# MINUTES OF CONVOCATION

Thursday, 25th October, 2007
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken, Backhouse, Banack, Carpenter-Gunn, Caskey, Chahbar, Chilcott, Conway, Crowe, Dickson, Dray, Finlayson, Go, Gottlieb, Ground, Halajian, Hare (by telephone), Hartman, Heintzman, Henderson, Krishna, Lawrence, Lawrie (by telephone), Legge, Lewis, McGrath, Marmur, Millar, Minor, Murphy, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Ross, Rothstein, Ruby, St. Lewis, Schabas, Sikand, Silverstein (by telephone), C. Strosberg, Swaye, Tough, Wardlaw, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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The Treasurer welcomed Mr. Ground back to Convocation.

## TREASURER'S REMARKS

On behalf of the benchers, the Treasurer extended best wishes to Samuel Gotfrid, Q.C. on the occasion of his 100th birthday.

The Treasurer acknowledged the contributions of Joanne St. Lewis as Chair of the Equity and Aboriginal Issues Committee over the last four and a half years.

The Treasurer reported on his activities since last Convocation.

## DRAFT MINUTES OF CONVOCATION

The Minutes of Convocation of September 20 and 26, 2007 were confirmed.

## 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, October 25, 2007.

ALL OF WHICH is respectfully submitted

DATED this 25th day of October, 2007

CANDIDATES FOR CALL TO THE BAR

October 25th, 2007

Michael Andrew Denyszyn
Reginald Gregory Dugald Hardy
Nader Raymond Hasan
Stephen Michael Hellsten
Danielle Lauren Kravetsky
Jason Mervin Joseph Kuzminski
Andrew Patrick Mac Isaac
Pierre Patrick Gerard Magnan
Serena Rose Newman
Jeysa Martinez-Pratt
Roxanne Victoria Prior
Daniel Loughlin Richardson
Jamie John Patrick Thompson
Allison Theresa Thiele-Callan
Rebecca Mary Wickens
Benissa Pui-Sum Yau

It was moved by Ms. Pawlitza, seconded by Professor Backhouse, 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

MOTION – Committee and External Appointments

It was moved by Mr. Millar, seconded by Ms. Warkentin, that the following motions be approved:

THAT Avvy Go be appointed to the Human Rights Monitoring Group.

THAT Janet Minor be appointed to the Ontario Justice Education Network Board of Directors for a term of three years.

THAT Janet Minor be appointed Chair of the Equity and Aboriginal Issues Committee to replace Joanne St. Lewis who has resigned as Chair and member of the Equity and Aboriginal Issues Committee.

THAT the Real Estate Issues Working Group be composed of the following people:

Bradley Wright (co-chair)
Don Thomson (co-chair) (Toronto Practitioner)
Bob Aaron
Clare Brunetta (CDLPA)
Sally Burks (Ottawa Practitioner)
Ray Leclair (Ontario Bar Association)
Greg Mulligan (Orillia Practitioner)
Nicholas Pustina
Alan Silverstein

THAT Mary Louise Dickson be the Treasurer's designate on the Ontario Bar Association Council for a period of two years.

THAT Jack Ground and Jack Rabinovitch be appointed to the Finance Committee.

THAT Jack Ground be appointed to the Hearing Panel.

THAT Bob Aaron be removed from the Compensation Fund Committee at his own request.

THAT Nicholas Pustina, Susan McGrath and Baljit Sikand be appointed to the Compensation Fund Committee.

Carried

## REPORT OF THE FINANCE COMMITTEE

Mr. Millar presented the Report.

Report to Convocation
October 25, 2007

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Finance Committee

Committee Members
Derry Millar, Chair
Brad Wright, Vice-Chair

Melanie Aitken
Susan Hare
Carol Hartman
Janet Minor
Paul Schabas
Gerald Swaye

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Finance Committee ("the Committee") met on October 10, 2007. Committee members in attendance were: Derry Millar(c.), Brad Wright (vc.), Carol Hartman, Janet Minor, Paul Schabas and Gerald Swaye

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

FOR DECISION

2008 BUDGET

Motion

1. That Convocation approve the draft 2008 Law Society budget for lawyers and the amount of the annual fee for the year at $1,653 comprising:

| | 2007 | 2008 |
|---|---|---|
| General | $1,102 | $1,143 |
| Compensation Fund | 200 | 200 |
| LibraryCo | 224 | 235 |
| Capital | 75 | 75 |
| Total | $1,601 | $1,653 |

2. The Society's draft 2008 budget is attached separately in two books:

   · VOLUME 1 - White Cover - 2008 Draft Budget Summary
   · VOLUME 2 – Blue Cover (Confidential) - 2008 Draft Budget Detail

Volume 1

3. VOLUME 1 – 2008 Draft Budget Summary presents high-level financial information on the Society's operations divided into two major categories:

   · 2007 vs 2008 Comparative Summaries

     The 2007 vs 2008 Comparative Summaries present summary budget comparisons by function/department between the two years and projected actual for 2007.
   · 2008 Budget Summaries
     The 2008 Budget Summaries present summary budgets in major functional categories employing the full cost allocation method. The Society adopted full cost allocation budgeting in 1999 to reflect the true cost of its various programs.

4. In addition to allocated administrative costs, the costs of the Spot Audit program, and a portion of the costs of the Investigations and Discipline departments are allocated to the Compensation Fund. This has been a consistent practice even before the adoption of full cost allocation.

5. In addition, in 2008 a portion of costs is being allocated to the first paralegal budget based on an estimated 1,000 paralegal licensees in 2008. The paralegal operating budget includes the allocation of $505,000 in administrative costs from the operating budget for lawyers.

Volume 2

6. VOLUME 2 - 2008 Draft Budget Detail book contains detailed line budget information for 2008, the comparable numbers from the 2007 approved budget, projected 2007 operating results and narratives for each department.

Moving between the 2 books

7. In the 2008 Budget Summary (VOLUME 1), beginning at page 17, at the top of each summary column, is a Tab and page reference to the 2008 Draft Budget Detail book (VOLUME 2). Referring to this reference in the Draft Budget Detail book will provide the reader with detail line item budget information. For example, page 26 in the Draft 2008 Budget Summary book presents the full cost allocation for the Society's regulatory functions broken down into their major categories. The tab and page reference for the second column (Investigations) takes the reader to Tab A, page 6 of the Draft Budget Detail book (VOLUME 2)

Budget Process

8. A Committee of the Whole for all benchers was held on September 20, 2007 to discuss the preliminary 2008 budget and to review possible options. There have been no significant changes in the budget since that date.

