receives instructions from spouses or partners as defined in the *Substitute Decisions Act, 1992* S.O. 1992 c. 30 to prepare one or more wills for them based on their shared understanding of what is to be in each will should treat the matter as a joint retainer and comply with subrule (6). Further, at the outset of this joint retainer, the lawyer should advise the spouses or partners that if subsequently only one of them were to communicate new instructions, for example, instructions to change or revoke a will:

(a) the subsequent communication would be treated as a request for a new retainer and not as part of the joint retainer;

(b) in accordance with rule 2.03, the lawyer would be obliged to hold the subsequent communication in strict confidence and not disclose it to the other spouse or partner; but

(c) the lawyer would have a duty to decline the new retainer, unless;

(i) the spouses or partners had annulled their marriage, divorced, permanently ended their conjugal relationship, or permanently ended their close personal relationship, as the case may be;

(ii) the other spouse or partner had died; or

(iii) the other spouse or partner was informed of the subsequent communication and agreed to the lawyer acting on the new instructions.

After advising the spouses or partners in the manner described above,

the lawyer should obtain their consent to act in accordance with subrule (8).

[Amended – February, 2005]

(6.1) Where a lawyer acts for both the borrower and the lender in a mortgage or loan transaction, the lawyer shall disclose to the borrower and the lender, in writing, before the advance or release of the mortgage or loan funds, all material information that is relevant to the transaction.

Commentary

What is material is to be determined objectively. Material information would be facts that would be perceived objectively as relevant by any reasonable lender or borrower. An example is a price escalation or "flip" where a property is re-transferred or re-sold on the same day or within a short time period for a significantly higher price. The duty to disclose arises even if the lender or the borrower does not ask for the specific information.

[New – February 2007]

(7) Except as provided in subrule (8.2), where a lawyer has a continuing relationship with a client for whom the lawyer acts regularly, before the lawyer accepts joint employment for that client and another client in a matter or transaction, the lawyer shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer.

[Amended – February 2007]

Commentary

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

(8) Except as provided in subrule (8.2), where a lawyer has advised the clients as provided under subrules (6) and (7) and the parties are content that the lawyer act, the lawyer shall obtain their consent.

[Amended – February 2007]

(8.1) In subrule (8.2), "lending client" means a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.

(8.2) If a lawyer is jointly retained by a client and by a lending client in respect of a mortgage or loan from the lending client to that client, including any guarantee of that mortgage or loan, the lending client's consent is deemed to exist upon the lawyer's receipt of written instructions from the lending client to act and the lawyer is not required to

(a) provide the advice described in subrule (6) to the lending client before accepting the employment,
(b) provide the advice described in subrule (7) if the lending client is the other client as described in that subrule, or
(c) obtain the consent of the lending client as described in subrule (8), including confirming the lending client's consent in writing, unless the lending client requires that its consent be reduced to writing.

Commentary

Subrules (8.1) and (8.2) are intended to simplify the advice and consent process between a lawyer and institutional lender clients. Such clients are generally sophisticated. Their acknowledgement of the terms of and consent to the joint retainer is usually confirmed in the documentation of the transaction (e.g. mortgage loan instructions) and the consent is generally deemed by such clients to exist when the lawyer is requested to act.

Subrule (8.2) applies to all loans where a lawyer is acting jointly for both the lending client and another client regardless of the purpose of the loan, including, without restriction, mortgage loans, business loans and personal loans. It also applies where there is a guarantee of such a loan.

[New – February 2007]

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

(a) not advise them on the contentious issue, and
(b) refer the clients to other lawyers, unless
    (i) no legal advice is required, and
    (ii) the clients are sophisticated,

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

Commentary

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

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

(10) Where clients consent to a joint retainer and also agree that if a contentious issue arises the lawyer may continue to advise one of them and a contentious issue does arise, the lawyer

may advise the one client about the contentious matter and shall refer the other or others to another lawyer

Affiliations Between Lawyers and Affiliated Entities

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

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

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

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

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

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

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

Commentary

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

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

[New - May 2001]

Prohibition Against Acting for Borrower and Lender

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

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

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

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

(c) the lender is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business,

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

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

[Amended - May 2001]

Multi-discipline Practice

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

Unrepresented Persons

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

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

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

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

Commentary

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

2.04.1 LAWYERS ACTING FOR TRANSFEROR AND TRANSFEREE IN TRANSFERS OF TITLE

2.04.1 (1) Subject to subrule (3), an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.

(2) Subrule (1) does not prevent a law firm of two or more lawyers from acting for or otherwise representing a transferor and a transferee in a transfer of title to real property so long as the transferor and transferee are represented by different lawyers in the firm and there is no violation of rule 2.04.

(3) So long as there is no violation of rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

(a) *[the applicable statutory instrument under authority of the Director of Titles]* permits the lawyer to sign the transfer on behalf of the transferor and the transferee,

(b) the transferor and transferee are "related persons" as defined in section 251 of the *Income Tax Act (Canada)*, or

(c) the lawyer practises law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

Rule 5 - Relationship to Students, Employees, and Others

5.01 SUPERVISION

Application

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

Direct Supervision Required

(2) A lawyer shall, in accordance with the By-Laws,
(a) assume complete professional responsibility for his or her practice of law, and
(b) shall directly supervise non-lawyers to whom particular tasks and functions are assigned.

Commentary

By-Law 7.1 governs the circumstances in which a lawyer may assign certain tasks and functions to a non-lawyer within a law practice. Where a non-lawyer is competent to do work under the supervision of a lawyer, a lawyer may assign work to the non-lawyer. The non-lawyer must be directly supervised by the lawyer. A lawyer is required to review the non-lawyer's work at frequent intervals to ensure its proper and timely completion.

A lawyer may permit a non-lawyer to perform tasks assigned and supervised by the lawyer as long as the lawyer maintains a direct relationship with the client or, if the lawyer is in a community legal clinic funded by Legal Aid Ontario, as long as the lawyer maintains a direct supervisory relationship with each client's case in accordance with the supervision requirements of Legal Aid Ontario and assumes full professional responsibility for the work.

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

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

The following examples, which are not exhaustive, illustrate situations where it may be appropriate to assign work to non-lawyers subject to direct supervision.

Real Estate – A lawyer may permit a non-lawyer to attend to all matters of routine administration, assist in more complex transactions, draft statements of account and routine documents and correspondence and attend to registrations. The lawyer must not assign to a non-lawyer the ultimate responsibility for review of a title search report or of documents before signing or for review and signing of a letter of requisition, review and signing of a title opinion or review and signing of a reporting letter to the client.

In real estate transactions using the system for the electronic registration of title documents ("e-reg" TM), only a lawyer may sign for completeness of any document that requires compliance with law statements.

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

Wills, Trusts and Estates – A lawyer may permit a non-lawyer to attend to all matters of routine administration, to assist in more complex matters, to collect information, draft routine documents and correspondence, to

prepare income tax returns, to calculate such taxes, to draft executors' accounts and statements of account, and to attend to filings.

[New November 2007]

Electronic Registration of Title Documents

(3) When a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents ("e-reg" TM), the lawyer

(a) shall not permit others, including a non-lawyer employee, to use the lawyer's diskette, and

(b) shall not disclose his or her personalized e-reg TM pass phrase to others.

(4) When a non-lawyer employed by a lawyer has a personalized specially encrypted diskette to access the system for the electronic registration of title documents, the lawyer shall ensure that the non-lawyer

(a) does not permit others to use the diskette, and

(b) does not disclose his or her personalized e-reg TM pass phrase to others.

Title Insurance

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

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

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

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

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

Signing E-Reg™ Documents

5.01 (6) A lawyer who electronically signs a document using the system for the electronic registration of title documents – e-reg™ – assumes complete professional responsibility for the document.

5.01 (7) A lawyer retained to act in a real estate matter or transaction

(a) may only authorize a non-lawyer to sign for completeness any e-reg™ document that may be signed by a non-lawyer, if the non-lawyer is registered under and signs under the lawyer's or law firm's e-reg™ account, and

(b) assumes complete professional responsibility for a document signed by a non-lawyer under the lawyer's or law firm's e-reg™ account.

APPENDIX 2

Notice to the Real Estate Profession

Oct 30, 2007

As noted in a Law Society bulletin in May 2007, the Ontario government is in the process of implementing changes in real estate practice following the passage of Bill 152. As previously noted, the government has been particularly concerned about title fraud and is proposing a range of fraud-prevention and consumer protection measures. The most significant changes for real estate practitioners involve the registration of transfers in the electronic registration system. These include the following:

- Lawyers will be required to sign transfers for completeness (but not required to sign for release); and
- Every registration of a transfer will involve two lawyers, one for the transferor and one for the transferee with very few exceptions.

The Law Society is considering what, if any, amendments it should make to the *Rules of Professional Conduct* to ensure effective protection of the public interest, and to promote accessible legal services. To this end, the Law Society has prepared draft Rules which are based on its current understanding of the changes proposed by the government.

One draft Rule under consideration is whether, given the Ministry's 'two lawyer' requirement, there should be a Law Society Rule that lawyers in the same firm cannot represent the transferor and the transferee in the same transaction. This 'two firm' rule would extend the existing conflict provisions currently set out in Rule 2.04.

A second Rule amendment under consideration would permit a lawyer in a remote location to act for both the transferor and the transferee in a transaction. Under this Rule, independent legal advice (ILA) would be required for one of the parties in the transaction, and the lawyer providing the ILA would also sign the transfer for completeness on behalf of that party. However, the overall responsibility for the transaction would remain with the first lawyer in the remote location, even though the lawyer providing ILA signs the transfer.

The draft Rules under consideration for your review and comment can be found on the Law Society's website. Additional Rule amendments to clarify a lawyer's responsibility to the client and to others in a real estate transaction are also included for comment.

The Law Society is seeking your views on these draft Rules. Please provide your responses by November 30, 2007 to lawconsultations@lsuc.on.ca

Proposed New Real Estate Rules

1. New Rules 2.04 (15) – (18)

Prohibition Against Acting for Transferor and Transferee

2.04 (15) Subject to subrules (16) and (17), a lawyer, or one or more lawyers practising in a law firm, shall not act for or otherwise represent both the transferor and the transferee in a transfer of real property.

2.04 (16) Provided that there is no violation of this rule, a lawyer, or one or more lawyers practising in a law firm, may act for or otherwise represent both a transferor and a transferee in a transfer of real property if in the circumstances the [*applicable statutory instrument*] permit one lawyer to sign the transfer for completeness on behalf of both the transferor and the transferee.

Lawyers in Remote Locations

2.04 (17) Provided that there is no violation of this rule and subrule (16) does not apply, where a lawyer, or one or more lawyers practising in the law firm, is situated in a remote location and there are no other lawyers that either party could conveniently retain for the transfer of real property, the lawyer, or one or more lawyers practising in a law firm, in the remote location may act for or otherwise represent both the transferor and the transferee in the transfer provided:

(a) the lawyer, or one or more lawyers practising in the law firm, in the remote location requires either the transferor or the transferee to obtain independent legal advice;
(b) the lawyer giving the independent legal advice signs the transfer for completeness on behalf of the party receiving the independent legal advice; and
(c) the lawyer, or one or more lawyers practising in the law firm, in the remote location assumes complete responsibility for the content of the transfer signed by the lawyer giving independent legal advice, despite rule 5.01 (7).

2.04 (18) (a) The lawyer providing independent legal advice pursuant to subrule (17) may do so in person or by other means, including telephone, video, or web conferencing.

(b) Where the lawyer does not provide the independent legal advice in person, that lawyer shall ensure that:

(i) the party receiving the independent legal advice signs documents, including the document authorizing the lawyer to electronically sign and register the transfer on behalf of that party, in the presence of the lawyer, or one or more lawyers practising in the law firm, in the remote location; and

(ii) the lawyer, or one or more lawyers practising in the law firm, in the remote location has taken steps to verify that the party receiving the independent legal advice and on whose behalf the documents are being signed has produced valid government-issued identification demonstrating that he or she is the party named in the documents.

2. New Rules 5.01 (7) - (9)

Signing E-RegTM Documents

5.01 (7) A lawyer who signs a document using the system for the electronic registration of title documents – e-regTM – assumes complete responsibility for the content of that document.

5.01 (8) (a) A lawyer retained to act in a real estate matter or transaction may only authorize a non-lawyer to sign for completeness any e-regTM document that may be signed by a non-lawyer, if the non-lawyer is registered and signs under the lawyer's e-regTM account.

(b) The lawyer assumes complete responsibility for the content of a document signed by a non-lawyer under the lawyer's e-regTM account.

5.01 (9) A lawyer who signs a document on behalf of a client using the e-regTM system or who authorizes a non-lawyer to sign a document using the e-regTM system on behalf of a client shall:

(a) before registering the document, require the client to produce valid government-issued identification demonstrating that he or she is the party named in the document;

(b) retain in the lawyer's file a copy of, or record details regarding, the identification produced by the client;

(c) before registering the document, advise the client of his or her legal rights and obligations with respect to the document; and

(d) obtain and retain in the lawyer's file the client's written authorization to the lawyer to sign and register the electronic document.

APPENDIX 3

SUMMARY OF RESPONSES TO CONSULTATION ON PROPOSED REAL ESTATE RULES

A. Summary of Reasons Against Two-Firm Requirement

1. The Rule is Not Required

Two lawyers in one firm can adequately protect the public by complying with the existing *Rules of Professional Conduct*.

The rule will not address the issue of fraud.

This rule punishes ethical lawyers in areas of the province where there is no fraud.

If a fraudster is bent on committing a fraud, he or she has already succeeded when he or she has acquired financing from the lender.

The rule goes further than what Bill 152 and the government changes require.

Bill 152 is designed to protect homeowners. It should not apply to commercial transactions.

The rule is unwarranted for the limited frequency of title fraud.

There should be more vigilance by other service providers – e.g. require that there be sworn affidavits of witnesses

2. Access to Lawyer of Choice

The rule would have the effect of depriving clients of retaining the lawyer of their choice. This rule may violate the Charter right of a client to services of his or her chosen lawyer.

The rule will create hardships for the elderly and others with limited mobility who may have to obtain legal services in other communities.

The rule will be perceived as a big city solution that causes problems for small rural communities.

This rule will create havoc in smaller communities. Clients in smaller communities often use the same law firm all their lives and refer family to the same firm.

3. Demise of the Smaller Firms

Law firms would be put in a position of sending longstanding clients to other lawyers. This would result in decreased revenue and will have the result of creating a shortage of law firms in smaller centers. Real estate is the bread and butter of the small firm.

The rule will have the effect of forcing law firms to disband. This will increase the cost of practicing law (increase overhead costs) and will ultimately result in increased costs to the public. In addition lawyers cannot avail themselves of the benefits of practising in a firm such as the sharing of knowledge and expenses.

4. Increase of Costs to the Public

The implementation of the rule will drive up the cost of legal services.

It will be seen as a lawyer designed plan to increase the income of lawyers.

The rule will erode the public's trust in the profession.

If the transaction is part of a corporate re-organization or tax plan, the second solicitor would have to look at the whole of the transaction. The second solicitor would require expertise in that type of transaction. This additional cost to the client is unwarranted.

5. Lawyer Dishonesty/Competence

The rule implies that lawyers practicing in the same firm cannot be trusted to protect the clients or would not exercise adequate care to protect the clients.

6. Loyalty to the Client

It takes many years for a lawyer to develop a client base and the respect and trust of clients. This rule would force a lawyer to choose between longstanding clients.

7. Firms Acting For Builders and Developers

Firms acting for builders and developers often do transfers between builders and developers. These rules would have a significant impact on both the law firm and clients.

8. Role of the Second Lawyer in the Transaction

Lawyers will be reluctant to act as a "second lawyer" in the transaction. Even if the role of the second lawyer is nominal, the lawyer would have to check for conflicts of interest and might be prevented from acting in the future for a client by virtue of having signed a transfer as the "second lawyer" in the transaction.

The role of the second lawyer is unclear. Will the rule require the second lawyer to give ILA or to fully represent the other party?

9. Client Confidentiality

Client confidentiality is compromised when a client is required to go to another law firm. Longstanding clients do not want to disclose confidential information to other law firms.

10. Overreaching

This rule goes further than the legislation requires.

Any rule that mandates the retaining of a lawyer is outside the mandate of the Law Society.

B. Summary Of Reasons For Two-Firm Requirement

1. Demise of the Sole Practitioner

The sole practitioners should not be discriminated against.

2. Quality of Legal Services

This rule reinforces the concept that the real estate lawyer is not merely a "paper-pusher", but does much more.

This rule ensures that the real estate lawyer fully represents and advocates for the client in the transaction in the event that there is a problem.

3. Loyalty

If a lawyer sends a long time client out to a second lawyer because he or she cannot act for both clients, it will result in increased loyalty of the client rather than a loss of business.

4. Sole Practitioners/Firms

Unless a two firm rule is implemented, sole practitioners will be pitted against firms.

C. Exceptions Suggested to the Two-Lawyer Requirement

The following are the main exceptions proposed regarding the two-lawyer requirement:

1. Inter-family transfers;

2. Same party transfers - change in legal tenure, severance of land;

3. Estate transfers -transfers from estate trustee to beneficiary, transfers for estate planning purposes;

4. Transfers to effect a s. 85 Income Tax Rollover;

5. Transfers to effect corporate re-organizations or transfers between corporation and related parties or shareholders of the corporation;

6. Transfers of easements;

7. Transfers where there is no change in the beneficial ownership.

D. Comments on the Remote Location Exception Proposal

1. Independent Legal Advice

The requirement for independent legal advice will increase costs to people in remote communities.

A strictly followed identification protocol is the best safeguard against fraud.

Many lawyers refuse to provide independent legal advice. It might be hard to find a lawyer who will provide independent legal advice.

The concept of giving independent legal advice by phone is demeaning to the process and to real estate practitioners.

There are grave concerns about the viability of a lawyer providing independent legal advice by phone to a person that the lawyer does not personally know, and does not see in connection with such advice, particularly when it comes to obtaining confirmation that such person understands the advice given and the legal consequences of proceeding in the particular manner recommended.

This rule will be perceived as a big city solution that causes problems for small rural communities.

2. Public Interest

It will cost persons in remote locations more to complete a transaction.

How will the lawyer choose which client should be sent out for independent legal advice?

3. Definition of Remote

The definition of the term “remote location” should include the legal demographics of small communities such as those in the Huron Law Association area.

The term remote should apply in situations where there is no lawyer who can complete the transaction at the time of registration (e.g. remoteness in time not only location).

Remoteness should be judged from the client’s perspective and circumstances and not those of the lawyer – e.g. mobility of the client and reasonable access to lawyers in other parts of the province.

E. Signing E-Reg Documents

1. Rule 5.01(7)

The meaning of “assume complete responsibility” is unclear. This wording might result in the courts applying a strict liability standard as against lawyers.

This rule is over-reaching and not in the public interest.

This rule sets a very high standard for lawyers.

One lawyer proposed alternate wording:
“A lawyer who signs a document using a system for the electronic registration of title documents assumes complete responsibility for that document being registered. “

One lawyer should not be responsible for the content of the document inputted by the other lawyer.

This rule creates an impossible standard. A lawyer should not be required to verify the veracity of the information provided by the client - e.g. family law statements, address, Planning Act statement etc.

2. 5.01(8)

Rule 5.01(8)(b) is overreaching.

Rule 5.01(8) should refer to the “law firm’s e-reg. account” rather than the “lawyer’s e-reg. account” as firms usually have one account under the firm name.

Rule 5.01 (8) – the use of an agent with respect to registrations is most effective from a cost and efficiency point of view.

3. 5.01(9)

The identification rule does not address corporations and existing clients. This rule is more appropriate to unknown or first time clients in residential transactions.

ID should not be required in situations where ID is available for backup if required.

What does the term “valid identification” mean?

Obtaining “photo identification” should be a minimum requirement.

A lawyer is not always in a position to provide legal advice regarding each document registered – e.g. bulk closings where hundreds of transfers are registered in one day.

This rule will result in delays, inconvenience and ultimately additional costs. The rule is broadly drafted and will apply to corporations, lenders, insurance companies, government authorities and similar institutions and bodies in each and every file and every time a document is registered. It will not always be possible or practical to comply with the Rule.

It is unclear what the lawyer’s responsibility is when the lawyer is acting for a corporation or entity and the instructions come from the directing mind of the corporation, but another person in the company instructs the lawyer to register the document. Whose identification must the lawyer obtain? To whom does the lawyer provide the legal advice? This rule should apply only to individuals and not corporations, trusts, partnerships and any government authorities or agencies.

The Rule should provide that the Acknowledgment and Direction could be kept in a central file. When a lawyer regularly acts for a client or when the lawyer is completing multiple transactions for the client, the lawyer might not obtain an acknowledgment and direction from the client for each file.

Rule 5.01(9)(c) – This rule is too onerous. Currently the Acknowledgement and Direction provides that the lawyer explain the effects of the document to the client. This rule would have the effect of requiring a lawyer to advise a client about each and every obligation in the document.

APPENDIX 4

BY-LAW 7.1

Made: October 25, 2007

Amended: November 22, 1007

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

Interpretation

1. (1) In this By-law,

"licensee" means a licensee who holds a Class L1 licence;

"non-licensee" means an individual who,

(a) is not a licensee;

(b) is engaged by a licensee to provide her or his services to the licensee; and

(c) expressly agrees with the licensee that the licensee shall have effective control over the individual's provision of services to the licensee.

Interpretation: "effective control"

(2) For the purposes of subsection (1), a licensee has effective control over an individual's provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society's rules of professional conduct and the Society's policies and guidelines.

PART II

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any

non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client.

(2) Without limiting the generality of subsection (1),

(a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;

(b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;

(c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;

(d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;

(e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;

(f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;

(g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and

(h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

1. to give or accept an undertaking on behalf of the licensee;

2. to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or

3. to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non-licensee,

(a) to give the licensee's client legal advice;

(b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;

(c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);

(d) to sign correspondence, other than correspondence of a routine administrative nature;

(e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or

(f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

PART III

COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,

a. the letter is in relation to the affairs of the licensee's client;

b. the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;

c. if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;

d. the letter is on the licensee's business letterhead; and

e. the letter is signed by the licensee.

INFORMATION

PROFESSIONAL REGULATION DIVISION
QUARTERLY REPORT

100. Professional Regulation Division's Quarterly Report (fourth quarter 2007), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and

responsibilities, including file management and monitoring, for the period October to December 2007.

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

Copy of the The Professional Regulation Division Quarterly Report October – December 2007.

(pages 108 – 153)

Re: Amendments to the *Rules of Professional Conduct* Respecting Requirements for Two Lawyers for a Real Estate Transfer and Responsibility for Real Estate Transfer Documents

Mr. Wright presented the amendments for decision.

It was moved by Mr. Ruby, seconded by Mr. Wright, –

that Convocation

a) amend the *Rules of Professional Conduct* by adding rule 2.04.1 to require that there be two lawyers for a transaction involving a transfer of title of real property, as follows:

2.04.1 LAWYERS ACTING FOR TRANSFEROR AND TRANSFEREE IN TRANSFERS OF TITLE

2.04.1 (1) Subject to subrule (3), an individual lawyer shall not act for or otherwise represent both the transferor and the transferee in a transfer of title to real property.

(2) Subrule (1) does not prevent a law firm of two or more lawyers from acting for or otherwise representing a transferor and a transferee in a transfer of title to real property so long as the transferor and transferee are represented by different lawyers in the firm and there is no violation of rule 2.04.

(3) So long as there is no violation of rule 2.04, an individual lawyer may act for or otherwise represent both the transferor and the transferee in a transfer of title to real property if

(d) *[the applicable statutory instrument under authority of the Director of Titles]* permits the lawyer to sign the transfer on behalf of the transferor and the transferee,

Amendment: The italized words in square brackets were deleted and the words "the Land Registration Reform Act" substituted.

(e) the transferor and transferee are "related persons" as defined in section 251 of the *Income Tax Act (Canada)*, or

(f) the lawyer practises law in a remote location where there are no other lawyers that either the transferor or the transferee could without undue inconvenience retain for the transfer.

The motion as amended was approved.

It was moved by Mr. Ruby, seconded by Mr. Wright, –

that Convocation

b. amend rule 5.01 by adding subrules (5) through (6) to clarify the lawyer's responsibility with respect to title insurance and for documents in the electronic system for registration of title documents, as follows:

Title Insurance

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

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

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

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

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

Signing E-Reg™ Documents

5.01 (6) A lawyer who electronically signs a document using the system for the electronic registration of title documents – e-reg™ – assumes complete professional responsibility for the document.

Amendment: The following Rule 5.01 (7) was deferred for further examination by the working group

5.01 (7) A lawyer retained to act in a real estate matter or transaction

(c) may only authorize a non-lawyer to sign for completeness any e-reg™ document that may be signed by a non-lawyer if the non-lawyer is registered under and signs under the lawyer's or law firm's e-reg™ account, and

(d) assumes complete professional responsibility for a document signed by a non-lawyer under the lawyer's or law firm's e-reg™ account.

The amendments to come in effect on March 31, 2008.

The motion as amended was approved.

Messrs. Conway and Heintzman abstained from the vote.

Item for Information

- Professional Regulation Division Quarterly Report

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Report.

Report to Convocation
February 21st, 2008

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tom Heintzman
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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Projected Operating Budget and Annual Fee

Report on First Licensing Examination

COMMITTEE PROCESS

1. The Committee met on February 7th, 2008. Committee members present were Paul Dray (Chair), Bonnie Warkentin (Vice-chair), Marion Boyd (by telephone), James Caskey, Michelle Haigh (by telephone), Tom Heintzman, Brian Lawrie (by telephone), Doug Lewis, Margaret Louter (by telephone), Stephen Parker and Cathy Strosberg. Staff members in attendance were Malcolm Heins, Terry Knott, Diana Miles, Zeynep Onen, Elliot Spears, Dulce Mitchell, Jim Varro, Lisa Mallia, and Julia Bass.

FOR DECISION

BY-LAW AMENDMENTS REQUIRED TO IMPLEMENT PARALEGAL LICENSING

Background

1. Now that the majority of 'grandparent' applicants have taken the licensing examination, the Law Society will be in a position to start issuing the first P1 licences in March. To make this possible, it is necessary to amend three existing by-laws to extend the regulatory requirements to paralegals. The provisions generally mirror the provisions for lawyers, with only minor exceptions.

2. The by-laws in question are as follows:
   a. By-law 6 - Insurance requirements (Appendix 1);
   b. By-law 7 - Multi-discipline Practices (Appendix 2);
   c. By-law 7 - Affiliations (Appendix 3), and
   d. By-law 9 - Financial transactions and trust accounts (Appendix 4).

Insurance Requirements

Motion

3. That Convocation approve the amendments to By-law 6 shown at Appendix 1, to implement the current requirements regarding paralegal insurance.

4. The insurance provisions for paralegals were submitted to Convocation in April 2007. The by-law amendments will implement the existing policy on paralegal insurance, which are essentially the same as for lawyers, with the exception that insurance is to be purchased on the open market and is not offered by LawPRO.

MDP's

Motion

5. That Convocation approve the amendments to By-law 7 shown at Appendix 2, to implement the policy on multi-discipline practices.

6. The amendments to the provisions on Multi-Discipline Practices (MDP's) are designed to permit paralegals to enter into partnership with other professionals (such as accountants) in similar fashion to lawyers.

7. Lawyers and paralegals can already form a Limited Liability Partnership together under section 61.1 of the *Law Society Act*. Applying to be an MDP would be more burdensome than forming an LLP, and for this reason would probably only be used where a non-legal professional was involved.

8. The rules behind the formation of MDP's include the following:
   a. Only persons, as opposed to partnerships or corporations, may join in an MDP;
   b. The relationship between individuals within the MDP may be a partnership or an association;
   c. The other professionals in an MDP must be actively involved in the provision of services within their areas of expertise;
   d. The MDP is a law practice or a legal services practice, in which the services of the other professions support or enhance the delivery of the legal services in the practice;
   e. Where lawyers partner with others in the MDP, effective control of the practice rests with the lawyers; where paralegals and non-licensees are involved, effective control rests with the paralegals. (These rules are important for effective enforcement);
   f. Licensees are responsible for ensuring compliance with the Law Society regulatory scheme and that non-licensees' ervices are provided with the appropriate level of skill and competence, and
   g. There is an approval scheme requiring a licensee to:
      i) apply for approval of the practice as an MDP;
      ii) provide information about the good character or standing of the other professionals proposed as partners sufficient to satisfy the Law Society that the practice may be approved;

iii) notify the Law Society of any new non-licensee partners after approval is granted and provide the same information about the new non-licensees in the same manner as in the original application;
iv) notify the Law Society of any changes in the status of the non-licensee partners as they may affect the designation of the practice as an MDP.

9. Other provisions include,
   a. the Law Society may require dissolution of the partnership if certain provisions of the by-law are breached;
   b. the terms "multi-discipline practice" and "multi-discipline partnership" may be used to describe entities which form such practices and partnerships pursuant to the by-law, and
   c. a multi-discipline partnership is required to maintain professional liability insurance for the practice which would effectively cover the non-licensee(s).

Affiliations
Motion

10. That Convocation approve the amendments to By-law 7 shown at Appendix 3, to implement the policy on affiliations.

11. The amendments to Part IV of By-law 7 provide for Affiliations for paralegals in the same manner currently applicable to lawyers.

12. Affiliation is defined in the following terms:

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

13. An example of this would be where a law firm is affiliated with a firm of accountants to advise on business structures, or with a firm of occupational therapists to advise on personal injury issues. It differs from an MDP in that the two entities remain organizationally completely separate.

14. The rules governing affiliations are as follows – if the committee approves the proposed amendments, these rules would also apply to paralegals:
   a. the law firm in the affiliation must be owned and controlled by lawyers;
   b. to assure control, law firms in affiliations, as a condition of practice, are required to disclose fully and completely to the Law Society,
      i) all financial arrangements that exist between the law firm and its partners and the non lawyer firm with which they are affiliated, and
      ii) all agreements and other arrangements that exist between the law firm and the non-lawyer firm with which it is affiliated including those dealing with the management and control of the affiliated law firm;
   c. law firms in affiliations are required to disclose to clients retaining the law firm and the non-lawyer firm for the joint provision of services, or who are the subject of referral for services between the firms, of any arrangements, including those described above in b., that may affect the independence of the lawyer's representation, to permit an informed decision by the client about the retainer;
   d. to facilitate the above, there is an application process whereby information necessary for the Society's review of the arrangements described can be obtained;

e. the non-lawyer firm is not permitted to share in the law firm's profits or revenues, either directly or indirectly through excessive inter-firm charges, such as charging expenses that do not reflect fair market value;
f. law firms in an affiliation are required to establish a system to search for conflicts in both the law firm and the non-lawyer firm and are required to deal with conflicts as if both firms were one, applying to situations of conflict the obligations applicable to law firms;
g. the conflicts search regime extends to searches for conflicts in firms affiliated with the law firm that practice outside Canada, in circumstances where separate national firms or offices of the non-lawyer firm are treated economically as if they were one firm;
h. the law firm in an affiliation is required to carry on its practice entirely within its own separate premises and maintain its documents, records and files, including all electronic data, entirely separate and apart from the files, documents, records and electronic data of the affiliated firm;
i. lawyers in law firms in an affiliation are required to obtain the informed written consent of the client in any matter where joint services are offered by the affiliated firms, after the client has been advised of the possible prejudice or loss of solicitor and client privilege arising from the provision of services by both firms on the same matters in respect of which legal advice will be sought and obtained by the client, or where non-lawyer staff of the non lawyer firm also provide services, including support services, in the law firm;
j. in circumstances in which lawyers move between the law firm and the non-lawyer firm in providing legal advice to clients on one hand and professional consulting services on the other, lawyers are required to disclose to clients, before being retained, their role in the firms, provide an explanation of when solicitor and client privilege may or may not attach, and give the client an opportunity to make an informed choice with respect to counsel, and
k. a law firm in an affiliation is required to observe and comply with the current rule of professional conduct on firm names in order to ensure that the public is not misled into believing that non-lawyers are practising or are entitled to practise law.

Financial Transactions, Trust Accounts and Client Property
Motion

15. That Convocation approve the amendments to By-law 9 shown at Appendix 4, regarding financial transactions, trust accounts and client property.

16. These amendments implement the policies on trust accounts, record keeping and the handling of client property for paralegals approved by Convocation in September 2007.

Appendix 1

PART II

LICENSEES HOLDING A CLASS P1 LICENCE

MANDATORY INSURANCE

Mandatory insurance

12. (1) Every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario which complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers' Professional Indemnity Company to a licensee who holds a Class L1 licence:

1. A policy limit for each single claim of not less than $1 million and an aggregate policy limit for all claims of not less than $2 million per year.

2. A maximum deductible amount under the policy that is reasonable in relation to the financial resources of the licensee.

3. Coverage for liability for errors, omissions and negligent acts arising out of the provision by the licensee of legal services authorized under a Class P1 licence.

4. A provision granting an extended reporting period of ninety days from the date of cancellation of the policy.

5. A provision naming the Society as an additional insured, for the purposes of reporting claims and receiving notice of the cancellation or amendment of the policy.

6. A provision that the policy may not be cancelled or amended without at least 60 days written notice to the Society.

Exemption from insurance requirement

(2) A licensee is not required to be insured against professional liability under subsection (1) if the licensee provides written evidence to the satisfaction of the Society that,

(a) the licensee is not providing legal services in Ontario; or

(b) the licensee is providing legal services in Ontario in the circumstances specified in paragraph 1, 2 or 4 of subsection 30 (1) of By-Law 4, subsection 31 (2), (3) or (4) of By-Law 4 or subsection 32 (2) of By-Law 4.

Proof of compliance with s. 12

13. A licensee shall, prior to the commencement of the provision of legal services and on an annual basis thereafter, by not later than the anniversary date of the commencement of the provision of legal services, provide written evidence to the satisfaction of the Society that the licensee is in compliance with section 12.

Appendix 2

PART III

MULTI-DISCIPLINE PRACTICES

Interpretation~~: "licensee"~~

15. (1) In this Part,

"licensee" ~~means a licensee who holds a Class L1 licence and~~ includes a partnership of licensees who each hold ~~a Class L1~~the same class of licence~~.~~;

"professional" means an individual whose services a licensee may, under section 17, provide to a client in connection with the licensee's practice of law or provision of legal services.

~~Interpretation: practice of law~~

~~(2) For the purposes of this Part, the practice of law means the giving of any legal advice respecting the laws of Canada or of any province or territory of Canada or the delivery of the professional services of a barrister or solicitor.~~

Application of certain sections

(~~3~~2) Subsection 18 (2) and sections 19, 20, 25, 26, 29 and 30 do not apply in respect of a partnership or an association that is not a corporation entered into by,

(a) ~~a~~ a licensee who holds, or a partnership of licensees who each hold, a Class L1 licence with an individual who is authorized to practise law in any province or territory of Canada outside Ontario; or

(b) a licensee who holds, or a partnership of licensees who each hold, a Class P1 licence with an individual who is authorized to provide legal services in any province or territory of Canada outside Ontario~~.~~.

Interpretation: practice of a profession, *etc.*

(3) For the purposes of paragraphs 2 to 6 of subsection 18 (2), subsection 18 (3), section 19 and subsection 26 (1), the practice of a profession, trade or occupation includes the provision of legal services.