Paralegals

9. This budget does not include direct costs for the regulation of paralegals in 2008. A draft operating budget for the regulation of paralegals in 2008 has been provided to the Paralegal Standing Committee and the Finance Committee for information and will be presented to Convocation for approval when the number of paralegals are determined after October 31. The paralegal operating budget includes the allocation of $505,000 in administrative costs from the operating budget for lawyers.

FOR DECISION

2008 LIBRARYCO INC. BUDGET

Motion

10. That Convocation approve the LibraryCo Inc. budget for 2008.

11. LibraryCo Inc.'s budget is to be approved by Convocation as required by the Unanimous Shareholders Agreement. The proposed 2008 Budget, approved by the LibraryCo board, is attached (in camera), requesting funding of $7,691,000 or $235 per member compared to the 2007 approved funding of $7,164,000 or $224 per member.

12. The LibraryCo budget can be characterized as a "stay-the-course" budget based on a continuation of the existing business model. The LibraryCo board and administration changed after the first quarter of 2007 and no changes in strategic direction have been implemented.

13. LibraryCo's budget process was different from previous years in that initially all counties were requested to submit detailed budget requests. The board requested relevant counties to provide explanations for increases in expenditures in excess of 5% for content and 3% for other expenses. Materials were reviewed by staff and the LibraryCo board, and consultations were held with CDLPA.

14. Although the budget attempts to cap most expenses as noted above, the primary reason for the increase in requested funding from the Law Society is that the cost of centrally purchased electronic products is forecast to rise by at least 7%. The Law Foundation of Ontario funds a significant portion of this expense, but the draft budget maintains the LFO grant at $850,000, unchanged from 2007.

15. As in 2007, the budget does not use LibraryCo's Reserve Fund, although the Board plans to review each county's requests in more detail and fund any additional needs from the Reserve Fund. The Reserve Fund has been used in 2007 to fund unbudgeted expenses resulting from the implementation of the Administrative Services Agreement with the Law Society. The balance in the Reserve Fund is projected to approximate $810,000 at the end of 2007.

16. The Law Society has taken over most of the administration of LibraryCo. Under the Administrative Services Agreement, LibraryCo will be paying the Law Society an administration fee of $410,000, equivalent to $12 per lawyer.

17. The Finance Committee reviewed the budget and recommends its approval by Convocation.

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

(1) Copy of the proposed 2008 Budget, approved by the LibraryCo board. (in camera) (pages 9 – 12)

(2) Copy of the public Law Society of Upper Canada 2008 Draft Budget Summary. (Volume 1)

(3) Copy of the *in camera* Law Society of Upper Canada 2008 Draft Budget. (Volume 2)

Re: Law Society and LibraryCo Inc. 2008 Budget

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve the LibraryCo Inc. budget for 2008.

Carried

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve the 2008 Law Society budget and the amount of the annual fee for the year at $1,653.

Carried

Re: Denison Trust Fund Application (in camera)

It was moved by Mr. Millar, seconded by Mr. Wright, that Convocation approve a $2,000 grant from the J. S. Denison Trust Fund to Applicant 2007-15.

Carried

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IN CAMERA

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IN PUBLIC

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REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Ruby presented the Report.

Report to Convocation
October 25, 2007

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 Finalyson
Patrick Furlong
Gary Gottlieb
Ross Murray

Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Decision

Prepared by the Policy Secretariat
JimVarro 416-947-3434

COMMITTEE PROCESS

1. The Professional Regulation Committee met on October 23, 2007. In attendance were Clay Ruby (Chair), Gary Gottlieb, and Bonnie Tough. Participating by telephone were Committee members Julian Porter (Vice-Chair), Tom Conway, and Brian Lawrie. Staff in attendance were Julia Bass, Katherine Corrick, Michael Elliott, Terry Knott, Dulce Mitchell, Zeynep Onen, Elliot Spears and Sheena Weir.

## FOR DECISION
## PROPOSED BY-LAW ON LAWYERS' SUPERVISORY RESPONSBILITIES

MOTION

2. That Convocation,
   a. approve By-Law 7.1, attached at Appendix 1, on the responsibilities of a lawyer to supervise a non-lawyer whom the lawyer engages to provide services within a law practice, and
   b. repeal sub-rules 5.01(1) to (6) of the Rules of Professional Conduct.

Background and Introduction

3. The Law Society has received a number of enquiries from members of the criminal bar expressing concern that a person appearing in the Ontario Court of Justice to set trial dates will require a paralegal licence. Their concern is that this will disrupt long-established practices and negatively affect the functioning of the set date courts in the province.

4. This issue arose from the policy adopted by Convocation on April 26, 2007 when Convocation considered the exemptions to be added to By-Law 4, the licensing by-law. The Report approved by Convocation included the following:

   *Exemption for individuals supervised by a lawyer*
   *At the meeting on April 12th, the Committee reviewed this category of exemption in light of the discussion at Convocation, and determined that it should cover only those individuals who are doing non-advocacy work under the supervision of a lawyer. Individuals exempted under this category would include law clerks in law firms and also independent contractors such as document-preparers and title searchers whose only clients are lawyers.*

   *This limitation means that in-house advocates such as litigation law clerks who appear before courts or tribunals must have a licence, unless they fit under one of the specifically exempted categories. Supervised law clerks will of course be able to draft pleadings and other documents in connection with the law firm's litigation practice, and will only need a licence if they are to appear on behalf of clients.*

5. On October 16, 2007, the Paralegal Standing Committee considered the issue, as a result of the concerns that had been expressed. One of the proposals considered at the Paralegal Standing Committee meeting was an amendment to the Rule of Professional Conduct that deals with the responsibility of lawyers to supervise non-lawyers whom the lawyer engages to provide services. The matter was referred to the Professional Regulation Committee.

6. The matter is of some urgency because of the pending October 31 deadline for grandparent applicants to apply for a class P1 licence. After that date, only individuals who have applied will be permitted to appear before courts and tribunals.