Prohibition against providing services of non-licensee

16. (1) A licensee who holds a Class L1 licence shall not, in connection with the licensee's practice of law, provide to a client the services of a person who ~~is~~ does not ~~a licensee~~hold a Class L1 licence except in accordance with this Part.

Same

(2) A licensee who holds a Class P1 licence shall not, in connection with the licensee's provision of legal services, provide to a client the services of a person who does not hold a Class P1 licence except in accordance with this Part.

Permitted provision of services of non-licensee

17. (1) A licensee who holds a Class L1 licence may, in connection with the licensee's practice of law, provide to a client only,

(a) the legal services of a licensee who holds a Class P1 licence; or

(b) ~~only~~ the services of an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law.

Same

(2) A licensee who holds a Class P1 licence may, in connection with the licensee's provision of legal services, provide to a client only the services of an individual who is not a licensee who practises a profession, trade or occupation other than the practice of law that supports or supplements the provision of legal services.

Partnership, with ~~non-licensee~~professional

18. (1) Subject to subsection (2) and subsection 20 (1), a licensee may enter into a partnership or association that is not a corporation with ~~an individual~~a professional ~~who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~ for the purpose of permitting the licensee to provide to clients the services of the ~~individual~~professional.

Same

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

1. The ~~individual~~professional, if other than a licensee who holds a Class P1 licence,

i. is qualified to practise a profession, trade or occupation that supports or supplements the practice of law or the provision of legal services~~.~~, and

ii.

~~2. i~~in the case of entering into a partnership with the ~~individual~~professional, ~~the individual~~ is of good character.

~~3~~2. The ~~individual~~ professional agrees with the licensee in writing that the licensee shall have effective control over the ~~individual=~~professional's practice of his or her profession, trade or occupation in so far as the ~~individual~~ professional practises the profession, trade or occupation to provide services to clients of the partnership or association.

3~~4~~. The ~~individual~~ professional agrees with the licensee in writing that, in partnership or association with the licensee, the ~~individual~~ professional will not practise his or her profession, trade or occupation except to provide services to clients of the partnership or association.

4~~5~~. The ~~individual~~ professional agrees with the licensee in writing that, outside of his or her partnership or association with the licensee, the ~~individual~~ professional will practise his or her profession, trade or occupation independently of the partnership or association and from premises that are not used by the partnership or association for its business purposes.

5~~6~~. The ~~individual~~ professional agrees with the licensee in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the licensee, the ~~individual~~ professional will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society~~=s~~'s rules of professional conduct for the licensee~~s~~ and the Society~~=s~~'s policies and guidelines.

6~~7~~. In the case of entering into a partnership with the ~~individual~~professional, the ~~individual~~ professional agrees with the licensee in writing to comply with the Society~~=s~~'s rules, policies and guidelines on conflicts of interest in relation to clients of the partnership who are also clients of the ~~individual~~ professional practising his or her profession, trade or occupation independently of the partnership.

Interpretation: "effective control"

(3) For the purposes of subsection (2), the licensee has "effective control" over the ~~individual=s~~professional's practi~~c~~s~~e~~ of his or her profession, trade or occupation if the licensee may, without the agreement of the ~~individual~~professional, take any action necessary to ensure that the licensee complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society~~=s~~'s rules of professional conduct for the licensee~~s~~ and the Society~~=s~~'s policies and guidelines.

Interpretation: "good character"

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

Society~~=s~~'s rules of professional conduct for the licensee~~s~~ and the Society~~=s~~'s policies and guidelines.

Responsibility for actions of ~~non-licensee~~professional

19. Despite any agreement between a licensee and ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional, the licensee shall be responsible for ensuring that, in respect of the ~~individual=s~~professional's practice of his or her profession, trade or occupation in partnership or association with the licensee,

(a) the ~~individual~~ professional practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the ~~individual~~ professional complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society~~=s~~'s rules of professional conduct for the licensee~~s~~ and the Society~~=s~~'s policies and guidelines.

Application by licensee forming partnership with ~~non-licensee~~professional

20. (1) Before a licensee enters into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional, the licensee shall apply to the Society for approval to enter into the partnership.

Application fee

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

Partnership agreement

21. At the time that a licensee makes an application under section 20, the licensee shall file with the Society a copy of so much of the agreement or agreements that will govern the licensee's partnership with the ~~individual~~ professional as may be required by the Society.

Consideration of application by Society

22. (1) A Society official shall consider every application made under section 20, and it shall approve the licensee's entering into a partnership with the ~~individual~~ professional if it is satisfied that,

(a) the conditions set out in subsection 18 (2) have been satisfied; and

(b) the licensee has made arrangements that will enable the licensee to comply with sections 19, 25, 26, 27 and 30.

Requirements not met

(2) If the Society is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Society shall notify the licensee who may meet the requirement or appeal to the committee of benchers appointed under section 37 if the licensee believes that the requirement has been met.

Time for appeal

23. An appeal under subsection 22 (2) shall be commenced by the licensee notifying the Society in writing of the appeal within thirty days after the day the Society notifies the licensee that a requirement has not been met.

Decision of committee of benchers

24. (1) After considering an appeal made under subsection 22 (2), the committee of benchers appointed under section 37 shall,

(a) if it determines that the requirement has been met, approve the licensee's entering into a partnership with the ~~individual~~professional; or

(b) if it determines that the requirement has not been met, notify the licensee that the requirement has not been met and that the licensee may not enter into a partnership with the ~~individual~~professional.

Filing requirements: partnerships

25. (1) A licensee who, under subsection 18 (1), has entered into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form

(2) The report required under subsection (1) shall be in contained in a form provided by the Society.

Due dates

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

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 25 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

(5) If a licensee's rights and privileges have been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 25 (1), for the

purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report mentioned in subsection (1) in force at the time the licensee is filing the report.

Changes in partnership

26. (1) A licensee who, under subsection 18 (1), has entered into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional shall immediately notify the Society when,

(a) the ~~individual~~ professional is expelled from the partnership;

(b) the ~~individual~~ professional ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the *Partnerships Act*; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Society may require the licensee to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the licensee notifies the Society under subsection (1) that an agreement that governs the partnership has been amended, the licensee shall file with the Society a copy of the amended agreement.

Dissolution of partnership: breach of certain provisions

27. If a licensee who, under subsection 18 (1), has entered into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional breaches section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, the Society may require the licensee to dissolve the partnership.

Notice to licensee of requirement to dissolve partnership

28. (1) If the Society requires a licensee to dissolve a partnership under subsection 26 (2) or section 27, the Society shall so notify the licensee and, subject to subsection (2), the licensee shall dissolve the partnership.

Appeal

(2) If the Society requires a licensee to dissolve a partnership under section 27, the

licensee may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 37 if the licensee believes that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the licensee notifying the Society in writing of the appeal within thirty days after the day the Society notifies the licensee that the partnership is to be dissolved.

Decision of committee of benchers

(4) After considering an appeal made under subsection (2), the committee appointed under section 37 shall,

(a) if it determines that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Stay

(5) The receipt by the Society of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with ~~non-licensee~~professional: multi-discipline practice

29. (1) A licensee who, under subsection 18 (1), has entered into an association that is not a corporation with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional may refer to the association as a multi-discipline practice.

Partnership with ~~non-licensee~~professional: multi-discipline practice or partnership

(2) A licensee who, under subsection 18 (1), has entered into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Interpretation: “Society’s insurance plan”

30. (1) In this section, "Society's insurance plan" means the Society's professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its licensees who hold a Class L1 licence.

Insurance requirements: ~~licensees~~Class L1 licence

(2) A licensee who holds a Class L1 licence who, under subsection 18 (1), has entered into a partnership with ~~an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law~~a professional shall maintain professional liability insurance coverage for the ~~individual~~professional,

(a) through the insurer of the Society's insurance plan, in an amount equivalent to that required of the licensee under the Society's insurance plan; and

(b) through any insurer, in an amount equivalent to the amount of coverage the licensee maintains in excess of that required of the licensee under the Society's insurance plan.

Insurance requirements: Class P1 licence

(3) A licensee who holds a Class P1 licence who, under subsection 18 (1), has entered into a partnership with a professional shall maintain professional liability insurance coverage for the professional, in an amount equivalent to the total of the amount of coverage required of the licensee and the amount of coverage the licensee maintains for herself, himself or itself in excess of that required of the licensee.

Appendix 3

PART IV

AFFILIATIONS ~~WITH NON-LICENSEES~~

Interpretation: ~~"affiliated entity"~~

31. (1) In this Part,

~~"~~affiliated entity" means ~~any person or group of persons other than a person or group of persons~~one or more persons none of whom are licensed or otherwise authorized to practise law or provide legal services in or outside Ontario;

"licensee" includes a permitted group of licensees.

Interpretation: "affiliation"

(2) For the purposes of this Part, a licensee ~~or group of licensees~~ affiliates with an affiliated entity when the licensee ~~or group~~ on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the ~~professional~~ services of ~~a barrister or solicitor by~~ the licensee ~~or group~~ and the ~~non-legal~~ services of the affiliated entity.

Ownership of practice, *etc.*

32. A licensee who ~~or a group of licensees that~~ affiliates with an affiliated entity shall ~~alone or together with other persons licensed to practise law in or outside Ontario~~,

(a) own the professional business through which the licensee ~~or group~~ practises law or provides legal services or comply with Part III;

(b) maintain control over the professional business through which the licensee ~~or group~~ practises law or provides legal services; and

(c) carry on the professional business through which the licensee ~~or group~~ practises law or provides legal services, other than the practice of law or the provision of legal services that involves the delivery of the ~~professional~~ services of ~~a barrister or solicitor by~~ the licensee ~~or group~~ jointly with the ~~non-legal~~ services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its ~~non-legal~~ services, other than those that are delivered by the affiliated entity jointly with the delivery of the ~~professional~~ services of ~~a barrister or solicitor by~~ the licensee ~~or group~~.

Report to Society

33. (1) A licensee who ~~or a group of licensees that~~ agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be contained in a form provided by the Society and shall include the following information:

1. The financial arrangements that exist between the licensee ~~or group of licensees~~ and the affiliated entity.

2. The arrangements that exist between the licensee ~~or group of licensees~~ and the affiliated entity with respect to,

i. the ownership, control and management of the professional business through which the licensee ~~or group~~ practises law or provides legal services,

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

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

Agreements

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

Filing requirements

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

Report

(2) The report required under subsection (1) shall be contained in a form provided by the Society.

Due date

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

~~Joint and several responsibility~~

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

Period of default

(~~5~~4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 34 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of licence

(~~6~~5) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 34 (1), for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report required under subsection (1) in force at the time the licensee is filing the report.

Change of Information

35. (1) A licensee who ~~or a group of licensees that~~ affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the licensee ~~or group~~ under section 33 or section 34; and

(b) any change in any agreement between the licensee ~~or group~~ and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the licensee ~~or group~~ and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2), shall include copies of the parts of the agreement or document that have changed.

REQUEST FOR EXEMPTION: PRO BONO STUDENTS CANADA

Motion

17. That Pro Bono Students Canada be granted an exemption from the requirement to hold a paralegal licence.

18. Pro Bono Students Canada ('PBSC') is a programme for law students originally established at the University of Toronto but now operating in every law school in Canada. It recruits law students who provide services to non-profit groups and public interest organizations, often in the form of research and public education. They also assist duty counsel in preparing documents for unrepresented parties, under the direct supervision of the lawyer. Such services do not require a licence from the Law Society.

19. While most law schools also have a 'student legal aid society' clinic (already exempted under By-law 4), PBSC provides services that would not be available through these clinics, in that their clientele have limited or no access to legal aid and their services often take the form of general support to non-profit organizations.

20. The students are supervised by lawyers and subject to quality control, and where their work can be regarded as of a legal nature, is covered by the insurance of the supervising lawyers. PBSC has reviewed their situation with LawPRO to ensure that the students' work is covered.

21. While PBSC receives some funding from Legal Aid Ontario, it does not fit within the definition of a "student legal aid services society" in By-law 4, which reads as follows:

> *Student legal aid services societies*
> *3. An individual who,*
> *i. is enrolled in a degree program at an accredited law school,*
> *ii. volunteers in, is employed by or is completing a clinical education course at a student legal aid services society, within the meaning of the Legal Aid Services Act, 1998,*
> *iii. provides the legal services through the clinic to the community that the clinic serves and does not otherwise provide legal services, and*
> *iv. provides the legal services under the direct supervision of a licensee who holds a Class L1 licence employed by the student legal aid services society.*

22. While PBSC fits within a number of these requirements, the definition in the *Legal Aid Services Act* contemplates a clinic funded by Legal Aid, established under an agreement with LAO.

23. PBSC is now interested in broadening its work to include advocacy services. As a first step, they have been approached to represent complainants appearing before the Health Professions Appeal & Review Board. The role of the board is stated on the board's website as follows:

> *The Health Professions Appeal and Review Board reviews decisions of the Complaints Committees of 23 self-regulating health professions Colleges pursuant to the provisions of the Regulated Health Professions Act, 1991(RHPA), and the Veterinarians Act. The Boards also reviews or conducts hearings regarding applications for registration to the 23 self-regulating health professions Colleges, pursuant to the provisions of the RHPA, and the Veterinarians Act. Under the Public Hospitals Act, the Board hears appeals regarding decisions of governing bodies of hospitals concerning hospital privileges and appointments to hospital medical staff.*

24. Advocating for parties before HPARB requires a Law Society licence. A submission from the National Director of PBSC, Noah Aiken-Klar, is attached at Appendix 5.

The Committee's Deliberations

25. The rationale for providing such an exemption is similar to that for the student legal clinics, in that unlike many of the other groups applying for exemptions, it would not be a reasonable alternative for them to obtain paralegal licences.

26. In terms of access to justice considerations, they serve an under-serviced clientele, and the clients they serve would be unlikely to obtain effective help elsewhere as they lack the financial resources to retain paid assistance. If granted an exemption, the students would not provide legal services other than through PBSC.

Appendix 5

Julia Bass
Policy Counsel, Law Society of Upper Canada
130 Queen Street West
Toronto, Ontario M5H 2N6

February 11, 2008

Dear Julia:

Re: Re: Pro Bono Students Canada

I hope you are well. I am writing to follow up on our conversations about the recent changes to *The Law Society Act* (the Act) and By-Laws and our request that Pro Bono Students Canada (PBSC) be included among the list of exempted groups in By-Law 4 (Part V) s.30. Thank you for offering to put this request and the attached description of PBSC before the Committee at its next meeting. We greatly appreciate your support.

For the past 12 years, PBSC programs have engaged law students across Ontario in providing critical legal information and support to communities in need – all *pro bono*. Students work under the supervision of lawyers to provide free legal information to public interest groups and non-profit organizations, and support to Legal Aid and *pro bono* lawyers. As we discussed, the vast majority of PBSC students do not provide "legal services" as defined by ss.1(5) and (6) of the Act, and thus operate outside the scope of the Act and By-Laws. A minority of students assist unrepresented individuals with the drafting of court forms under the direct supervision of Legal Aid lawyers, in compliance with By-Law 7.1 s.3 and s.4.

PBSC is constantly approached by organizations and individuals for help in meeting their legal needs. Recently, we have begun working with stakeholders to develop a program whereby students, under the supervision of volunteer lawyers, would provide legal services to unrepresented individuals appearing before an administrative board where no other services are available or will be made available in the foreseeable future. In order to build this program and continue to meet the evolving needs of unrepresented communities across Ontario, we request that PBSC be included among the list of exempted groups in By-Law 4 (Part V) s.30.

As with student legal aid services societies, which are an exempted group, all PBSC students are enrolled in a degree program at an accredited law school; volunteer for or are employed by PBSC to participate in projects that enhance their legal education; only provide services through PBSC projects to communities that have only limited or no access to other legal services; and provide services under the direct supervision of lawyers. PBSC programs are administered through, supported by and benefit from the oversight of law faculties and complement the work of student legal aid services societies and legal clinics. By including PBSC in the list of exempted groups in By-Law 4 (Part V) s.30, the Committee would help ensure that PBSC programs can continue to meet the demands of communities in need across Ontario and provide law students with unique hands-on opportunities for advancing their legal education under the supervision of lawyers.

Please do not hesitate to contact me if you or the Committee have any questions or would like more information about PBSC. You can reach me by email at noah.aikenklar@probonostudents.ca or at 416.946.0519. Many thanks for your time and consideration,

Yours truly,

Noah Aiken-Klar

PRO BONO STUDENTS CANADA:

From the classroom to the community and back

WHO WE ARE:

- In 1996, the University of Toronto Faculty of Law (U of T) launched Pro Bono Students Canada (PBSC) to cultivate the pro bono ethic in law students and to serve communities in need.
- Today, every law school in Ontario and Canada has a PBSC program, and the PBSC National Office is housed by the U of T, where it receives strategic support and the guidance of senior staff and faculty.

- Each year, PBSC programs engage approximately 2,000 law students who contribute more than 120,000 hours to enhancing access to justice.
- Over the last 12 years, over 11,000 law students have graduated from our programs.

OUR GOALS:

- Our main goals are two-fold:
  (1) To enable law students to develop their legal skills and broaden their educational experience by engaging in *pro bono* philosophy and practice; and
  (2) To provide critical *pro bono* services and increase access to justice for public interest organizations and communities in need.