7. It has become fairly common practice in many parts of the province for clerks and secretaries (employed or independent contractors) of criminal lawyers to attend in the "set date" court of the Ontario Court of Justice on behalf of the lawyers to set trial dates for the lawyers' clients.

Context

8. Prior to considering this issue, it is helpful to understand the process for setting a trial date for criminal matters in the Ontario Court of Justice. Of course, the procedures vary from region to region, and in some cases, from courthouse to courthouse within a region.

9. Most criminal courts dedicate a courtroom, for at least part of the week, to setting dates for trial. It is essentially a scheduling court. In the Greater Toronto Area, these courts sit everyday. In regions outside of the GTA, the set date court may, for example, sit three days a week, once a week, or everyday for a part of the day, depending on the volume of cases in that court. Justices of the Peace preside over most set date courts.

10. A trial date is set only after the accused person has retained counsel, and the counsel has obtained disclosure from the Crown Attorney, had a pre-trial meeting with the Crown Attorney, and, in some cases, a pre-trial conference before a judge. In the Greater Toronto Area, an accused person often appears in set date court eight or nine times before a trial date is set.

11. In Toronto, and many other regions including those outside of the Greater Toronto Area, a case management system has been adopted that often makes it impossible for a lawyer to attend before the set date court. The system works alphabetically based on the accused person's surname. It is best explained by an example. In Toronto, accused people whose surnames begin with an A – D appear in set date court only on Mondays. If it takes nine appearances to set a date for trial, all of those appearances occur on a Monday. If a lawyer has more than one client with a surname that begins with an A – D, all of those clients must appear on a Monday to set a date for trial. The Ontario Court of Justice in Toronto sits in five different courthouses – Old City Hall, College Park, Scarborough, North York, and Etobicoke. A lawyer could have clients in three different courthouses on the same day at the same time to set a date for trial. It is impossible for the lawyer to appear in all three places. These set date appearances are in addition to the lawyer's trial schedule.

12. The current scheduling system in the Ontario Court of Justice imposes a heavy burden on the accused person and the accused person's counsel in terms of the number of appearances required to set a date. On any given day, hundreds of accused people appear in set date court. The people who appear on behalf of lawyers to set dates for

accused people allow the system, in its present form, to continue to function. The lawyer's clerk or secretary attends before the Justice of the Peace with the lawyer's schedule to facilitate the setting of a trial date. Without these people, accused persons would have to attend in court with a letter from the lawyer setting out possible dates. If those dates were not available to the prosecution or the court, the accused person would have to reappear at a later date with alternative dates from the lawyer.

13. Most criminal lawyers practise law as sole practitioners or in small firms. In some cases, these practitioners rely on their unlicensed employees to attend in set date court together with their clients. In many other cases, these practitioners operate their practices without support staff. In these circumstances, the practitioner will hire independent contractors, who perform this service on a regular basis, to attend in set date court.

14. The people who currently perform this service, including employees of lawyers, are unlikely to qualify under the grandparent provisions for a paralegal licence. They are unlikely to have provided legal services that a paralegal has been authorized to provide on a full-time basis for three of the last five years, as required by section 11(1) 1. of By-Law 4. This would mean that they will remain unlicensed.

The Proposed By-Law

15. The Committee considered a by-law on a lawyer's supervisory responsibilities over non-lawyers whom the lawyer engages to provide services in the law practice. The by-law is set out at Appendix 1. This by-law would replace most of Rule 5.01 of the *Rules of Professional Conduct*, and become the operative regulation on this subject.

16. By-law 7.1 will permit unlicensed persons to appear in set date court on behalf of lawyers as long as the lawyer has given the non-licensee express instruction and authorization to do so, has effective control over the non-licensee's provision of services, directly supervises the non-licensee, and assumes complete professional responsibility for the activities of the non-licensee. Sections 5(1)(b) and 6(b) taken together will permit the current practice in set date court to continue.

17. By-Law 7.1 addresses a lawyer's responsibility to supervise a non-lawyer whom the lawyer engages to provide services within the lawyer's practice. It is modelled on Rule 5.01 of the Rules of Professional Conduct, but is more definitive in its regulatory scope.

18. The focus of the by-law is on the responsibility of the lawyer. The following are the key features of the by-law:

    a. the by-law would not apply to articled students, who were expressly excluded from rule 5.01;
    b. the by-law defines the lawyer/non-lawyer relationship in terms of an 'engagement';
    c. within the engagement, the lawyer must have effective control of the provision of the services of the non-lawyer in the law practice ('effective control' is defined in the by-law);
    d. as rule 5.01 provided, lawyers must assume complete professional responsibility for all business entrusted to them and must directly supervise non-lawyers to whom tasks and functions are assigned;

e. without limiting the generality of the above, the by-law provides a list of activities that illustrate the lawyer's supervisory responsibilities in the lawyer and client relationship in which the non-lawyer is providing services;
f. the by-law lists tasks and functions that cannot be assigned;
g. within this list is the prohibition on a non-lawyer appearing before an adjudicative body, except:
    i) to set a date or deal with a related routine administrative matter as instructed by and on behalf of the lawyer, or
    ii) where the non-lawyer is authorized under the *Law Society Act* to do so.

19. The by-law also takes the following into consideration:
    a. There are essentially four categories of non-lawyers in this context: licensed paralegals, exempt paralegals, articled students and others who are outside of the Law Society's regulation.
    b. The by-law uses the term "engaged" rather than the term "retained." The term retained has traditionally been used to apply to the situation where someone is hiring a lawyer. The term "engaged" as it is used in the by-law refers to the situation where a lawyer is hiring a non-lawyer. It was felt that this distinction was important, and thus a different word has been used.
    c. The by-law was intentionally drafted not to be limited to circumstances where the non-lawyer is an employee of the lawyer. This language would permit unlicensed independent contractors to appear in set date court under the supervision of a lawyer. The by-law is not restricted to advocacy services. Non-lawyers who are independent contractors who perform non-advocacy services for lawyers also need to be covered by the by-law.
    d. While licensed paralegals are authorized to provide legal services and legal advice within their permitted scope of practice, in the context of this by-law the client would be retaining the lawyer for the lawyer's practice of law and in such cases, even if the non-lawyer were a licensed paralegal, the lawyer, not the paralegal, is the individual who must provide the legal advice.

The Committee's Deliberations

20. The Committee considered the following when considering the appropriateness of the proposed by-law:
    a. The goal is to ensure that the public is protected when a lawyer delegates a task to a non-licensee. The by-law accomplishes this by ensuring that the lawyer is responsible for all of the activities, including tasks delegated to non-licensees, within the lawyer's practice. This is accomplished whether the non-licensee is an employee of the lawyer or an independent person hired by the lawyer to perform the task.
    b. To require people who attend in set date court on behalf of lawyers to become licensed will drive up the costs of running a criminal law practice. Criminal lawyers who act on legal aid matters are not in a financial position to absorb this increased cost. Access to legal services and justice may be adversely affected.
    c. Many of the people currently providing set-date services are unlikely to qualify under the grandparent provisions for a paralegal licence as they lack the experience required by By-Law 4.

Repeal of Sub-rules 5.01 (1) to (6)

21. By-Law 7.1 deals with the subject matter of sub-rules 5.01 (1) to (6) of the Rules of Professional Conduct. These sub-rules should be repealed. The by-law is a more

effective regulatory instrument to deal with the supervisory obligations of lawyers than a rule of conduct. Maintaining these sub-rules would create an inconsistency in the instruction to lawyers on their supervisory responsibilities.

## BY-LAW 7.1

## 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 business 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 business 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 business 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 each client's business.

(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 sufficiently 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 act finally in respect of the business 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,

(a) to give or accept an undertaking on behalf of the licensee;

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

(c) 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 business 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 business 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.

## RÈGLEMENT ADMINISTRATIF NO 7.1

## OBLIGATIONS ET RESPONSABILITÉS OPÉRATIONNELLES

### PARTIE I

### GÉNÉRALITÉS

Interprétation

1. (1) Dans le présent règlement administratif,

« titulaire de permis » S'entend d'un titulaire de permis qui détient un permis de catégorie L1; ("licensee")

« non-titulaire de permis » S'entend d'une personne qui

a) n'est pas titulaire de permis;

b) est embauchée par un titulaire de permis pour lui fournir des services;

c) convient formellement avec le titulaire de permis que ce dernier doit exercer un contrôle efficace des services que la personne rend au titulaire de permis. ("non-licensee")

Interprétation : « contrôle efficace »

(2) Aux fins du paragraphe (1), un titulaire de permis contrôle efficacement les services qu'une personne lui rend lorsqu'il peut, sans l'accord de la personne, prendre toute mesure nécessaire pour assurer qu'il se conforme à la *Loi sur le Barreau*, aux règlements administratifs, au *Code de déontologie* du Barreau et aux politiques et lignes directrices du Barreau.

PARTIE II

SURVEILLANCE DES TÂCHES ET FONCTIONS

Application

2. Cette partie ne s'applique pas à la fourniture de services juridiques par un étudiant ou une étudiante qui est sous la surveillance d'une ou d'un titulaire de permis approuvé par le Barreau.

Assignation des tâches et des fonctions : généralités

3. (1) Sous réserve du paragraphe (2), un titulaire de permis peut, aux fins de la présente partie, assigner à un non-titulaire de permis des tâches et des fonctions qui sont reliées à l'exercice du droit du titulaire de permis pour les affaires de son client.

Assignation des tâches et des fonctions : affiliation

(2) Un titulaire de permis qui est affilié à une entité en application du Règlement administratif no 7 peut, aux fins de la présente partie, assigner à l'entité ou au personnel de celle-ci, des tâches et des fonctions reliées à l'exercice du droit du titulaire de permis pour les affaires de son client, seulement si le client y consent.

Assignation des tâches et des fonctions : surveillance directe requise

4. (1) Un titulaire de permis assume l'entière responsabilité professionnelle de son exercice du droit dans les affaires de ses clients et surveille directement tout non-titulaire de permis à qui il a confié des tâches et des fonctions particulières reliées à l'exercice du droit du titulaire de permis pour les affaires de chaque client.

(2) Sans restreindre la portée du paragraphe (1),

a) le titulaire de permis ne permet pas à un non-titulaire de permis d'accepter un client en son nom;

b) le titulaire de permis maintient un contact direct avec chaque client durant son mandat;

c) le titulaire de permis n'assigne à un non-titulaire de permis que les tâches et fonctions pour lesquelles ce dernier est compétent;

d) le titulaire de permis s'assure qu'un non-titulaire de permis n'agit pas sans ses instructions;

e) le titulaire de permis vérifie assez fréquemment que le non-titulaire de permis a accompli les tâches et les fonctions qui lui ont été assignées;

f) le titulaire de permis s'assure que les tâches et les fonctions assignées au non-titulaire de permis sont accomplies convenablement et à temps;

g) le titulaire de permis assume l'entière responsabilité de toutes les tâches et les fonctions accomplies par un non-titulaire de permis, y compris tous les documents préparés par ce dernier;

h) le titulaire de permis s'assure qu'un non-titulaire de permis n'agit pas de façon définitive dans les affaires du client du titulaire de permis.

Assignation des tâches et des fonctions : instructions et autorisation exprès préalables requises

5. (1) Un titulaire de permis donne des instructions et des autorisations exprès à un non-titulaire de permis avant de permettre à ce dernier,

a) de donner ou d'accepter un engagement au nom du titulaire de permis;

b) d'agir au nom du titulaire de permis pour l'établissement du calendrier ou d'autres tâches connexes d'administration courante devant un organisme d'arbitrage;

c) de recevoir des instructions du client du titulaire de permis.

Assignation des tâches et des fonctions : consentement et approbation préalables

(2) Un titulaire de permis obtient le consentement d'un client pour permettre à un non-titulaire de permis de mener des négociations courantes avec des tiers dans les affaires du client du titulaire de permis et approuve les résultats des négociations avant de prendre toute action subséquente.