OUR PROGRAMS:

- We involve law student volunteers in our programs in a range of ways, including:
  (1) Serving the unmet legal needs of public interest organizations, legal clinics and community groups through: researching pending legislation, legal issues and current policy questions; drafting policies for organizations and manuals for their clients; conducting public legal education workshops; and helping organizations provide legal information and support to communities; and
  (2) Assisting in-court (duty) counsel and advice lawyers at Ontario courthouses to respond to the increasing numbers of unrepresented clients who need help completing court forms and navigating the legal system, thereby supporting the administration of justice while learning about public interest practice and legal aid lawyering.
- Law student Coordinators are hired at every law school and trained by the PBSC National Office to manage PBSC projects and oversee volunteers.
- Volunteers are trained prior to participating in PBSC projects to ensure that they have the legal, management and professional skills to accomplish their work, and they submit regular progress reports about and evaluations of their projects upon completion.
- *Whenever students are involved in providing legal information to communities or at courthouses, we require that they work under the direction of a lawyer supervisor.*

OUR PARTNERS:

- At every Ontario law school, faculty and senior administrative staff are key partners in hiring student Coordinators and supporting and supervising their management of PBSC programs and projects.
- Our principal funder, The Law Foundation of Ontario, our law firm partner, McCarthy Tétrault LLP, and Legal Aid Ontario provide funding for our 8 Ontario offices and support for our programs.
- Our projects involve a vast network of partners across the province – like the Ministry of the Attorney General, Pro Bono Law Ontario, the City of Toronto, and many more – who work with PBSC programs and students and approach us with requests for assistance with new projects and initiatives every day.

COMPENSATION FUND PROVISIONS FOR PARALEGALS

Background

27. Since the Law Society will start to issue paralegal licences in the near future, it is necessary to decide the key features of the approach for Compensation Fund claims involving paralegals.

28. The Compensation Fund is established pursuant to section 51 of the Law Society Act. The Act provides that Convocation, in its absolute discretion, may make grants from the Fund as

follows:

> *51(5) Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person in consequence of,*
>
> *(a) dishonesty on the part of a person, while a licensee, in connection with his or her professional business or in connection with any trust of which he or she was or is a trustee; or*
>
> *(b) dishonesty, before the amendment day, on the part of a person, while a member, in connection with his or her law practice or in connection with any trust of which he or she was or is a trustee. 2006, c.21, Sched.C, s. 71 (4)*

29. The provisions in the *Act* govern both lawyer and paralegal licensees. There is a single Compensation Fund, with separate pools of money for lawyers and paralegal licensees. It is therefore appropriate that the same policies and procedures, with minor exceptions, be adopted for claims relating to both lawyer and paralegal licensees.

Per Claimant Limit, Audit Programme and Annual Levy

30. On January 10, the Committee approved the Per Claimant Limit, Audit Programme and Annual Compensation Fund Levy, and forwarded them to the Finance Committee, for review and presentation to Convocation.

Compensation Fund Guidelines

Motion

31. That Convocation approve the Guidelines attached at Appendix 6, for the processing of compensation fund claims involving paralegals.

Background

32. The Committee proposes Guidelines for claims relating to paralegals, based on the existing guidelines for lawyers, to establish the parameters of coverage by the Fund for claims relating to paralegal licensees. The proposed guidelines are attached at Appendix 6.

Composition of the Compensation Fund Committee

Motion

33. That Convocation approve the addition of two paralegal members of the Paralegal Standing Committee to the Compensation Fund Committee.

34. Subsection 51 (10) of the *Law Society Act* permits Convocation to delegate its authority over the Fund to a committee of Convocation. The Compensation Fund Committee is established under By-law 12 and is responsible for the supervision and management of the Fund. There are currently 6 members, one of whom is a lay bencher. By-law 12 is attached at Appendix 7.

35. Since the Compensation Fund Committee will soon begin consideration of claims relating to paralegal licensees, the Committee recommends that two members of the Paralegal Standing Committee be added to the Compensation Fund Committee.

Appendix 6

DRAFT

The Law Society of Upper Canada

GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE COMPENSATION FUND RELATING TO PARALEGALS

1. In order to qualify for a grant from the Compensation Fund, it must be shown that,

   a) the paralegal licensee received funds or property of a claimant, in his or her capacity as a person licensed to provide legal services, and that

   b) the claimant's loss was in consequence of dishonesty, on the part of the paralegal, in connection with the paralegal's professional business. Professional business means the provision of legal services and the business operations relating to it, as set out in the Law Society Act.

2. Notwithstanding the requirements of guideline 1(a) a paralegal and client relationship between the claimant and the paralegal is not required, when it can be shown that the claimant relied on the paralegal and the loss was in consequence of dishonesty by the paralegal in connection with any trust related to the paralegal's professional business where the paralegal is or was a trustee.

3. Money left with a paralegal to be used in a venture, in which the paralegal and the person advancing the money are both participants, is not money received by the paralegal in connection with his or her professional business, or in his or her capacity as a paralegal, despite the fact that the paralegal provides legal services in connection with the venture. Misappropriation by the paralegal of money left with the paralegal to participate in a venture with the paralegal, or failure to properly account by the paralegal, is not conduct for which relief from the Fund is available.

4.
   a) There shall be no recovery of money advanced to the paralegal if the purpose of such advance was known by the claimant to be a loan to the paralegal or in circumstances where the claimant should have known that the advance was a loan to the paralegal. It is deemed that the advance was to the paralegal, if it was for the paralegal personally or to his or her spouse or a corporation, syndicate or partnership in which the paralegal or the paralegal's spouse or both of them directly or indirectly, have a substantial interest.
   b) Notwithstanding the foregoing, if a claimant is induced to lend money to a paralegal because of a paralegal and client relationship, consideration can be given to making a grant when the loan is not repaid.

5. There must be satisfactory proof that money or money's worth was received by the paralegal from or on behalf of the claimant and equivalent money or money's worth has not been returned or accounted for to the claimant.

6. Ordinarily,

   a) the amount of the loss in respect of which a grant may be made is the difference between the amount received by the paralegal and the actual amount returned or otherwise accounted for to the claimant; and

   b) payment of interest to the claimant, or costs (except counsel fees set out below), expenses or damages incurred or suffered by the claimant will not be made out of the Fund. Counsel fees may be allowed as follows: $500. (may be increased in complicated cases) for preparation of claim documents and final resolution of the claim plus $800. per day in the discretion of the Referee if a hearing is held.

7. Carelessness on the part of the claimant, or risk undertaken by the claimant, which cause or contribute to a loss, may be considered in making a grant from the Fund. Each claim for a grant depends on its particular facts. While it is not feasible to attempt to exhaustively define what constitutes carelessness, it may be considered to be careless where a claimant advances or continues to advance money to a paralegal, if the claimant has knowledge of facts that reasonably should cause the claimant to doubt the integrity, or the financial reliability of the paralegal.

8. Where the dealings with the paralegal have been conducted by a trustee or agent for or on behalf of another person, the merits of the claim, the decision to make a grant and the amount of the grant should be determined as though the trustee or agent had been dealing with his or her own funds. If a grant is made, care should be taken that it reaches and thereafter will be preserved for the person beneficially entitled. If the formal written claim is not made in the name of the person entitled to benefit from any grant made in respect of that claim, the record should be corrected to meet the circumstances and to ensure that the proper person receives the benefit of the grant.

9. Where a claimant has a reasonable cause of action against some other person, including the paralegal, which would reimburse the claimant or reduce the amount of his or her loss, and would not be recoverable by such other person from the Fund, the claimant, as a general rule, should be required to take all reasonable steps to effect recovery from such other person before a grant is made from the Fund. It is in the discretion of Fund counsel and/or the Committee whether all reasonable steps have been taken, but such discretion should be exercised primarily in the interests of the claimant rather than the protection of the Fund.

10. Where the paralegal would appear to have a valid claim against the claimant for fees and disbursements in respect of services that have been rendered to the claimant, the approximate amount thereof can be deducted from the amount of the grant that would otherwise be made.

11. Where a claim arises out of circumstances that strongly suggest criminal conduct on the part of the paralegal, the claimant shall report the facts to the relevant police authority for investigation. The claimant must then satisfy the Fund that he or she has done so failing which the claim may not be entertained.

12. The financial circumstances of the person actually suffering the loss and the degree of hardship suffered by that person as a result of the loss are factors to be taken into

account when determining any grant. No grant shall be made to a bank or other financial institution engaged in the business of lending money.

13. Ordinarily, a claimant who elects to take steps to recover the loss in pursuit of a private agreement with an apparently dishonest paralegal will not be entitled to a grant unless the Compensation Fund has been informed before any such steps are taken.

14. In the case of a paralegal who provides legal services in a jurisdiction outside Ontario, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the paralegal in connection with a matter that originated in that jurisdiction.

Draft, December 2007

Appendix 7

By-Law 12

Made: May 1, 2007
Amended: June 28, 2007

COMPENSATION FUND

EXERCISE OF POWERS

Exercise of powers, etc.

1. The holders of the following offices may exercise the powers and perform the duties under subsection 51 (11.1) of the Act:

1. The office of Director, Professional Regulation.

2. The office of Senior Counsel, Professional Regulation.

COMPENSATION FUND COMMITTEE

Compensation Fund Committee

2. The standing committee known as the Lawyers Fund for Client Compensation Committee is continued as the Compensation Fund Committee.

Application of By-Law

3. The following provisions of By-Law 3 [Benchers, Convocation and Committees] apply to the Compensation Fund Committee:

1. Section 107.

2. Sections 109 to 116.

Mandate

4. (1) The Compensation Fund Committee is responsible to Convocation for the administration of the Compensation Fund.

Powers

(2) The Compensation Fund Committee may make such arrangements and take steps as it considers advisable to carry out its responsibilities.

FOR INFORMATION

PARALEGAL BUDGET AND ANNUAL LEVY

36. On January 10th, the Committee considered the projected operating budget and annual fees for paralegals. The Committee approved the budget and proposed fees and forwarded them to the Finance Committee for presentation to Convocation.

Start-up budget

37. The Committee also approved the extension of the start-up budget to the end of 2008. Due to the larger than expected number of applications, certain expenditures will be incurred later than expected, and revenues are higher. However, until all work associated with start-up is complete, including the licensing hearings, it is too early to project a surplus/deficit. With the high volume of applications, licensing hearings may not be completed until late 2008. If the $500,000 provision reported in regulatory expenses in the start-up budget is sufficient to cover the costs of licensing hearings, the start-up budget process could end with a small surplus of approximately $300,000.

REPORT ON FIRST LICENSING EXAMINATION

38. Diana Miles, Director of Professional Development & Competence, reported on the first Licensing Examination on January 17th. There were 1,930 candidates, in these locations:

Toronto	1,557
London	204
Sudbury	49
Ottawa	105
Thunder Bay	15

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

(1) Copy of By-law 9 – Re: Financial transactions and trust accounts (Part I Interpretation). (Appendix 4, pages 23 – 47)

<u>Re: By-Law Amendments</u>

Copies of the bilingual version of the proposed amendments to By-Laws 6, 7 and 9 were distributed to the benchers.

It was moved by Mr. Dray, seconded by Ms. Warkentin that Convocation approve the amendments to the bilingual version of By-Laws 6, 7 and 9.

Carried

By-Law 6

THAT By-Law 6, made by Convocation on May 1, 2007 and amended on June 28, 2007, be amended as follows:

1. By-Law 6 [Professional Liability Insurance] is amended by adding the following:

PART II

LICENSEES HOLDING A CLASS P1 LICENCE

MANDATORY INSURANCE

Mandatory insurance

12. (1) Every licensee who holds a Class P1 licence shall maintain insurance against professional liability under a policy of professional liability insurance issued by a company licensed to carry on business in the province of Ontario which complies with the following minimum requirements and is otherwise comparable to a policy of professional liability insurance issued by the Lawyers' Professional Indemnity Company to a licensee who holds a Class L1 licence:

1. A policy limit for each single claim of not less than $1 million and an aggregate policy limit for all claims of not less than $2 million per year.

2. A maximum deductible amount under the policy that is reasonable in relation to the financial resources of the licensee.

3. Coverage for liability for errors, omissions and negligent acts arising out of the provision by the licensee of legal services authorized under a Class P1 licence.

4. A provision granting an extended reporting period of ninety days from the date of cancellation of the policy.

5. A provision naming the Society as an additional insured, for the purposes of reporting claims and receiving notice of the cancellation or amendment of the policy.

6. A provision that the policy may not be cancelled or amended without at least 60 days written notice to the Society.

Exemption from insurance requirement

(2) A licensee is not required to be insured against professional liability under subsection (1) if the licensee provides written evidence to the satisfaction of the Society that,

(a) the licensee is not providing legal services in Ontario; or

(b) the licensee is providing legal services in Ontario in the circumstances specified in paragraph 1, 2 or 4 of subsection 30 (1) of By-Law 4, subsection 31 (2), (3) or (4) of By-Law 4 or subsection 32 (2) of By-Law 4.

Proof of compliance with s. 12

13. A licensee shall, prior to the commencement of the provision of legal services and on an annual basis thereafter, by not later than the anniversary date of the commencement of the provision of legal services, provide written evidence to the satisfaction of the Society that the licensee is in compliance with section 12.

PARTIE II

TITULAIRES DE PERMIS DE CATÉGORIE P1

ASSURANCE OBLIGATOIRE

Assurance obligatoire

12. (1) Chaque titulaire de permis de catégorie P1 souscrit une assurance responsabilité civile professionnelle émise par un assureur autorisé à exercer ses activités dans la province de l'Ontario, laquelle satisfait aux exigences minimales ci-après et est similaire à la police d'assurance responsabilité civile professionnelle émise par la compagnie d'assurance responsabilité civile professionnelle des avocats aux titulaires de permis de catégorie L1 :

1. Une limite de couverture d'au moins 1 M$ pour chaque demande d'indemnités et une limite totale de couverture d'au moins 2 M$ par année pour toutes les demandes d'indemnités.

2. Un montant déductible maximal raisonnable, sous réserve de la police, en fonction des ressources financières des titulaires de permis.

3. Une protection pour responsabilité en cas d'erreurs, d'omissions et de négligence découlant de services juridiques autorisés fournis par les titulaires de permis de catégorie P1.

4. Une disposition accordant un prolongement de la période de déclaration de quatre-vingt-dix jours à compter de la date d'annulation de la police.

5. Une disposition nommant le Barreau comme assuré additionnel aux fins des demandes de déclaration et des avis d'annulation ou de modification de la police d'assurance.

6. Une disposition indiquant que la police ne peut être annulée ou modifiée sans un avis écrit d'au moins 60 jours au Barreau.

Exemption de l'obligation d'assurance

(2) Les titulaires de permis ne sont pas obligés de souscrire une assurance responsabilité civile professionnelle en vertu de l'alinéa (1) s'ils prouvent de façon convaincante au Barreau

a) qu'ils ne fournissent pas de services juridiques en Ontario;

b) qu'ils fournissent des services juridiques en Ontario dans les circonstances prévues aux dispositions 1, 2 ou 4 du paragraphe 30 (1), aux paragraphes 31 (2), (3) ou (4) ou au paragraphe 32 (2) du Règlement administratif no 4.

Preuve de conformité à l'article 12

13. Les titulaires de permis doivent, avant de commencer à fournir des services juridiques et chaque année par la suite, au plus tard à la date anniversaire du début de la prestation de leurs services juridiques, prouver au Barreau par écrit de façon convaincante qu'ils se sont conformés à l'article 12.

Re: By-Law 7

THAT By-Law 7 [Business Entities], made by Convocation on May 1, 2007 and amended on June 28, 2007, be further amended as follows:

1. Parts III and IV of By-Law 7 [Business Entities] are deleted and the following substituted:

PART III

MULTI-DISCIPLINE PRACTICES

Interpretation

15. (1) In this Part,

"licensee" includes a partnership of licensees who each hold the same class of licence;

"professional" means an individual whose services a licensee may, under section 17, provide to a client in connection with the licensee's practice of law or provision of legal services.

Application of certain sections

(2) Subsection 18 (2) and sections 19, 20, 25, 26, 29 and 30 do not apply in respect of a partnership or an association that is not a corporation entered into by,

(a) a licensee who holds, or a partnership of licensees who each hold, a Class L1 licence with an individual who is authorized to practise law in any province or territory of Canada outside Ontario; or

(b) a licensee who holds, or a partnership of licensees who each hold, a Class P1 licence with an individual who is authorized to provide legal services in any province or territory of Canada outside Ontario.

Interpretation: practice of a profession, etc.

(3) For the purposes of paragraphs 2 to 6 of subsection 18 (2), subsection 18 (3), section 19 and subsection 26 (1), the practice of a profession, trade or occupation includes the provision of legal services.

Prohibition against providing services of non-licensee

16. (1) A licensee who holds a Class L1 licence shall not, in connection with the licensee's practice of law, provide to a client the services of a person who does not hold a Class L1 licence except in accordance with this Part.

Same

(2) A licensee who holds a Class P1 licence shall not, in connection with the licensee's provision of legal services, provide to a client the services of a person who does not hold a Class P1 licence except in accordance with this Part.

Permitted provision of services of non-licensee

17. (1) A licensee who holds a Class L1 licence may, in connection with the licensee's practice of law, provide to a client only,

(a) the legal services of a licensee who holds a Class P1 licence; or

(b) the services of an individual who is not a licensee who practises a profession, trade or occupation that supports or supplements the practice of law.

Same

(2) A licensee who holds a Class P1 licence may, in connection with the licensee's provision of legal services, provide to a client only the services of an individual who is not a licensee who practises a profession, trade or occupation other than the practice of law that supports or supplements the provision of legal services.

Partnership, etc. with professional

18. (1) Subject to subsection (2) and subsection 20 (1), a licensee may enter into a partnership or association that is not a corporation with a professional for the purpose of permitting the licensee to provide to clients the services of the professional.

Same

(2) A licensee shall not enter into a partnership or an association that is not a corporation with a professional unless the following conditions are satisfied:

1. The professional, if other than a licensee who holds a Class P1 licence,

   i. is qualified to practise a profession, trade or occupation that supports or supplements the practice of law or the provision of legal services, and

   ii. in the case of entering into a partnership with the professional, is of good character.