Tâches et fonctions qui ne peuvent pas être assignées : généralités

6. Un titulaire de permis ne permet pas à un non-titulaire de permis,

a) de donner des conseils juridiques à son client;

b) d'agir au nom d'une personne dans une instance devant un organisme d'arbitrage, autrement qu'au nom du titulaire de permis conformément au paragraphe 5 (1), à moins que le non-titulaire de permis n'y soit autorisé en vertu de la *Loi sur le Barreau*;

c) de mener des négociations avec des tiers, autrement qu'en conformité avec le paragraphe 5 (2);

d) de signer la correspondance, autre que la correspondance habituelle de nature administrative;

e) de faire suivre au client du titulaire de permis des documents, autres que des documents de routine, que le titulaire de permis n'a pas examinés auparavant;

f) d'utiliser la disquette personnalisée et codée du titulaire de permis pour avoir accès au système pour l'enregistrement électronique de titres de propriété.

PARTIE III

LETTRES DE RECOUVREMENT

Lettres de recouvrement

7. Un titulaire de permis ne permet pas l'envoi d'une lettre de recouvrement à une personne sauf si,

a) la lettre porte sur les affaires du client du titulaire de permis;

b) la lettre est préparée par le titulaire de permis ou par un non-titulaire sous la surveillance directe du titulaire de permis;

c) la lettre est préparée par un non-titulaire de permis sous la surveillance directe du titulaire de permis, et si la lettre est examinée et approuvée par le titulaire de permis avant qu'elle soit envoyée;

d) la lettre est imprimée sur le papier à entête du titulaire de permis;

e) la lettre est signée par le titulaire de permis.

Re: Proposed By-Law on Lawyers' Supervisory Responsibilities

It was moved by Mr. Ruby, seconded by Mr. Porter, that Convocation,

a. approve By-Law 7.1, attached at Appendix 1, on the responsibilities of a lawyer to supervise a non-lawyer whom the lawyer engages to provide services within a law practice, and
b. repeal sub-rules 5.01(1) to (6) of the Rules of Professional Conduct.

Carried

The main motion is subject to the undertaking of the committee that a new Rule of Professional Conduct will be brought to Convocation in November 2007, and that the By-Law will be reconsidered by Convocation on or before October 31, 2008.

It was moved by Mr. Dray, seconded by Mr. Caskey, that the By-Law be restricted to part time/full time employees of lawyers.

Lost

It was moved by Mr. Dray, seconded by Mr. Caskey, that in paragraph 5 (1)(b) on page 12 the sentence end at the word "schedule".

Lost

It was moved by Mr. Banack, seconded by Mr. Swaye, that there be a sunset clause providing that the By-Law expires on October 31, 2008.

Withdrawn

The Treasurer announced that Professor Backhouse has been voted President-elect by the American Society for Legal History.

REPORT OF THE EMERGING ISSUES COMMITTEE

Ms. Warkentin presented the Report.

Report to Convocation
October 25, 2007*

Emerging Issues Committee

Committee Members
Ron Manes, Co-chair
Bonnie Warkentin, Co-chair
Robert Aaron
Paul Copeland
Susan Elliott
Richard Filion
Holly Harris
Allan F. Lawrence
Janet Minor
Julian Porter
Joanne St. Lewis

Purpose of Report: Decision

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

* deferred from March 29, April 26, May 25, June 28 and September 20, 2007 Convocations

COMMITTEE PROCESS

1. The Emerging Issues Committee ("the Committee") met on January 10, 2007. In attendance were Ron Manes and Bonnie Warkentin (Co-Chairs), Paul Copeland (by telephone), Allan Lawrence, Holly Harris, Julian Porter and Joanne St. Lewis. Staff in attendance were Katherine Corrick, Jim Varro, Roy Thomas and Allyson O'Shea.

# DISSOLUTION OF THE EMERGING ISSUES COMMITTEE

MOTION

2. That Convocation approve the dissolution of the Emerging Issues Committee.

Background

3. The Emerging Issues Committee ("the Committee") was created as a standing committee of Convocation in July 2001 and tasked with "providing long-range intelligence on issues of concern to the profession". The Committee's original mandate in By-Law 9 was as follows:

> The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession that do not fall directly within the jurisdiction of any other standing committee, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

4. After their first meeting, the new Committee's co-chairs reported to Convocation in November 2001 seeking an amendment to the mandate. The co-chairs felt it was "inevitable" that in "most cases", issues of concern to the profession would directly impact on issues of interest to other standing committees or task forces. The co-chairs did not want the Emerging Issues Committee to be restricted in the matters that it could consider, and asked that the words, "that do not fall directly within the jurisdiction of any other standing committee," be deleted from the Committee's mandate. Convocation agreed. The current mandate of the Committee, now in By-Law 3 – Benchers, Convocation and Committees, is as follows:

> The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society and the legal profession, to undertake and direct research into such policy issues and to develop for Convocation's approval strategic plans and other proposals relating to such policy issues.

Evolution of the Committee and Reasons for Dissolution

5. The Committee has noted that over time, its role and function have shifted away from its stated mandate. The Committee has also met less frequently in the past two years. In the Committee's view, these developments are primarily the result of
   a. a mandate that, if fully realized, would require an allocation of resources that is not possible to achieve,
   b. the Committee performing a "triage" function in initially reviewing issues and then referring them to other appropriate committees or to discrete task forces to study (e.g. the task force on issues relating to sole practitioners and small firms, and the task force on corporate governance)[1] ,
   c. improved processes for dealing with new issues at the Society, and

[1] For example, the Committee's issue relating to access to a lawyer in smaller communities was subsumed within the Sole Practitioner and Small Firm Task Force and the issue of priorities and planning was subsumed within the Governance Task Force.

d. a more experienced staff who facilitate policy development for benchers' decision-making in Convocation.

6. After thoughtful consideration, the Committee has concluded that the dissolution of the Emerging Issues Committee would be appropriate, for the following reasons.

The Committee's "Triage" Function

7. In many cases, the Committee was assigned issues that it quickly realized would have more appropriately been assigned to other standing committees or to a task force. This effectively saw the Committee fulfilling a "triage" function, increasingly so in recent years. What the first co-chairs perceived at the outset – that the majority of issues that would be considered by the Committee would interest or impact on the work of other committees – has indeed become the case. The Committee essentially sorted new issues to determine their appropriate "home" within one of the other established committees or whether a task force was required.