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

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

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

5. The professional agrees with the licensee in writing that, in respect of the practice of his or her profession, trade or occupation in partnership or association with the licensee, the professional will comply with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's rules of professional conduct for the licensee and the Society's policies and guidelines.

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

Interpretation: "effective control"

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

Interpretation: "good character"

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

rules of practice and procedure, the Society's rules of professional conduct for the licensee and the Society's policies and guidelines.

Responsibility for actions of professional

19. Despite any agreement between a licensee and a professional, the licensee shall be responsible for ensuring that, in respect of the professional's practice of his or her profession, trade or occupation in partnership or association with the licensee,

(a) the professional practises his or her profession, trade or occupation with the appropriate level of skill, judgement and competence; and

(b) the professional complies with the Act, the regulations, the by-laws, the rules of practice and procedure, the Society's rules of professional conduct for the licensee and the Society's policies and guidelines.

Application by licensee forming partnership with professional

20. (1) Before a licensee enters into a partnership with a professional, the licensee shall apply to the Society for approval to enter into the partnership.

Application fee

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

Partnership agreement

21. At the time that a licensee makes an application under section 20, the licensee shall file with the Society a copy of so much of the agreement or agreements that will govern the licensee's partnership with the professional as may be required by the Society.

Consideration of application by Society

22. (1) A Society official shall consider every application made under section 20, and it shall approve the licensee's entering into a partnership with the professional if it is satisfied that,

(a) the conditions set out in subsection 18 (2) have been satisfied; and

(b) the licensee has made arrangements that will enable the licensee to comply with sections 19, 25, 26, 27 and 30.

Requirements not met

(2) If the Society is not satisfied that a requirement set out in clause (1) (a) or (b) has been met, the Society shall notify the licensee who may meet the requirement or appeal to the committee of benchers appointed under section 37 if the licensee believes that the requirement has been met.

Time for appeal

23. An appeal under subsection 22 (2) shall be commenced by the licensee notifying the Society in writing of the appeal within thirty days after the day the Society notifies the licensee that a requirement has not been met.

Decision of committee of benchers

24. (1) After considering an appeal made under subsection 22 (2), the committee of benchers appointed under section 37 shall,

(a) if it determines that the requirement has been met, approve the licensee's entering into a partnership with the professional; or

(b) if it determines that the requirement has not been met, notify the licensee that the requirement has not been met and that the licensee may not enter into a partnership with the professional.

Filing requirements: partnerships

25. (1) A licensee who, under subsection 18 (1), has entered into a partnership with a professional shall submit to the Society for every full or part year that the partnership continues a report in respect of the partnership.

Form

(2) The report required under subsection (1) shall be in contained in a form provided by the Society.

Due dates

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

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 25 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of rights and privileges

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

Changes in partnership

26. (1) A licensee who, under subsection 18 (1), has entered into a partnership with a professional shall immediately notify the Society when,

(a) the professional is expelled from the partnership;

(b) the professional ceases or for any reason is unable to practise his or her profession, trade or occupation;

(c) the term of the partnership has expired, if the partnership was entered into for a fixed term;

(d) the partnership is dissolved under the Partnerships Act; or

(e) any agreement that governs the partnership has been amended.

Dissolution of partnership

(2) If an event mentioned in clause (1) (b), (c) or (e) occurs, the Society may require the licensee to dissolve the partnership.

Amendment of partnership agreement

(3) At the time that the licensee notifies the Society under subsection (1) that an agreement that governs the partnership has been amended, the licensee shall file with the Society a copy of the amended agreement.

Dissolution of partnership: breach of certain provisions

27. If a licensee who, under subsection 18 (1), has entered into a partnership with a professional breaches section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, the Society may require the licensee to dissolve the partnership.

Notice to licensee of requirement to dissolve partnership

28. (1) If the Society requires a licensee to dissolve a partnership under subsection 26 (2) or section 27, the Society shall so notify the licensee and, subject to subsection (2), the licensee shall dissolve the partnership.

Appeal

(2) If the Society requires a licensee to dissolve a partnership under section 27, the licensee may appeal the requirement to dissolve the partnership to the committee of benchers appointed under section 37 if the licensee believes that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30.

Time for appeal

(3) An appeal under subsection (2) shall be commenced by the licensee notifying the Society in writing of the appeal within thirty days after the day the Society notifies the licensee that the partnership is to be dissolved.

Decision of committee of benchers

(4) After considering an appeal made under subsection (2), the committee appointed under section 37 shall,

(a) if it determines that there has been no breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, cancel the requirement to dissolve the partnership; or

(b) if it determines that there has been a breach of section 19, section 25, subsection 26 (1), subsection 26 (3) or section 30, take any of the following actions:

(i) Confirm the requirement to dissolve the partnership.

(ii) Permit the partnership to continue, subject to such terms and conditions as the committee may impose.

(iii) Any other action that the committee considers appropriate.

Stay

(5) The receipt by the Society of the notice of appeal from the requirement to dissolve the partnership stays the requirement until the disposition of the appeal.

Association with professional: multi-discipline practice

29. (1) A licensee who, under subsection 18 (1), has entered into an association that is not a corporation with a professional may refer to the association as a multi-discipline practice.

Partnership with professional: multi-discipline practice or partnership

(2) A licensee who, under subsection 18 (1), has entered into a partnership with a professional may refer to the partnership as a multi-discipline practice or multi-discipline partnership.

Interpretation: “Society’s insurance plan”

30. (1) In this section, “Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its licensees who hold a Class L1 licence.

Insurance requirements: Class L1 licence

(2) A licensee who holds a Class L1 licence who, under subsection 18 (1), has entered into a partnership with a professional shall maintain professional liability insurance coverage for the professional,

(a) through the insurer of the Society's insurance plan, in an amount equivalent to that required of the licensee under the Society's insurance plan; and

(b) through any insurer, in an amount equivalent to the amount of coverage the licensee maintains in excess of that required of the licensee under the Society's insurance plan.

Insurance requirements: Class P1 licence

(3) A licensee who holds a Class P1 licence who, under subsection 18 (1), has entered into a partnership with a professional shall maintain professional liability insurance coverage for the professional, in an amount equivalent to the total of the amount of coverage required of the licensee and the amount of coverage the licensee maintains for herself, himself or itself in excess of that required of the licensee.

PART IV

AFFILIATIONS

Interpretation:

31. (1) In this Part,

"affiliated entity" means one or more persons none of whom are licensed or otherwise authorized to practise law or provide legal services in or outside Ontario;

"licensee" includes a permitted group of licensees.

Interpretation: "affiliation"

(2) For the purposes of this Part, a licensee affiliates with an affiliated entity when the licensee on a regular basis joins with the affiliated entity in the delivery or promotion and delivery of the services of the licensee and the services of the affiliated entity.

Ownership of practice, etc.

32. A licensee who affiliates with an affiliated entity shall,

(a) own the professional business through which the licensee practises law or provides legal services or comply with Part III;

(b) maintain control over the professional business through which the licensee practises law or provides legal services; and

(c) carry on the professional business through which the licensee practises law or provides legal services, other than the practice of law or the provision of legal services that involves the delivery of the services of the licensee jointly with the services of the affiliated entity, from premises that are not used by the affiliated entity for the delivery of its services, other than those that are delivered by the affiliated entity jointly with the delivery of the services of the licensee.

Report to Society

33. (1) A licensee who agrees to affiliate or affiliates with an affiliated entity shall immediately notify the Society of the affiliation.

Contents of notice

(2) Notice under subsection (1) shall be contained in a form provided by the Society and shall include the following information:

1. The financial arrangements that exist between the licensee and the affiliated entity.

2. The arrangements that exist between the licensee and the affiliated entity with respect to,

   i. the ownership, control and management of the professional business through which the licensee practises law or provides legal services,

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

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

Agreements

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

Filing requirements

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

Report

(2) The report required under subsection (1) shall be contained in a form provided by the Society.

Due date

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

Period of default

(4) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file the report required under subsection 34 (1) is 120 days after the day on which the report is required to be submitted.

Reinstatement of licence

(5) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file the report required under subsection 34 (1), for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report required under subsection (1) in force at the time the licensee is filing the report.

Change of Information

35. (1) A licensee who affiliates with an affiliated entity shall notify the Society in writing immediately after,

(a) any change in the information provided by the licensee under section 33 or section 34; and

(b) any change in any agreement between the licensee and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2).

Information required

(2) The notice required under subsection (1) shall include details of the change and, in the case of a change in any agreement between the licensee and the affiliated entity, or in any other document, that addresses the matters mentioned in subsection 33 (2), shall include copies of the parts of the agreement or document that have changed.

PARTIE III

LES CABINETS MULTIDISCIPLINAIRES

Définition

15. (1) Dans la présente partie :

« professionnel » Désigne une personne dont les services peuvent être fournis, sous réserve de l'article 17, par le titulaire de permis à un client ou une cliente relativement à l'exercice du droit ou à la prestation de services juridiques. (« professional »)

« titulaire de permis » S'entend de titulaires de permis réunis en sociétés en nom collectif qui détiennent un permis de même catégorie. (« licensee »)

Application de certains articles

(2) Le paragraphe 18 (2) et les articles 19, 20, 25, 26, 29 et 30 ne s'appliquent pas à l'égard des sociétés en nom collectif et des associations sans personnalité morale

a) qu'un titulaire de permis de catégorie L1 ou que des titulaires de permis en société en nom collectif qui détiennent chacun un permis de catégorie L1 forment avec un particulier autorisé à exercer le droit dans une province autre que l'Ontario ou dans un territoire du Canada,

b) qu'un titulaire de permis de catégorie P1 ou que des titulaires de permis en société en nom collectif qui détiennent chacun un permis de catégorie P1 forment avec un particulier autorisé à fournir des services juridiques dans une province autre que l'Ontario ou dans un territoire du Canada.

Interprétation : exercice d'une profession

(3) Aux fins des alinéas 2 à 6 du paragraphe 18(2), du paragraphe 18(3), de l'article 19 et du paragraphe 26(1), l'exercice d'une profession ou d'un métier comprend la prestation de services juridiques.

Interdiction d'offrir les services de non titulaires de permis

16. (1) Dans le cadre de l'exercice du droit, les titulaires de permis de catégorie L1 ne doivent pas offrir à leur clientèle les services d'une personne qui ne détient pas un permis de catégorie L1, sauf conformément à la présente partie.

Idem

(2) Dans le cadre de la prestation de services juridiques, les titulaires de permis de catégorie P1 ne doivent pas offrir à leur clientèle les services d'une personne qui ne détient pas un permis de catégorie P1, sauf conformément à la présente partie.

Prestation de services autorisés de non titulaires de permis

(1) Les titulaires de permis qui détiennent un permis de catégorie L1 ne peuvent, dans le cadre de l'exercice du droit, offrir à leur clientèle

i. que les services juridiques d'un titulaire de permis de catégorie P1;

ii. que les services d'un non titulaire de permis qui exerce une profession ou un métier qui sert les intérêts de l'exercice du droit.

Idem

(2) Les titulaires de permis de catégorie P1 ne peuvent, dans le cadre de la prestation de services juridiques, offrir à leur clientèle que les services d'un non-titulaire de

permis qui exerce une profession ou un métier autre que l'exercice du droit qui sert les intérêts de la prestation des services juridiques.

Société en nom collectif avec des professionnels

18. (1) Sous réserve des paragraphes (2) et 20 (1), les titulaires de permis peuvent former une société en nom collectif ou une association sans personnalité morale avec des professionnels, dans le but de leur permettre d'offrir à leur clientèle les services des professionnels en question.

Idem

(2) Les titulaires de permis s'abstiennent de former une société en nom collectif ou une association sans personnalité morale avec des professionnels, à moins de répondre aux critères suivants :

1. Le professionnel qui n'est pas titulaire de permis de catégorie P1,

   i. est habilité à exercer la profession ou le métier qui sert les intérêts de l'exercice du droit ou la prestation de services juridiques,

   ii. dans le cas de la formation d'une société en nom collectif commune, la ou le professionnel est réputé de bonnes mœurs.

2. Le professionnel et le titulaire de permis conviennent par écrit que le titulaire de permis possède le contrôle effectif de l'exercice de la profession ou du métier du professionnel pour autant que celui ci exerce sa profession ou son métier afin d'offrir des services aux clients et clientes de la société en nom collectif ou de l'association.

3. Le professionnel et le titulaire de permis conviennent par écrit que, dans le cadre de la société en nom collectif ou de l'association commune, le professionnel n'exerce sa profession ou son métier qu'en vue d'offrir des services aux clients et clientes de la société en nom collectif ou de l'association.

4. Le professionnel et le titulaire de permis conviennent par écrit que, en dehors de la société en nom collectif ou de l'association commune, la ou le professionnel est libre d'exercer sa profession ou son métier d'une manière indépendante et dans des locaux autres que ceux utilisés par la société ou l'association pour la conduite de ses affaires.

5. Le professionnel et le titulaire de permis conviennent par écrit que, dans le cadre de l'exercice de sa profession ou de son métier et dans le contexte de la société en nom collectif ou de l'association commune, le professionnel se conforme à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, aux codes de déontologie des titulaires de permis et aux politiques et directives du Barreau.

6. Dans le contexte de la formation de la société en nom collectif ou de l'association commune, le professionnel et le titulaire de permis conviennent par écrit de se conformer aux règles, politiques et directives du Barreau sur les conflits d'intérêts

relatifs aux relations avec les clients et clientes de la société en nom collectif qui sont également clients de la pratique indépendante du professionnel.

Interprétation : « contrôle effectif »

(3) Pour l'application du paragraphe (2), le titulaire de permis détient le « contrôle effectif » de l'exercice de la profession ou du métier d'un professionnel si le titulaire de permis peut, sans l'accord de ce professionnel, prendre les mesures nécessaires pour garantir que le titulaire de permis se conforme à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, aux codes de déontologie des titulaires de permis et aux politiques et directives du Barreau.

Interprétation : « bonnes mœurs »

(4) Pour l'application du paragraphe (2), un professionnel est « de bonnes mœurs » si l'on peut raisonnablement s'attendre, d'après l'intégrité et le professionnalisme démontrés dans le cadre de l'exercice de sa profession ou de son métier et d'après sa réputation dans la communauté, à ce que le professionnel se conformera à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, aux codes de déontologie des titulaires de permis et aux politiques et directives du Barreau.

Responsabilité des actions de professionnels

19. Malgré toute entente entre un titulaire et un professionnel, le titulaire de permis doit garantir que, dans le cadre de l'exercice de la profession ou du métier du professionnel dans le contexte de la société en nom collectif ou de l'association commune,

a) le professionnel exerce sa profession ou son métier avec un niveau approprié d'habiletés, de jugement et de compétences;

b) le professionnel se conforme à la Loi, aux règlements, aux règlements administratifs, aux règles de pratique et de procédure, aux codes de déontologie des titulaires de permis et aux politiques et directives du Barreau.

Demande en vue de former une société avec un professionnel

20. (1) Avant de former une société en nom collectif avec un professionnel, les titulaires de permis présentent une demande au Barreau en vue d'obtenir l'approbation de former la société.

Frais de dossier

(2) La demande prévue au paragraphe (1) est rédigée selon le formulaire fourni par le Barreau et est accompagnée des frais de dossier.

Contrat de société

21. Lors de la présentation de la demande visée à l'article 20, les titulaires de permis déposent également au Barreau un exemplaire des parties du contrat ou des ententes qui régissent la société en nom collectif avec le professionnel qui sont exigées par le Barreau.

Étude de la demande

22. (1) Le Barreau étudie chaque demande déposée conformément à l'article 20 et approuve la création de la société entre le titulaire et le professionnel s'il est d'avis :

a) d'une part, que les conditions du paragraphe 18 (2) sont réunies;

b) d'autre part, que le titulaire de permis a pris les dispositions nécessaires pour se conformer aux articles 19, 25, 26, 27 et 30.

Non conformité aux exigences

(2) Si le Barreau est d'avis que les exigences des alinéas (1) a) ou b) n'ont pas été satisfaites, il en avise le titulaire de permis; celui-ci peut alors se conformer aux exigences ou, s'il est d'avis qu'il a répondu aux exigences, interjeter appel au comité de conseillers nommés conformément à l'article 37.

Délai d'appel

23. Le Barreau est avisé par écrit de l'appel interjeté par le titulaire de permis en vertu du paragraphe 22 (2) dans un délai de 30 jours suivant le jour où le Barreau a avisé le titulaire de permis qu'il ne s'est pas conformé à une des exigences.

Décision du comité de conseillers

24. (1) Après avoir étudié l'appel interjeté conformément au paragraphe 22 (2), le comité formé en vertu de l'article 37

a) soit approuve, s'il est d'avis que les exigences ont été satisfaites, la création de la société en nom collectif avec le professionnel;

b) soit, s'il est d'avis que les exigences n'ont pas été satisfaites, avise le titulaire de permis de ce fait et de l'impossibilité de former la société en nom collectif avec le professionnel.

Dépôt de documents : sociétés en nom collectif

25. (1) Les titulaires de permis qui, en vertu du paragraphe 18 (1), se sont associés à un professionnel déposent au Barreau, pour chaque année ou partie de celle ci, un rapport sur les activités de la société.

Formulaire

(2) Le rapport exigé au paragraphe (1) est rédigé selon un formulaire fourni par le Barreau.

Dates d'échéance

(3) Le rapport exigé au paragraphe (1) est déposé au Barreau au plus tard le 31 janvier de l'année suivant immédiatement l'année entière ou partie de cette dernière pour laquelle le titulaire de permis dépose un rapport.

Période

(4) Pour l'application de l'alinéa 47 (1) a) de la Loi, la période prescrite en ce qui a trait à l'omission de remplir ou de déposer le rapport exigé au paragraphe 25 (1) est de 120 jours à compter du jour où il doit être déposé.