8. Exceptions to this "triage" function have been few. In the past five years, the Committee undertook significant work on three projects:

   a. An examination based on the core values of the profession which led to referrals to the Professional Regulation Committee for recommended regulatory reforms and to Convocation's creation of a Governance Task Force;
   b. Review of United States legislation, The *Sarbanes-Oxley Act*, and the resulting recommendations, through the Professional Regulation Committee, for further regulatory reforms to address the lawyer's role when he or she discovers corporate wrongdoing; and
   c. Review of intellectual property professionals' attempt to obtain a legislated agent-client privilege.

9. The Committee understood early in these projects that these matters would eventually be referred to other Committees or groups. The first two issues, as noted, were referred to the Professional Regulation Committee for what would become amendments to the Law Society Act, the By-Laws and the *Rules of Professional Conduct*. The third item was referred to the Federation of Law Societies of Canada, given its national scope. A committee was established there to carry on with the work on that subject.

10. It has been over a year since the Committee has produced any significant analysis of new issues. Moreover, it is the Committee's view that even the above-mentioned policy issues could have been assigned to other standing committees of Convocation, or alternatively, assigned to a new task force or working group formed specifically for those issues.

11. Accordingly, the Committee believes that the current triage function of the Committee is neither necessary nor the best use of resources.

Improved Channeling of Policy Issues

12. The manner in which issues arriving at the Society are reviewed and assigned has improved in the past few years.

13. Issues relating to the Society's mandate find their way to committees and, if necessary, Convocation in a number of ways. Benchers and staff become aware of issues through

colleagues, political or other networks and through legal and mainstream media. Typically, these issues have already "emerged". Benchers and staff, the latter through the CEO or Director of Policy, bring these issues to the attention of the Treasurer. On occasion, benchers will approach staff regarding new issues or matters of concern. These are then reviewed and appropriate action is taken to address them.

14. With increasingly experienced staff in the policy and other key departments, matters are quickly channeled to the appropriate group, if required, for consideration. This enhances the process of information sharing among benchers, staff, and the Treasurer. This process, although still informal, has become sufficiently sophisticated so that new issues of importance to the Society are appropriately and quickly assessed and routed accordingly.

15. Convocation's adoption of recommendations of the Governance Task Force to improve Convocation's priority-setting responsibilities, of which this process is a part, will bring more structure to priority planning and priority setting. In particular, the recommendation that Convocation institute a full review of priorities as part of plan to achieve the Society's strategic objectives will envelope the Committee's forward-looking responsibilities and make its separate existence redundant. [2]

Bencher, Staff and Financial Resource Issues

16. It appears that, initially, the Emerging Issues Committee was intended to proactively determine new issues on the legal horizon in order to provide an analysis of "not yet emerged" issues that were relevant to the Law Society's mandate. This was never realized, as to do so would require substantial use of the Society's policy staff (and others) and may involve significant financial expenditures that might be difficult to link to any specific regulatory priority.

17. With respect to staff, when the Law Society restructured its governance in 1996, the number of standing committees of Convocation was reduced to four. When the Emerging Issues Committee was created in 2001, it brought the number of standing committees to six. The number of committees has since grown to 13. The number of Policy Counsel in the Policy Secretariat who support the work of the committees, their working groups and stand-alone task forces has remained at three since 1996, with the more recent addition of Counsel to the Office of the Director of Policy.

18. While the Policy staff has gained experience over the years and has become better at handling these increased responsibilities, appropriate allocation of these human resources must be observed. Practically speaking, these resources are not available for the type of exercise described in paragraph 16. Policy Counsel attend the meetings of Convocation and all committees. Policy Counsel draft the required Reports to Convocation and Committee Agendas on a two-week cycle during the bencher year for the vast majority of these committees and groups. In addition, the task of scheduling meetings and finding meeting rooms for 13 different committees has also become exceedingly challenging for staff. To fulfill the proactive function described above in a meaningful way, additional resources, and the related financial expenditure, would inevitably be required.

[2] These recommendations were adopted by Convocation on March 29, 2007.

19. In any event, in the Committee's view, it is questionable whether this type of forward-looking initiative would have borne results such that the Society would have been "ahead of the curve" in policy development related to the Society's mandate. The Society has improved, and continues to improve, its ability to take timely action on information that comes to the Society, as previously described.

20. At a higher level, the Committee considered its role within the overall corporate governance structure. The Committee's view is that responsible use of financial and human resources makes the continuation of the Committee unnecessary. Time that benchers devote to the Committee, and the associated travel and accommodation expense for out of town benchers, could be better utilized in more focused work that is directly linked to the Society's governance mandate.

21. The dissolution of the Committee will not affect the integrity of the Society's ability to govern the profession, nor impact negatively on the manner in which the benchers organize themselves corporately for the Society's governance responsibilities. The Committee's view is that it is not contributing significantly to the work of Convocation, and that resources devoted to it may be more usefully applied elsewhere.

Other Options Considered

22. The Committee briefly considered other options for revamping the Committee's structure. For example, the Committee considered transforming itself into a "brainstorming" group with a more philosophical focus that would include a multi-disciplinary element, such as non-bencher lawyers and academics. Another option would be to have the Committee continue without any permanent members, other than a named chair, so that it could be called upon on an *ad hoc* basis to deal with defined issues. Under that model, the Committee could then be populated for those specific issues.

23. The Committee favoured elements of the latter option. However, it determined that creating a committee on an *ad hoc* basis for a specific issue really amounts to the creation of a task force, something which is currently done by Convocation when deemed necessary.

Current Processes and Recommended Improvements are Sufficient

24. The Committee favours the current process whereby the Treasurer and Convocation assign new policy issues to the appropriate standing committee. Where a new issue of importance to the Society does not fall within the mandate of one of the standing committees, the Treasurer should continue to use his or her discretion to form a task force and populate it with benchers (or others if necessary) who have the appropriate expertise with the particular subject matter. These issues can then be studied in a more focused way that maximizes bencher and outside expertise, and makes more efficient use of Law Society human and financial resources.

25. The Governance Task Force recommendations, noted earlier, will also improve the manner in which issues are identified and dealt with as a matter of priority.

26. For all of the above reasons, the Committee requests that Convocation dissolve the Committee. If Convocation agrees with this request, amendments to By-Law 3 to revoke the Committee's mandate will be required.

It was moved by Ms. Warkentin, seconded by Mr. Porter, that Convocation approve the dissolution of the Emerging Issues Committee.