Rétablissement des droits et privilèges

(5) Pour l'application du paragraphe 47 (2) de la Loi, le titulaire de permis dont les droits et privilèges ont été suspendus en application de l'alinéa 47 (1) a) de la Loi parce qu'il n'a pas rempli le rapport exigé au paragraphe 25 (1) de la Loi ou qu'il ne l'a pas déposé est tenu de le remplir et de le déposer sous réserve du paragraphe (1) en vigueur au moment où il le dépose.

Modifications à la société

26. (1) Les titulaires de permis qui, conformément au paragraphe 18 (1), se sont associés à des professionnels, avisent sans délai le Barreau des événements suivants :

a) le professionnel est renvoyé de la société;

b) le professionnel cesse ou, pour quelque raison que ce soit, est incapable d'exercer sa profession ou son métier;

c) la durée du contrat de société est échue, si l'association avait une durée fixe;

d) la société est dissoute conformément à la Loi sur les sociétés en nom collectif;

e) tout contrat de société a fait l'objet d'une modification.

Dissolution de la société en nom collectif

(2) Si l'un des événements mentionnés à l'alinéa (1) b), c) ou e) se produit, le Barreau peut exiger la dissolution de la société.

Modification au contrat de société

(3) Lorsqu'il avise le Barreau, conformément au paragraphe (1), qu'une modification vient changer les termes du contrat de société, le titulaire de permis dépose auprès de lui un exemplaire du contrat modifié.

Dissolution de la société : contravention à certaines dispositions

27. Si des titulaires de permis qui, selon le paragraphe 18 (1), se sont associés à des professionnels contreviennent à l'article 19, 25 ou 30 ou au paragraphe 26 (1) ou 26 (3), le Barreau peut exiger la dissolution de la société.

Avis de dissolution de société à un titulaire de permis

28. (1) Si le Barreau exige la dissolution d'une société en vertu du paragraphe 26 (2) ou de l'article 27, le Barreau en avise le titulaire de permis visé; sous réserve du paragraphe (2), le titulaire de permis procède à la dissolution de la société.

Appel

(2) Si le Barreau exige la dissolution d'une société conformément à l'article 27, le titulaire de permis visé peut interjeter appel de cette décision au comité de conseillers formé en vertu de l'article 37 dans la mesure où il croit qu'aucune contravention à l'article 19, 25 ou 30 et au paragraphe 26 (1) ou 26 (3) n'a eu lieu.

Délai d'appel

(3) Le Barreau est avisé par écrit de l'appel interjeté par le titulaire de permis en vertu du paragraphe (2) dans un délai de 30 jours suivant le jour où le Barreau a avisé le titulaire de permis qu'il devait procéder à la dissolution de la société.

Décision du comité des conseillers

(4) Suite à l'examen de l'appel interjeté conformément au paragraphe (2), le comité formé en vertu de l'article 37,

a) soit, s'il est d'avis qu'il n'y a eu aucune contravention à l'article 19, 25 ou 30 ou au paragraphe 26 (1) ou 26 (3), annule la décision relative à la dissolution de la société;
b) soit, s'il est d'avis qu'il y a eu contravention à l'article 19, 25 ou 30 ou au paragraphe 26 (1) ou 26 (3), prend l'une des mesures suivantes :

(i) il confirme la décision relative à la dissolution de la société;

(ii) il autorise le maintien de la société, sous réserve des modalités qu'il lui impose;

(iii) il prend toute autre mesure qu'il juge appropriée.

Suspension

(5) La réception par le Barreau de l'avis d'appel par le titulaire de permis contestant l'exigence de dissolution de société a pour effet de suspendre l'exigence de dissolution jusqu'au verdict de l'appel.

Association avec un professionnel : cabinet multidisciplinaire

29. (1) Les titulaires de permis qui, en vertu du paragraphe 18 (1), se sont associés à des professionnels pour créer une association sans personnalité morale, peuvent faire référence à l'association comme étant un cabinet multidisciplinaire.

Association avec un professionnel : cabinet ou société multidisciplinaire

(2) Les titulaires de permis qui, en vertu du paragraphe 18 (1), se sont associés à des professionnels pour créer une société en nom collectif, peuvent faire référence à la société comme étant un cabinet ou une société multidisciplinaire.

Interprétation : « Régime d'assurance du Barreau »

30. (1) Dans le présent article, « Régime d'assurance du Barreau » désigne le régime d'assurance responsabilité civile professionnelle du Barreau, y compris de toute police d'assurance responsabilité civile professionnelle négociée par le Barreau au nom de ses titulaires de permis de catégorie L1.

Exigences relatives à l'assurance : permis de catégorie L1

(2) Les titulaires de permis de catégorie L1 qui, en vertu du paragraphe 18 (1), se sont associés à des professionnels pour créer une société en nom collectif, doivent avoir

a) par l'entremise de l'assureur du régime d'assurance du Barreau une couverture d'assurance responsabilité civile professionnelle pour le professionnel équivalente à celle du titulaire de permis;

b) par l'entremise de tout autre assureur, une couverture pour le professionnel équivalente à celle que le titulaire de permis garde en surplus de ce qui est requis en vertu du régime d'assurance du Barreau.

Exigences relatives à l'assurance : permis de catégorie P1

(3) Les titulaires de permis de catégorie P1 qui, en vertu du paragraphe 18 (1), se sont associés à des professionnels pour créer une société en nom collectif, doivent avoir une couverture d'assurance responsabilité civile professionnelle pour le professionnel équivalente à celle du titulaire de permis et à celle que le titulaire de permis garde en surplus de ce qui est requis.

PARTIE IV

AFFILIATION

Interprétation

31. (1) Pour l'application de la présente partie,

« entité affiliée » Désigne une personne ou plus d'une personne non titulaire de permis par ailleurs autorisée à exercer le droit ou à fournir des services juridiques en Ontario ou à l'extérieur de l'Ontario,

« titulaire de permis » S'entend d'un groupe de titulaires de permis autorisés.

Interprétation : « affiliation »

(2) Pour l'application de la présente partie, un titulaire de permis s'affilie à une entité affiliée lorsque ce titulaire de permis se joint de façon régulière à l'entité affiliée pour la prestation ou la promotion et la prestation des services du titulaire de permis et des services de l'entité affiliée.

Propriété du cabinet

32. Le titulaire de permis qui s'affilie à une entité affiliée doit,

a) être propriétaire du cabinet par l'intermédiaire duquel le titulaire de permis exerce le droit ou fournit des services juridiques au public ou se conformer à la partie III;

b) conserver le contrôle du cabinet par l'intermédiaire duquel le titulaire de permis exerce le droit ou fournit des services juridiques au public;

c) exploiter le cabinet par l'intermédiaire duquel le titulaire de permis exerce le droit ou fournit des services juridiques, à l'exception de l'exercice du droit ou la prestation de services juridiques qui contient la prestation de services d'un titulaire de permis, conjointement avec les services de l'entité affiliée, dans des locaux autres que ceux utilisés par l'entité affiliée pour la prestation de ses services, à l'exception de ceux qui sont fournis par l'entité affiliée conjointement avec les services d'un titulaire de permis.

Avis au Barreau

33. (1) Le titulaire de permis qui s'engage à s'affilier ou qui s'affilie à une entité affiliée en avise immédiatement le Barreau.

Contenu de l'avis

(2) L'avis prévu au paragraphe (1) est rédigé selon un formulaire fourni par le Barreau et comprend les renseignements suivants :

1. Les accords financiers qui existent entre le titulaire de permis et l'entité affiliée.

2. Les accords qui existent entre le titulaire de permis et l'entité affiliée à l'égard des aspects suivants :

i. la propriété, le contrôle et la gestion du cabinet par l'intermédiaire duquel le titulaire de permis exerce le droit ou fournit des services juridiques;

ii. le respect, par le titulaire de permis, des règles, politiques et directives du Barreau sur les conflits d'intérêts relatifs aux relations avec les clients et clientes du titulaire de permis qui sont également clients de l'entité affiliée;

iii. le respect, par le titulaire de permis, des règles, politiques et directives du Barreau sur le caractère confidentiel des renseignements fournis aux titulaires de permis ou à un titulaire de permis du groupe par leurs clients et clientes qui sont aussi clients de l'entité affiliée.

Ententes

(3) Au moment où un titulaire de permis donne l'avis prévu au paragraphe (1), il dépose auprès du Barreau une copie des parties de toute entente passée entre le titulaire de permis et l'entité affiliée ou de tous les autres documents abordant les questions visées au paragraphe (2) qui sont exigés par le Barreau.

Dépôt de documents

34. (1) Le titulaire de permis qui s'affilie à une entité affiliée présente au Barreau, pour toute année entière ou partie d'année pendant laquelle l'affiliation se poursuit, un rapport à l'égard de celle ci.

Rapport

(2) Le rapport exigé au paragraphe (1) est rédigé selon un formulaire fourni par le Barreau.

Date d'échéance

(3) Le rapport exigé au paragraphe (1) est présenté au Barreau au plus tard le 31 janvier de l'année suivant immédiatement l'année entière ou la partie d'année pour laquelle le titulaire de permis présente un rapport.

Période prescrite

(4) Pour l'application de l'alinéa 47 (1) a) de la Loi, la période prescrite en ce qui a trait à l'omission de remplir ou de déposer le rapport exigé au paragraphe 34 (1) est de 120 jours à compter du jour où il doit être présenté.

Rétablissement de permis

(5) Pour l'application du paragraphe 47 (2) de la Loi, le titulaire de permis dont le permis a été suspendu en application de l'alinéa 47 (1) a) de la Loi parce qu'il n'a pas rempli le rapport exigé au paragraphe 34 (1) du présent règlement administratif ou qu'il ne l'a pas déposé est tenu de le remplir et de le déposer sous réserve du paragraphe (1) en vigueur au moment où il le dépose.

Modification des renseignements

35. (1) Le titulaire de permis qui s'affilie à une entité affiliée avise immédiatement le Barreau par écrit :

a) de toute modification des renseignements qu'il a fournis en application de l'article 33 ou de l'article 34;

b) de toute modification d'une entente entre le titulaire de permis et l'entité affiliée ou de tout autre document qui aborde les questions visées au paragraphe 33 (2).

Renseignements requis

(2) L'avis exigé par le paragraphe (1) indique les détails de la modification et, en cas de modification d'une entente entre le titulaire de permis et l'entité affiliée ou de tout autre document qui aborde les questions visées au paragraphe 33 (2), comprend des copies des parties de l'entente ou du document qui ont été modifiées.

By-Law 9

THAT By-Law 9 [Financial Transactions and Records], made by Convocation on May 1, 2007 and amended on June 28, 2007 and January 24, 2008, be further amended as follows:

1. Subsection 1 (1) of By-Law 9 [Financial Transactions and Records] is deleted and the following substituted:

Interpretation

1. (1) In this By-Law,

"arm's length" has the same meaning given it in the Income Tax Act (Canada);

"cash" means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the Bank of Canada Act and current coin or banks notes of countries other than Canada;

"charge" has the same meaning given it in the *Land Registration Reform Act;*

"client" means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

"firm of licensees" means,

(a) a partnership of licensees and all licensees employed by the partnership,

(b) a professional corporation established for the purpose of practising law in Ontario and all licensees employed by the professional corporation,

(c) a professional corporation established for the purpose of providing legal services in Ontario and all licensees employed by the professional corporation, or

(d) a professional corporation established for the purpose of practising law and providing legal services in Ontario and all licensees employed by the professional corporation;

"holiday" means,

(a) any Saturday or Sunday;

(b) New Year's Day, and where New Year's Day falls on a Saturday or Sunday, the following Monday;

(c) Family Day

(d) Good Friday;

(e) Easter Monday;

(f) Victoria Day;

(g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;

(h) Civic Holiday;

(i) Labour Day;

(j) Thanksgiving Day;

(k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;

(l) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;

(m) Boxing Day; and

(n) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

"lender" means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or corporation;

"licensee" includes a firm of licensees;

"money" includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

"related" has the same meaning given it in the Income Tax Act (Canada);

"Teranet" means Teranet Inc., a corporation incorporated under the Business Corporations Act, acting as agent for the Ministry of Consumer and Business Services.

Définitions

1. (1) Les définitions qui suivent s'appliquent au présent règlement administratif :

« cabinet » S'entend

a) d'une société de personnes constituée de titulaires de permis et de tous les titulaires de permis employés par la société,

b) d'une société professionnelle établie aux fins de l'exercice du droit en Ontario et de tous les titulaires de permis employés par la société professionnelle,

c) d'une société professionnelle établie aux fins de la prestation de services juridiques en Ontario et de tous les titulaires de permis employés par la société professionnelle,

d) d'une société professionnelle établie aux fins de l'exercice du droit et de la prestation de services juridiques en Ontario et de tous les titulaires de permis employés par la société professionnelle. (« firm of licensees »).

« charge » S'entend au sens que lui attribue la *Loi portant réforme de l'enregistrement immobilier*.(« charge »)

« client » Personne ou groupe de personnes de qui ou au nom de qui un ou une titulaire de permis reçoit des fonds ou d'autres biens. (« client »)

« espèces » Monnaie courante conformément à la définition de la Loi sur la monnaie courante, billets de banque prévus pour la circulation au Canada émis par la Banque du Canada en application de la *Loi sur la Banque du Canada* et monnaie courante et billets des pays autres que le Canada. (« cash »)

« fonds » Espèces, chèques, traites, bordereaux de cartes de crédit, mandats poste, mandats exprès et mandats bancaires. (« money »)

« jour férié » Chacun des jours suivants,

a) les samedis et les dimanches;

b) le Jour de l'An, et si le jour de l'An tombe un samedi ou un dimanche, il est remis au lundi suivant;

c) le Jour de la famille

d) le Vendredi Saint;

e) le lundi de Pâques;

f) la fête de Victoria;

g) la fête du Canada, et si la fête du Canada tombe un samedi ou un dimanche, elle est remise au lundi suivant;

h) le congé municipal;

i) la fête du Travail;

j) l'Action de grâces;

k) le jour du Souvenir, et si le jour du Souvenir tombe un samedi ou un dimanche, il est remis au lundi suivant;

l) le jour de Noël, et si Noël tombe un samedi ou un dimanche, il est remis au lundi ou mardi suivant, et s'il tombe un vendredi, le lundi suivant;

m) le lendemain de Noël;

n) les jours que le gouverneur général ou le lieutenant-gouverneur désigne par proclamation comme jours fériés. (« holiday »)

« liée » S'entend au sens que lui attribue la *Loi de l'impôt sur le revenu* (Canada). (« related »)

« lien de dépendance » S'entend au sens de la *Loi de l'impôt sur le revenu* (Canada). (« arm's length »)

« prêteur » ou « prêteuse » Personne qui consent un prêt garanti ou devant être garanti par une charge, et notamment par une charge détenue en fiducie, directement ou par l'intermédiaire d'une personne liée, physique ou morale. (« lender »)

« Teranet » S'entend de Teranet Inc., une personne morale constituée sous le régime de la Loi sur les sociétés par actions, agissant en qualité de mandataire du ministère des Services aux consommateurs et aux entreprises. (« Teranet »)

« titulaire de permis » S'entend d'un cabinet. (« licensee »)

2. Section 2.1 of the By-Law is deleted and the following substituted:

Interpretation

2.1 In this Part,

"suspended licensee" means a licensee who is the subject of a suspension order;

"suspension order" means an order made under the Act suspending a licensee's licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Interprétation

2.1 Les définitions qui suivent s'appliquent à la présente partie.

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite. (« suspension order »)

« titulaire de permis suspendu » Titulaire de permis qui fait l'objet d'une ordonnance de suspension. (« suspended licensee »)

3. Subsection 7 (1) of the By-Law is deleted and the following substituted:

Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act*, 1994 applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

Fonds reçus en fiducie pour des clients

7. (1) Sous réserve de l'article 8, les titulaires de permis qui reçoivent des fonds en fiducie pour une cliente ou un client les déposent sans délai dans un compte en fiducie, à leur nom ou au nom du cabinet dont ils sont associés ou employés, ou par lequel ils exercent le droit ou fournissent des services juridiques, dans une banque à charte, une caisse d'épargne provinciale, une caisse ou caisse populaire ou une fédération à laquelle s'applique la Loi de 1994 sur les caisses populaires et les Credit Unions ou une société de fiducie inscrite.

4. Section 7 of the By-Law is amended by adding the following:

Money to be paid into trust account: money received before licence issued

(3.1) If a licensee who holds a Class P1 licence receives from a person, prior to being issued the licence, money for services yet to be rendered to a client and the licensee does not perform the services for the client by May 2, 2010, the licensee shall on May 3, 2010 pay the money into a trust account.

Fonds déposés dans un compte en fiducie : fonds reçus avant la délivrance du permis

(3.1) Si un titulaire de permis de catégorie P1 reçoit d'une personne, avant la délivrance de son permis, des fonds pour des services devant être rendus à un client et que le titulaire de permis ne rend pas les services au client avant le 2 mai 2010, le titulaire de permis doit, le 3 mai 2010, déposer les fonds dans un compte en fiducie.

5. Paragraph 1 of subsection 8 (2) of the By-Law is deleted and the following substituted:

1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, including an

amount received as a general retainer for which the licensee is not required either to account or to provide services.

1. Les fonds qui leur appartiennent entièrement ou qui appartiennent à d'autres titulaires de permis du cabinet dont ils sont associés ou employés, ou par lequel ils exercent le droit ou fournissent des services juridiques, notamment les honoraires provisionnels généraux dont les titulaires de permis ne sont pas tenus de rendre compte ou à l'égard desquels ils n'ont pas de service à rendre.

6. Subsection 12 (3) of the By-Law is deleted and the following substituted:

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law or provides legal services without another licensee as a partner, if the licensee practises law or provides legal services through a professional corporation, without another licensee practising law or providing legal services through the professional corporation and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Application de la disposition 1 du paragraphe (2) aux praticiens autonomes

(3) La disposition 1 du paragraphe (2) ne s'applique pas aux titulaires de permis qui exercent le droit ou fournissent des services juridiques sans avoir d'autres titulaires de permis ayant le statut d'associé, si le titulaire de permis exerce le droit ou fournit des services juridiques par l'intermédiaire d'une société professionnelle, sans avoir un autre titulaire de permis exerçant le droit ou fournissant des services juridiques par l'intermédiaire de la société professionnelle, et sans avoir d'autres titulaires de permis ou personnes ayant qualité d'employé, à condition que les titulaires de permis entrent personnellement, dans le système de télévirement de fonds en fiducie, les données relatives au virement et celles autorisant l'institution financière à effectuer le virement

7. Clause 16 (1) (a) of the By-Law is deleted and the following substituted:

(a) an account at a chartered bank, provincial savings office, credit union or league to which the Credit Unions and Caisses Populaires Act, 1994 applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or by which the licensee is employed, and designated as a trust account; and

a) il est ouvert au nom du titulaire de permis ou du cabinet dont le titulaire de permis est un associé ou un employé, ou par l'intermédiaire duquel le titulaire de permis exerce le droit, dans une banque à charte, une caisse d'épargne provinciale, une caisse ou caisse populaire ou fédération à laquelle s'applique la *Loi de 1994 sur les caisses populaires et les credit unions* ou une société en fiducie inscrite;

Re: Request for Exemption: Pro Bono Students Canada

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Pro Bono Students Canada be granted an exemption from the requirement to hold a paralegal licence.

Carried

Re: Compensation Fund Provisions for Paralegals

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the Guidelines attached at Appendix 6 to the Report for the processing of compensation fund claims involving paralegals.

Carried

Re: Composition of the Compensation Fund Committee

It was moved by Mr. Dray, seconded by Ms. Warkentin, that Convocation approve the addition of two paralegal members of the Paralegal Standing Committee to the Compensation Fund Committee.

Carried

Items for Information

- Projected Operating Budget and Annual Fee
- Report on First Licensing Examination

JOINT REPORT OF THE PARALEGAL STANDING COMMITTEE/PROFESSIONAL REGULATION COMMITTEE

Mr. Ruby presented the Report.

Joint Report to Convocation
February 21st, 2008

Paralegal Standing Committee/Professional Regulation Committee

ADDITIONAL DECISION ITEM

PRC Committee Members
Clayton Ruby, Chair
Julian Porter, Vice-Chair
Linda Rothstein, Vice-Chair
Heather Ross, Vice-Chair
Melanie Aitken
Tom Conway
Brian Lawrie
George Finlayson

PSC Committee Members
Paul Dray, Chair
Bonnie Warkentin, Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tim Heintzman
Paul Henderson

Patrick Furlong
Gary Lloyd Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision

Prepared by the Policy Secretariat
Jim Varro 416 947 3434/Julia Bass 416 947 5228

COMMITTEE PROCESS

1. The Committees met jointly on February 20th 2008.

2. Members of the Professional Regulation Committee present were, Clayton Ruby, Chair, Julian Porter, Vice-Chair (by telephone), Heather Ross, Vice-Chair (by telephone), Linda Rothstein, Vice-Chair, Tom Conway (by telephone), Brian Lawrie, Patrick Furlong, and Gary Lloyd Gottlieb.

3. Members of the Paralegal Standing Committee present were, Paul Dray, Chair, Bonnie Warkentin, Vice-Chair, Michelle Haigh, Tom Heintzman, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Terry Knott, Zeynep Onen, Elliot Spears, Jim Varro, Lisa Mallia, and Julia Bass.

FOR DECISION

COMPOSITION OF PROCEEDINGS AUTHORIZATION COMMITTEE

Motion

4. That the Proceedings Authorization Committee be expanded to include a paralegal bencher and that By-Law 11, Part VI be amended as shown at Appendix 1.

Background

5. The Proceedings Authorization Committee (PAC) is established by the *Law Society Act*[1] and its role is defined in Part VI of By-law 11. By-Law 11 provides that PAC consists of

[1] PROCEEDINGS AUTHORIZATION COMMITTEE

Establishment

49.20 (1) Convocation shall establish a Proceedings Authorization Committee in accordance with the by-laws. 1998, c. 21, s. 21.

Functions

(2) The Committee shall review matters referred to it in accordance with the by-laws and shall take such action as it considers appropriate in accordance with the by-laws. 1998, c. 21, s. 21.

Decisions final

(3) A decision of the Committee is final and is not subject to appeal or review. 1998, c. 21, s. 21.

four benchers, and must include the chair or a vice-chair of the Professional Regulation Committee and the chair or a vice-chair of the Professional Development and Competence Committee.

6. Two members of PAC constitute a quorum. If quorum cannot be reached, the By-Law provides that temporary members may be appointed to PAC by the chair to achieve a quorum.

7. PAC's primary function is to consider requests to authorize proceedings under the *Law Society Act* concerning the conduct, capacity or competence of licensees - up to now, lawyers.[2] However, the provisions of the Act concerning the conduct, capacity or competence of licensees apply to all licensees.

8. PAC also considers requests for the following:
   a. authorization for a licensing hearing arising from issues of good character;
   b. authorization for a letter of advice from the chair of PAC to a licensee, in circumstances where the conduct issue is not sufficiently serious to justify discipline proceedings;
   c. authorization for an invitation to attend before PAC for those cases where the misconduct does not warrant the full panoply of the hearing process, but a discussion of the conduct issue by benchers with the licensee is necessary. An invitation to attend (sometimes referred to as an 'ITA') does not form part of the licensee's discipline record. Appearing before PAC can have a salutary effect and may prevent a licensee from engaging in future misconduct;
   d. authorization for an application for an order under s. 49.13 of the Act, whereby the Society may disclose to a public authority information that is confidential

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The Act also includes the following by-law making authority relating to PAC:
By-laws

62. (0.1) …
Same

(1) Without limiting the generality of paragraph 1 of subsection (0.1), by-laws may be made under that paragraph,

10. providing for the establishment, composition, jurisdiction and operation of the Proceedings Authorization Committee;

[2] Conduct application

34. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee has contravened section 33.
Capacity application

38. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee is or has been incapacitated
Professional competence application

43. (1) With the authorization of the Proceedings Authorization Committee, the Society may apply to the Hearing Panel for a determination of whether a licensee is failing or has failed to meet standards of professional competence

under the Act and which the Society would otherwise be prohibited from disclosing. The test for such disclosure set out in By-law 11 is "the extent to which disclosure of information is necessary in order to protect the public and further the administration of justice";

e. directions with respect to the conduct of an audit, investigation or review by Law Society staff or outside counsel;
f. directions for or the approval of the informal resolution of a matter;
g. authorization for the Society to apply for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

9. PAC generally meets once each month to review investigation reports and other matters within its mandate. After review, PAC may decide to take no action, may take action as described above, or may take "any other action that the Committee considers appropriate." PAC's decisions are final and are not subject to appeal or review.

10. Other than the members of the Committee, the only individuals permitted to participate in PAC's review of matters, at PAC's request and for the purpose of answering questions, are the person who referred the matter to PAC or an individual involved in an audit, investigation, review, search or seizure relating to the matter.

11. PAC's structure and processes reflect the policy that,
    a. hearings concerning conduct, capacity or competence are serious matters for licensees as a matter of regulation in the public interest, and as such, the decisions required to be made should be those of benchers and not operational staff, and
    b. PAC's decisions are administrative, not judicial, and do not require, as a matter of procedural fairness, the right of a licensee to be heard or make representations before PAC.

Paralegal Licensees and PAC

12. The first paralegal licences will be issued in the near future, and it will become necessary to refer decisions regarding paralegal licensing hearings, and matters regarding the conduct, capacity and competence of paralegal licensees, to PAC.

13. It is therefore appropriate to review the composition of PAC. It will be important for paralegal licensees to know that PAC's deliberations, which can have serious consequences for a licensee's livelihood and professional life, will be informed by knowledge of paralegal practice.

14. On February 7, both Committees reviewed a proposed draft amendment that would add a paralegal member to PAC and require that PAC's quorum for consideration of paralegal matters include a paralegal member of PAC. The amendments were silent as to whether the paralegal bencher would form part of the quorum for matters concerning lawyer licensees. Both committees agreed that a paralegal should be added to PAC, but had different recommendations on the quorum requirements.

15. A joint meeting of the committees was convened with the objective of preparing a joint report to Convocation, with a recommendation for amendments to the By-Law.

Committee Deliberations

16. The committees agreed that it would be in keeping with the public interest mandate of all benchers to specify that a paralegal bencher should be added to PAC, and to leave the specified quorum for all matters as two benchers.

17. Accordingly, it is recommended that the composition of PAC be expanded to include a paralegal bencher. The proposed wording of the necessary amendment to By-law 11 is attached at Appendix 1.

18. It should be noted that a member of PAC who considers a file at PAC is disqualified from sitting on the hearing on the matter.

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

Copy of amendment to By-Law 11.

Appendix 1, pages 7 – 14)

Re: Composition of Proceedings Authorization Committee

It was moved by Mr. Ruby, seconded by Mr. Dray, that the Proceedings Authorization Committee be expanded to include a paralegal bencher and that By-Law 11, Part VI be amended as set out at Appendix 1 to the Report.

Carried

ROLL-CALL VOTE

Aaron	Against	Legge	For
Anand	For	Lewis	For
Backhouse	For	Millar	For
Caskey	For	Minor	For
Conway	For	Pawlitza	For
Crowe	For	Porter	For
Dickson	For	Potter	Against
Dray	For	Rabinovitch	For
Elliott	For	Robins	For
Epstein	For	Ross	Against
Finlayson	For	Ruby	For
Go	For	St. Lewis	For
Gottlieb	Against	Sikand	For
Halajian	Against	Silverstein	For
Hare	For	C. Strosberg	For
Hartman	For	Swaye	For
Heintzman	For	Tough	For
Krishna	For	Warkentin	For
Lawrie	For	Wright	For

Vote: 33 For; 5 Against

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MATTERS NOT REACHED

Tribunals Committee Report

Report To Convocation
February 21, 2008

Tribunals Committee

Committee Members
Mark Sandler (Chair)
Bonnie Warkentin (Vice-Chair)
Raj Anand
Larry Banack
Jennifer Halajian
Derry Millar
Joanne St. Lewis

Purposes of Report: Decision
Information

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

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Office of Counsel to the Hearing Panel

COMMITTEE PROCESS

1. The Committee met on February 7, 2008. Committee members Mark Sandler (Chair), Bonnie Warkentin (Vice Chair), Raj Anand, Jennifer Halajian, Derry Millar, and Joanne St. Lewis attended. Bencher Paul Dray also attended. Staff members A.K. Dionne, Grace Knakowski, and Sophia Sperdakos also attended.

FOR DECISION

GUIDELINES FOR ADJUDICATORS RESPECTING ORAL/WRITTEN REASONS FOR DECISION

MOTION

2. That Convocation approve the "housekeeping" amendments to the guidelines for adjudicators respecting oral/written reasons for decision as set out at Appendix 1.

3. That Convocation permit the Committee to make future housekeeping amendments to guidelines without seeking Convocation's approval.

Background

4. In September 2006 Convocation approved guidelines for adjudicators respecting oral/written reasons for decision. Housekeeping amendments are necessary to reflect changes in the language of the *Law Society Act* since the guidelines were originally approved. The proposed amendments are highlighted in the document at Appendix 1.

5. The Committee is of the view that it is not the best use of Convocation's time to consider housekeeping amendments to guidelines such as these. Instead its approval for amendments should be reserved for proposals that seek substantive changes. The Committee proposes that in future it be permitted to make housekeeping amendments to guidelines without Convocation's approval.

PUBLICATION OF TRIBUNALS DECISIONS – DISMISSAL OF APPLICATIONS

MOTION

6. That Convocation direct that Hearing Panel dismissals of Law Society applications be published in the same manner as other Hearing Panel decisions.

Introduction and Background

7. Notices of Applications respecting members are posted on the Law Society's website. Currently, however, if an application against a member is dismissed, the Law Society does not publish this fact. So for example, the case summary would not appear in the Ontario Reports where other decisions are set out. While these decisions would be available on CanLII assuming there are reasons for decision, the public is not generally likely to search CanLII for this information.

8. Given the Law Society's commitment to transparency in its hearing processes there does not seem to be a justification for failing to publish notices of dismissals.

9. While there may be some licensees who prefer not to have the information about the original complaint made known again, the Committee is of the view that on balance it seems only fair to make it known when a licensee has been found not guilty of professional misconduct or conduct unbecoming. Moreover, it is in the public interest.

INFORMATION/MONITORING

OFFICE OF COUNSEL TO THE HEARING PANEL

Conclusion

10. In its final report to Convocation dated April 26, 2007 the Tribunals Composition Task Force included the following recommendation:

> That the Tribunals Committee be invited to consider the merits of establishing the Office of Counsel to the Hearing Panel.

11. The Committee has considered the issues as it was invited to do and has concluded that no such Office should be established at the Law Society at this time. Its analysis follows.

Background

12. A number of administrative tribunals and professional regulators have established units within their organizations known most often as Office of Tribunal Counsel or Office of Independent Counsel. The role varies from organization to organization, but generally speaking its main function is to provide support by way of advice and research and answering legal questions the adjudicators may have in the course of proceedings (e.g. on admissibility of evidence, substantive law or procedure, etc.).

13. The role is generally a public one in the sense that the Counsel's research, advice and answers to questions are shared with all parties. Its main advantage or reason for being is most often described as providing neutral information or advice to the panel that does not derive from any of the parties interested in the outcome of the proceedings.

14. The role exists almost exclusively in organizations whose adjudicators are not lawyers. Other law societies do not have this position.

Examples of uses of Counsel by Other Professions and Tribunals

15. Appendix 2 contains a chart of some professional bodies that use independent Counsel and the roles they play within each organization. The role is limited to advice, not direction and the advice given to adjudicators must be shared with the parties.

16. The Health Professions Procedural Code, made under the *Regulated Health Professions Act* states in section 44:

> If a panel obtains legal advice with respect to a hearing, it shall make the nature of the advice known to the parties and they may make submissions with respect to the advice.

This statement codifies the public nature of the role and the appropriateness of establishing such a position within the regulated health professions.

17. In a 2003 orientation program for members of the Royal College of Dental Surgeons of Ontario the supporting material asked, “What is an Independent Legal Counsel? (ILC)” Among other points it noted,

- ILC is the legal counsel to the Discipline Panel, and provides advice to the Panel on issues of procedure, admissibility of evidence and substantive law.
- ILC is independent, that is he or she must not favour the interests of the College or those of the Member.
- ILC must be “indifferent” as to the outcome of the proceedings, provided that the process has been respected throughout.
- ILC will occasionally request time to consider submissions made to the Panel by the parties, review legal authorities presented (if any), and/or make his or her own inquiry of legal sources, before advising the Panel.

18. In a professional development program out of Alberta in 2007 the Environmental Appeals Board noted in response to the question, “Why does a tribunal need legal counsel?” that,

- citizens are becoming more aware of their rights and more active in asserting those rights;
- issues and legal arguments are becoming more complex;
- tribunal members have other specialized expertise; and
- main role of tribunal counsel is to uphold the principles of natural justice and procedural fairness.

19. Both these programs reveal the role of Tribunal Counsel to impart advice on legal issues and procedure.

Advantages and Disadvantages of Establishing an Office of Counsel to the Hearing Panel

Possible Advantages

20. Counsel to the Hearing Panel may assist in enhancing consistency from panel to panel in dealing with procedural issues, applying established policy and addressing precedent. This is by no means the only way to enhance this feature, however, given the influence of both adjudicator experience and ongoing education.

21. Another possible advantage may be that to the extent there is an unrepresented party before the panel, Counsel may be seen as contributing to procedural fairness. It is important to note, however, that both prosecutors and adjudicators have an important role to play in such circumstances as is evidenced by current practice in both criminal and civil justice courts.

22. A third possible advantage is one that is largely applicable to tribunals in which none of the panel members is a lawyer, namely that Counsel to the Hearing Panel would be in a position to provide assistance where legal considerations are at play.

Possible Disadvantages

23. For whatever advantages the establishment of the office might have, the Courts have ruled in a number of instances that Tribunal Counsel must be cautious not to "descend into the arena" by demeanour or involvement in the actual progression of the proceeding. Criticism has been levelled at Counsel who participate in the proceeding without being asked, interfere in cross-examination, or appear dominant over or at least equal to the adjudicators.

24. There is also the risk that panels will come to rely on the advice of the Counsel over the submissions of parties, not because it is necessarily better or more accurate, but because it is given by a "disinterested source" and that source becomes a familiar one to panels. Needless to say this has the potential to compromise the transparency and objectivity of the process. Even if this is not the case, the appearance to the parties of over influence may result in disrespect for or frustration with the process. To the extent that the issue is legal in nature it might be argued that a panel with no lawyers on it will rely even more heavily on Counsel. [1]

25. The Law Society has taken a number of steps to promote the separation of the tribunals processes from the prosecutorial functions. There is a potential concern that for Counsel to the Hearing Panel to be seen as truly independent the lawyer could not be a member of Law Society staff but would have to be outside counsel. This complicates the nature of the appointment.

Tribunals Composition Task Force consideration of Counsel role

26. In the course of its deliberations the Tribunals Composition Task Force considered whether there would be a place in the Law Society's Tribunal process for Counsel. As can be seen from the excerpt from the Task Force's report set out at Appendix 3 it envisioned a narrower role for Counsel than is typically the case in other administrative tribunals. In the course of its deliberations the Task Force received a memorandum on the issue, which is set out at Appendix 4.