Carried

REPORT AND ADDENDUM OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Ms. Pawlitza presented the Report and Addendum.

Report to Convocation
October 25, 2007

Professional Development & Competence Committee

ADDENDUM

Committee Members
Laurie Pawlitza(Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Robert Aaron
Carole Curtis
Jennifer Halajian
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina

Purposes of Report: Decision

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

FOR DECISION
CERTIFIED SPECIALIST PROGRAM (ADDENDUM)

MOTION
(all but (h) is contained in the original report)

1. That the Certified Specialist program continue as a Law Society program, as follows:

    a. Commencing January 1, 2008, or as soon thereafter as is feasible but not later than January 1, 2009, and thereafter on an ongoing basis the program be run on a self-funding, cost recovery basis out of fees generated by those lawyers applying for certification and certified specialists renewing their certification.

b. The threshold for eligibility for certification as a specialist in any given specialty area is set at 30% of practice in that area.

c. A person may be certified in not more than two specialty areas at any one time.

d. Applicants for certification will demonstrate completion of 36 hours of continuing legal education, specifically related to the area of specialty, in the three years prior to application (an average of 12 hours per year) as well as 50 hours of self-study in the area related to the specialty per year in the three years prior to application.

e. Certified specialists will demonstrate, annually, completion of 12 hours of continuing legal education and 50 hours of self-study for each specialty.

f. Certified specialists will be entitled to include credentials "C.S." after their names.

g. The Specialty Committees will be disbanded and the program application process will move to an administrative compliance process.

h. The Certification Board will be reconstituted to be composed of between 8 and 12 members, one of whom will be a lay bencher, two of whom will be elected benchers and the balance of whom will be lawyers who are not benchers. All lawyers on the Board, including the elected bencher members, will be certified specialists.

2. That the necessary amendments be made to By-law 15 (Certified Specialist Program) for Convocation's approval.

Introduction and Background

3. The Committee's Report is set out at TAB 5 of the Convocation materials for October 25, 2007 Convocation. By an oversight, one part of the motion respecting the Certified Specialist program was omitted.

4. The entire motion is repeated above with the additional clause set out in bolded text at subclause h.

5. In keeping with the Committee's recommendation that Specialty Committees be disbanded, as discussed in the main report, the Committee also considered whether there should be changes to the structure of the Certification Board. The Review Group also considered this issue.

6. Currently the Board consists of seven persons appointed by the Professional Development and Competence Committee namely,

a. four benchers who are not lay benchers;
b. one lay bencher;
c. two persons who are certified specialists who are not benchers.

7. A Board member's term is three years and members are eligible for reappointment.

8. Currently, the Board's main activities include establishing Specialty Committees and defining and overseeing their work

9. The Review Group recommended that,

> the Certified Specialist Board should serve in a predominantly advisory capacity. It should be reconstituted to be more representative of the profession. The need for Benchers of the Law Society to be a part of the Board is acknowledged, but not to the extent of the current requirement. It is more useful for this Board to have representatives from a variety of solicitor and barrister practices and from geographically diverse areas of the province.
>
> The Review Group recommends a Certified Specialist Board of 8 to 12 members, including two Bencher representatives. All Board members should be specialists. This will support the goals of the Program while ensuring efficient and timely decision-making.

10. The Committee agrees with this recommendation, but recommends maintaining the presence of a lay bencher.

Report to Convocation
October 25, 2007

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Professional Development & Competence Committee

Committee Members
Laurie Pawlitza(Chair)
Constance Backhouse (Vice-Chair)
Mary Louise Dickson (Vice-Chair)
Alan Silverstein (Vice-Chair)
Robert Aaron
Carole Curtis
Jennifer Halajian
Susan Hare
Laura Legge
Daniel Murphy
Judith Potter
Nicholas Pustina

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Committee met on October 11, 2007. 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, Judith Potter and Nicholas Pustina attended. Bencher Gerry Swaye also attended. Staff members Diana Miles, Nancy Reason and Sophia Sperdakos also attended.

FOR DECISION
CERTIFIED SPECIALIST PROGRAM

MOTION

2. That the Certified Specialist program continue as a Law Society program, as follows:

   a. Commencing January 1, 2008, or as soon thereafter as is feasible but not later than January 1, 2009, and thereafter on an ongoing basis the program be run on a self-funding, cost recovery basis out of fees generated by those lawyers applying for certification and certified specialists renewing their certification.

   b. The threshold for eligibility for certification as a specialist in any given specialty area is set at 30% of practice in that area.

   c. A person may be certified in not more than two specialty areas at any one time.

   d. Applicants for certification will demonstrate completion of 36 hours of continuing legal education, specifically related to the area of specialty, in the three years prior to application (an average of 12 hours per year) as well as 50 hours of self-study in the area related to the specialty per year in the three years prior to application.

   e. Certified specialists will demonstrate, annually, completion of 12 hours of continuing legal education and 50 hours of self-study for each specialty.

   f. Certified specialists will be entitled to include credentials “C.S.” after their names.

   g. The Specialty Committees will be disbanded and the program application process will move to an administrative compliance process.

3. That the necessary amendments be made to By-law 15 (Certified Specialist Program) for Convocation's approval.

Introduction and Background

4. In March 2001 Convocation approved a competence model consisting of five components, one of which was a reformulated certified specialist program that would be part of the continuum of competence for the profession. In June 2002 Convocation approved the design for the new program and subsequently approved the business plan that was created to implement the goals of the newly revised program. The performance goals for the new program were set at 6% or approximately 1150 licensees by December 2004 and 10% or approximately 2000 licensees by December 2006. The program was to be self-funding by December 2004 with a 10% profit margin by December 2006 to be reinvested in the program to develop new specialty areas and support further marketing efforts.

5. As of December 31, 2004 there were only 682 specialists in the program and at December 31, 2006 only 3.6% or 719 of the lawyer licensees in private practice were certified specialists. The membership at large continues to subsidize the program. In 2008 subsidies for this program if unchanged are currently budgeted at $6 per licensee.

6. In keeping with the business plan the number of specialties increased. Five additional specialties were added between 2003 and 2007, but the number of specialists increased by only 100 or so lawyers.