27. Its ultimate consideration did not include some of the broader components of the role. Without recommending the creation of the position, the Task Force's consideration was that to the extent a Counsel role might be contemplated, its role would be to review draft panel decisions to ensure that they are consistent with the existing jurisprudence of the Hearing Panel. This is different from the role that Publications Counsel currently plays and if such a Counsel role were to be introduced, the Publications Counsel position would continue to exist.

28. There are some possible benefits to having Tribunal Counsel perform the limited function of reviewing draft decisions from a jurisprudential perspective. Without in any way trying to limit the freedom, and indeed the requirement, that the panel that has

[1] This is not the scenario for Law Society panels, which will always have at least one and usually two lawyers adjudicating on any matter. Hearings in which a paralegal licensee is the subject will have a lawyer, a lay bencher and a paralegal adjudicating.

heard the case must make the decision the Counsel may be an additional resource that supports the panel in rendering the best decision it can. Such an oversight or advisory role can play a part in ensuring the growth and development of Tribunal jurisprudence.

29. The potential disadvantage or risks of even this limited Counsel role are similar to the ones set out under the broader Counsel role discussed above, in particular, that there will be a perceived or real sense that Counsel has greater influence over the process than appropriate and that panels may, in certain circumstances, defer to Counsel. There might also be the perception that Counsel has participated in the panel's deliberation and/or written the decision for the panel. Although these risks can be reduced there is the potential for this perception to persist.

30. In addition, there is the potential for the Counsel's additional views to complicate the process procedurally. What, for example, would the process be if the Counsel identified to a panel that its decision was inconsistent with the jurisprudence? The panel must be free to accept or reject the Counsel's advice, but to what extent should the parties have an opportunity to make submissions if issues of inconsistency with jurisprudence are raised?

31. In October 2007 the Committee responded to an earlier request of Convocation that the Committee consider whether law clerks could be made available to adjudicators to assist them with preparing reasons for decision. An excerpt from the Committee's report is set out at Appendix 5. In its report the Committee noted that it is a principle of natural justice that the persons who hear a proceeding must decide the matter and this extends to the writing of the reasons for decision. The approach the Committee adopted on that issue is relevant to its considerations here.

32. Having considered the possible advantages and disadvantages of establishing the Office of Counsel to the Hearing Panel, the Committee has concluded that there is insufficient reason to do so. The Tribunals Composition Task Force did not point to any particular deficiency in the current approach to justify changing it. Moreover, in weighing the possible advantages and disadvantages of establishing this new position the Committee is of the view that the disadvantages outweigh the advantages. In particular the Committee emphasizes the importance of the principle that those who hear the matter should decide it and should be perceived to be deciding it. In the Committee's view, the potential danger to that principle in establishing the Office of Counsel to the Hearing Panel is not justified at this time either on the basis of need or benefit.

Appendix 2

Profession	Do you have counsel to the tribunal? If so, what is their role?
Physicians & Surgeons	The College has independent legal counsel (ILC) to the Discipline Committee and the Fitness to Practise Committee. Independent Legal Counsel carries out various responsibilities and duties including: • Legal Advice to Panels of Committees – see s.44 of Code requirement to make advice known to the parties; • Legal Research;

	• Review of draft decisions and editorial assistance in confines of *Khan* decision; • Proactive advice to improve policy and procedure including rules of the committee; Rules of committee audit/review as required; • Research memoranda in response to issues and questions related to cases or in preparation for Council, business or educational meetings; • Ad hoc advice to Chairs, panel members and the Hearings Office manager; • Delivers orientation and education of Committee members.
Pharmacists	College has ILC to give legal advice on the record, if asked by the panel.
Chartered Accountants	ILC sits with the Panel and answers any legal questions that they may have. For example, they may answer questions on issues of evidence.
Teachers	ILC to the Committee is always present at hearings and at pre-hearings, if requested by the presiding officer. The role of ILC is to give impartial legal advice to the panel, to help the panel make a legally correct decision. It is important to remember that ILC's advice is just that – advice. ILC cannot direct how the panel should decide the case or an issue.
Professional Engineers	ILC provides independent legal advice on the record to the Committee.
Ontario Rental Housing Tribunal	They provide advice to the Chair, Adjudicators, the Director and Managers.

Appendix 3

EXCERPT FROM TRIBUNALS COMPOSITION TASK FORCE REPORT OF APRIL 26, 2007

Counsel to the Tribunal

101. As a matter related to the integrity of the decision-making function of the tribunal, the Task Force considered the merits of counsel to the chair of the tribunal. Unlike the broader duties of counsel to some administrative tribunals, the Task Force envisaged a counsel whose primary duty would be to review draft panel decisions to ensure that the decision is consistent with existing jurisprudence of the Hearing Panel. This type of resource is common in most sophisticated administrative tribunals.

102. The Law Society's Tribunals Office currently includes the position of Publications Counsel, whose responsibilities include coordinating the production of reasons of the Hearing Panel and preparing the reasons for publication on Quicklaw and CanLII.

103. The counsel the Task Force conceived would not replace the Publications Counsel, as the role is different. The new counsel would be available to provide guidance to the chair, and through him or her, to the panels, with respect to the written reasons for

decision. The advice would be provided in a neutral way to ensure consistency in the body of jurisprudence created by the Hearing Panel, with instruction on how, but not what, to write. In complex cases or where intricate procedural or jurisdictional issues are raised, counsel to the hearing panels may be of added benefit.

104. The Task Force is suggesting that Convocation consider the merits of counsel to the Hearing Panel. The Task Force recognizes that the suggestion for such a counsel position is only peripherally related to the Task Force's specific mandate. The Task Force also acknowledges that creating a new position within the operational departments is a matter for the Chief Executive Officer, the relevant senior manager and the Human Resources Department.

105. However, to the extent that the position of counsel may, broadly speaking, assist in improving the tribunal function, and in that sense is an extension of the policy recommendations reflected in this report, the Task Force is bringing the matter to the attention of Convocation. Convocation may wish to refer this matter to the Tribunals Committee for review.

Appendix 4

MEMORANDUM

To: Tribunals Composition Task Force

From: Jim Varro

Date: February 1, 2006

Re: Information on Law Society's Consideration of Counsel to Hearing Panels

At the Task Force's January 25, 2006 meeting, a question about counsel to the Society's Hearing Panel was raised. This memorandum outlines the previous consideration of this issue at the Society. Counsel to the Panels has never been discussed as a matter of policy at Convocation.

In April 1998, the Professional Regulation Committee ("the PRC"), chaired at the time by Eleanor Cronk, received a report from a team of staff (the PRROGRAM team) that had been organized to comprehensively review the regulatory processes at the Society as part of a Society-wide improvement initiative called Project 200. In a series of reports to the PRC, the team provided its views on ways to enhance, through "redesign" initiatives, the regulatory effectiveness of the Society. One of the suggestions was that counsel be appointed to discipline committees. The following is the report that the team provided to the PRC on this issue:

COUNSEL TO DISCIPLINE COMMITTEES

1. Many self-regulating or regulatory bodies maintain counsel to their discipline and appeal tribunals. These counsel essentially provide legal advice to the tribunal

on matters connected with the tribunal's authority, such as issues of process or jurisdiction.

2. While the scope of the redesign project did not originally include a review of this type of facility within the Law Society, it became apparent that as a related function to the discipline hearing process, the role of counsel to the Discipline Committee may be an appropriate addition to the redesign.

Redesign Proposals

3. The Prrogram Team called for the creation of a Legal Services Office (LSO) which would provide a range of services for the entire Law Society, including the regulatory process. One of the functions within the office would be that of counsel to the Discipline Committees. Under the redesign, this counsel would, among other things, provide advice, research and assistance with the decision-making function of the tribunal.

4. It was envisaged that the LSO would also provide supervision for the activities of the hearings support staff, supervise the investigation and conduct the prosecution of unauthorized practice matters and oversee the activities of outside counsel retained by the Law Society (i.e. outside investigation of complaints against benchers).

5. The position of counsel to the Committee would encompass these responsibilities to the extent that they did not conflict with the counsel role[2] , in which case it may be necessary to maintain LSO staff specifically for counsel duties.

6. On a related point, it is proposed that the LSO would be staffed and operated separately from the regulatory/discipline department as a means of avoiding potential conflicts or questions of bias.

7. The Institute of Chartered Accountants is one organization that has, as a standing feature of its process, counsel to both the discipline and appeal panels. Bylaw 579 of the Institute states that "...members of the panel may seek legal advice from the legal adviser to the discipline committee and in such case the nature of the advice sought shall be made known to the parties in order that they may make a submission as to the law". A similar provision applies to its appeal committee.

8. Counsel retained as the legal adviser to the discipline and appeal panels at the Institute of Chartered Accountants, Robert Peck, was interviewed and provided his perspective on his role and its place in the process. He indicated the following:

[2] For example, where an outside investigation is under the direction of the LSO counsel, it would not be appropriate, should the matter proceed to hearing, for that counsel to advise a hearing panel in the prosecution of the that case.

- he performs the role of "gatekeeper" respecting evidentiary matters, providing advice as needed on the appropriate tests to be applied, and assisting in the panels' understanding of the arguments presented;
- he is available to answer questions about the proceeding and the process generally;
- he provides guidance to the panels with respect to the written reasons for decision, with instruction on how, but not what, to write, providing advice in a neutral way and educating panels on this aspect of their responsibilities;
- he addresses legal and policy questions, for example, where in the assignment hearings or disclosure meetings, the panels are narrowing issues and are seeking to resolve what can be resolved at that stage;
- he assists in managing the process, in advising on legal challenges brought by the parties on jurisdictional or process issues, ensuring that where legal questions are raised by the panel, counsel for both sides have, where appropriate, an opportunity to address it;
- he undertakes legal research as required for the purposes of his advice to the panels.

Implementation Issues

9. While it is recognized the disciplinary tribunals of other regulatory bodies have legal counsel because they otherwise do not have any legal expertise "at the table" (because they are not lawyers), the fact that lawyers (with lay benchers) comprise the Law Society's discipline hearing panels should not automatically discount the need or the usefulness of counsel to the tribunals.

10. Having said the above, it is recognized that, given the variety of cases heard by hearing panels, counsel to the panels may not always be necessary.

11. Some cases are uncomplicated (a simple Forms case is one example). Further, the legislative reforms anticipate that many of these straightforward, single-issue or "minor offence" cases will be heard by one-member hearing panels. These cases may not warrant the attendance of advisory counsel at the hearing.[3]

12. However, another feature of the legislative reforms is the end of the current bifurcated hearing process (where hearing panels' reasons and decisions are considered by Convocation (except for reprimands in Committee)). In the new system, hearing panels' decisions will be final, subject to an appeal to an Appeal Panel appointed by Convocation.

13. In light of this fundamental change, in complex cases or where intricate procedural or jurisdictional issues are anticipated to be raised, the role of counsel to the hearing panels may be an important and helpful addition to the process.

14. To address the above issues, a policy could be developed to give a seized hearing panel the discretion to appoint a counsel to the hearing panel in certain circumstances.

[3] This report predated to the amendments to the *Law Society Act* effective February 1999.

Summary

15. Independent counsel to the tribunals may serve to emphasize to both the lawyer appearing before the tribunal and the public who is interested in the process that there is a separation between the decision-making responsibility of the tribunal, as it weighs the facts, law and arguments, and advice on process or jurisdictional questions which may arise in the course of the hearing. Generally, it cannot but assist in assuring the interested parties that the process is fair, open and efficacious.

The PRC also received a letter from then Vice-chair Harriet Sachs, who, unable to make the April 1998 meeting, wished to express her views on the proposal. The text of the letter is attached at Appendix 1.

Ultimately, the PRC decided not to pursue this proposal and discussion of it ended at the PRC level.

Appendix 1.

April 7, 1998.

Mr. Jim Varro,
The Law Society of Upper Canada,
Osgoode Hall,
130 Queen Street West,
TORONTO, Ontario.
MSH 2N6

Dear Jim:

Unfortunately, I will not be able to attend the above meeting. I am writing this letter because of one issue which appears in the Discussion Paper on Policy Issues Arising from the PRROGRAM Team Report and Implementation of Regulatory Design Through Project 200. I would ask that you put this letter before the members of the Committee so that my views on this issue can be made known to them.

Beginning at page 8 of the Discussion Paper, a proposal is made that the Law Society consider having the ability to appoint counsel to their discipline and appeal tribunals. I appreciate that it is contemplated that this should only take place in complex cases or where intricate procedural or jurisdictional issues are anticipated to be raised. In the McCruer Report the role of counsel to regulatory tribunals was developed. It was developed in appreciation of the fact that many administrative tribunals did not have lawyers sitting as adjudicators. This is not the case with the Law Society. From our ranks judges are chosen. Judges do not have counsel appointed to assist them in making their decisions. In my opinion, to appoint independent counsel to either our Committee hearings or our Appeal Tribunal is, in effect, saying that we are unable to

understand the legal arguments put to us by counsel and make decisions on our own. Quite frankly, I find this suggestion demeaning.

The suggestion is also made that the appointment of an independent counsel gives an appearance of fairness to the process. I have appeared frequently before administrative tribunals on behalf of a party where the tribunal has had independent counsel. In fact, my experience is that the presence of independent counsel, rather than reassuring both counsel, is one which in and of itself can cause concern to counsel. Good independent counsel can alleviate this concern. The concern is one that arises in two ways:

(a) a perception that the independent counsel is on the side of one party or the other and, consequently, there is a feeling of a two against one situation; and

(b) a perception that it does not matter what one says in legal argument, the tribunal will listen to its independent counsel rather than the counsel arguing before them.

My point is not that independent counsel cannot be useful in situations where the members of the tribunal do not have legal expertise. Rather, it is that the presence of independent counsel does not in and of itself increase the appearance of fairness to the process. If this were the case, our legal system would be designed so that all of our fact finding tribunals, including the courts, had independent counsel.

Yours very truly,

Harriet Sachs
HS:ljt

cc: Ms. E. Cronk 598-3730

Appendix 5

EXCERPT FROM TRIBUNALS COMMITTEE REPORT – JUNE 2007

33. In the Committee's view it is not appropriate for non-panel members to assist with the writing of reasons. The Law Society Act specifies who is eligible for appointment to the Hearing and Appeal Panels. It is a principle of natural justice that the persons who hear a proceeding must decide the matter and in the Committee's view this extends to the writing of the reasons for decision.

34. For this reason the Committee does not believe that it is appropriate for law clerks to assist panels with preparing their reasons.

35. Having decided this, the Committee wishes to emphasize, however, that there are a number of tools already in place to support adjudicators in writing their reasons as follows:
    a. Adjudicators have received a number of guidelines and templates to assist them including,

        i. template for written reasons for decision (will be redistributed as this was given out some time ago);

ii. two templates for oral reasons (included in the adjudicator education binder);

iii. guidelines for adjudicators respecting oral/written reasons for decisions (approved by Convocation September 2006 – included in the adjudicator education binder). These guidelines articulate when written reasons are required;

iv. guidelines for endorsements (included in the adjudicator education binder);

v. guidelines for possible wording for oral/written reasons respecting specific topics (included in the adjudicator education binder);

b. Publications Counsel reviews all reasons before they are released and published for factual errors, spelling and grammar errors and consistent use of terms;

c. Adjudicators have access to Law Society jurisprudence and will receive copies each month of all decisions sent to CANLII and Quicklaw;

d. Electronic versions of many of the documents in a proceeding, such as the Notice of Application, the Agreed Statement of Facts and, in the case of an appeal, the facta are available for the use of adjudicators when writing their reasons so that they do not have to re-type the information; and

e. The Chairs of the Hearing and Appeal Panels are available to respond to adjudicators' questions on process issues.

36. The question was raised whether it was permissible for adjudicators to seek the assistance of their staff to type their reasons. The Committee is of the view that members of an adjudicator's staff are subject to the same requirements of confidentiality as the adjudicator and as such there is no prohibition on seeking such assistance.

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

Copy of the Guidelines for Adjudicators Respecting Oral/Written Reasons for Decision.
(Appendix 1, pages 5 – 6)

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

- Human Rights Monitoring Group Interventions (in camera)

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Committee Members
Laurie Pawlitza(Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Robert Aaron
Jennifer Halajian
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina

Purposes of Report: Information

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

COMMITTEE PROCESS

1. The Committee met on February 7, 2008. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair), Alan Silverstein ((Vice Chair), Robert Aaron, Jennifer Halajian, Susan Hare, Laura Legge, Judith Potter and Nicholas Pustina attended. Staff members Leslie Greenfield, Diana Miles, Nancy Reason and Sophia Sperdakos also attended.

INFORMATION AND MONITORING

CERTIFIED SPECIALIST BOARD

2. In accordance with By-law 15, the Committee has appointed the members of the Certified Specialist Board as follows:

Gerald A. Swaye, Hamilton (Civil Litigation)
Kim Carpenter-Gunn, Hamilton (Civil Litigation)
Bonnie Tough, Toronto (Civil Litigation)
Abdul Chahbar, London (lay bencher)
Jerry Udell, Windsor (Real Estate)
Janet Leiper, Toronto (Criminal)
Frederick Bickford, Thunder Bay (Labour Law)
David Shelley, Vankleek Hill (Municipal Law)
Philip Thompson, Richmond Hill (Corporate & Commercial Law)
Edward Olkovich, Toronto (Estates and Trusts Law)

3. The Committee has appointed Gerald A. Swaye to continue as Chair of the Board for a further period of one year.

4. The Committee thanks the Board members for assuming their roles and thanks Mr. Swaye for continuing in the role of Board Chair for a further one year.

QUARTERLY BENCHMARK REPORT

5. The Professional Development and Competence Department's quarterly benchmark report for the period ending December 31, 2007 is set out at Appendix 1.

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

Copy of the Professional Development & Competence Department Resource and Program Benchmarking Report as at December 31, 2007.

(pages 4 – 19)

CONVOCATION ROSE AT 1:15 P.M.

Confirmed in Convocation this 27th day of March, 2008.

Treasurer