7. Given the failure of the program to meet its benchmarks, during the 2006-07 term of the Committee it undertook a review and discussion of the program with a view to making recommendations to Convocation on the future of the program. The Committee considered,

    a. the number of participants in the program, including in the five new specialty areas that were introduced as part of the redesign, and the possible reasons for failure to meet the goal of 10% participation;

    b. the profile of the participants, in particular the increasing age of certified specialists and the implications of this for the future of the program;

    c. the development of the criteria for each specialty area and whether specialty committees were consistently applying the objective criteria;

    d. the continued subsidization of the program beyond the initial developmental stage and the budget and resource implications;

    e. whether there were incentives that might increase interest in the program;

    f. whether the threshold for eligibility for certification was too high in certain specialties; and

    g. the role of the Specialty Committees.

8. The Committee's discussions spanned a number of months. Based on a longstanding lack of growth in the program from its outset even despite the extensive redesign; the degree to which the program had fallen short of the benchmarks set for the end of 2006; the evidence that too few licensees appeared interested in applying for certification; and the program's continued subsidization, the Committee's initial determination was to recommend the termination of the program.

9. As a result of concern raised by the Certification Board that such a recommendation was, at best, premature the Committee expanded its report to include an additional option for Convocation, namely that the program continue with the addition of a C.S. (certified specialist) designation for certified specialists and that a further review of the program would take place after two years. There were two variations of this option, the first that the program continue to be subsidized during the two year period; the second that it become self-sustaining as of January 2008.

10. Prior to Convocation in February 2007, the Committee's report was provided to members of the Specialty Committees. A decision was made to defer discussion of the report in Convocation until the members of the Specialty Committees had had an opportunity to provide comments. The Committee reviewed the comments in April 2007, providing them as well to Convocation. At that time, the Committee advised Convocation that a Review Group with representatives from the Specialty Committees would be established to consider the comments in detail and provide a report to the Committee.

11. The Review Group met in May and June 2007. A report to the Committee setting out the Group's recommendations is set out at APPENDIX 1.[1]

The Committee's Analysis

12. The Committee has considered the Review Group's report, particularly in light of the many comments it received from the Specialty Committee members who strenuously opposed the termination of the program.

13. The Committee has also taken into account benchers' recent reconfirmation in September 2007 at a strategic planning session that any certified specialist program should be self-funding, as well as the Review Group's assertion set out in paragraph 9 of its report that,

> There is sufficient value and benefit in the Program that most Certified Specialists would be willing to pay an increased annual fee to ensure that the cost-recovery requirement set by Convocation for this Program is met.

14. In reaching its revised recommendations to Convocation, set out in paragraph 2 above, the Committee has paid particular attention to the points made in the Review Group Report and its proposed changes and comments on them below:

---

[1] Over 80 people provided comments to the Committee. These led to the establishment of the Review Group. The Toronto Lawyers' Association also provided a submission respecting the program, which was made after those provided to Convocation. For the Committee's information the submission is set out at APPENDIX 2.

General Comments

15. Both the Review Group and the specialists who commented on the Committee's earlier draft report have been of the view that there are ways in which to increase participation in the program without in any way undermining the standards of the specialist program. Both groups have considered ways to encourage growth in the program and reduce barriers to such growth where possible. They have considered incentives to growth.

16. The Committee is satisfied that the Review Group's recommended changes do not reduce the quality of those eligible for certification, but reflect a realistic assessment of how the program can better operate and perhaps thrive. The Committee's analysis of the changes it is proposing is set out below.

Cost Recovery

17. The Committee appreciates that there are different views about the manner in which the cost of a competence program of the Law Society should be addressed. However, Convocation has made it clear on every occasion on which it has discussed and approved this program that it must be self-funding. To date, however, the program has always been subsidized, creating ongoing friction with those who believe that this is contrary to Convocation's wishes and direction.

18. The Committee accepts Convocation's strongly held view and recent re-commitment to the decision that the program must operate on a self-funding, cost recovery basis out of fees generated by those applying for certification and certified specialists renewing their certification. The Review Group believes this is viable and this approach allows the program to exist without pressures of evaluating success based on numbers. Whatever is required to achieve cost-recovery will be achieved by setting the fees at a level to accomplish this. While the goal is to achieve cost-recovery for 2008 the Committee is recommending some leeway for that fiscal year on the understanding that by 2009 at the latest (and perhaps earlier) the program fees will reflect full cost-recovery.

19. Immediate steps must be taken to fulfill Convocation's direction, given over many years, respecting a self-funding program.

Practice Concentration

20. One of the mandates of the redesigned program was to increase accessibility for lawyers outside Toronto and the GTA. It was thought that a practice concentration of 50% was unrealistic for many lawyers outside Toronto and accordingly specialty committees were requested to consider practice concentrations of between 30% and 50%. Despite this request, the majority chose 50%.

21. This has proven an unreasonable and unnecessary barrier to participation for the very people the program redesign was intended to encourage. In reality, the percentage of practice appears not to be as important to the standards of the program as the scope of skills, activities and knowledge applicants demonstrate.

22. The Review Group has noted that most other jurisdictions fall between a 25% and 40% practice concentration. The Committee agrees with the view that 30% is a realistic percentage and should be adopted.

Continuing Legal Education Requirements

23. The current requirements are that applicants for certification must demonstrate that in the five years preceding the application they meet the requirements for 18 hours of CLE per year and 50 hours of self-study per year in their specialty area, with 6 hours of the 18 being as a learner in a program. Other hours can be met by teaching, writing, etc. Once a specialist they must continue to meet the annual requirements.

24. In most other jurisdictions the CLE requirement for specialists is between 10 and 15 hours and the Review Group is of the view that the number of hours for Certified Specialists should be reduced from 18 hours to 12 with no specification respecting participation as learner.

25. The Review Group has noted:

> The requirements for Continuing Legal Education are too restrictive given the need for specialists to undertake professional development at an advanced level of learning.
>
> Specialists should be entitled to choose education based on practice needs and nuances. Often the best education for specialists is outside of the specialty in areas of law that add specific or particular value to the manner in which the specialist might apply his or her core practice skill.
>
> Specialists should be entitled to obtain the education as a learner or as an instructor or seminar leader.
>
> The Review Group further recommends that those applying for specialization should be required to show the achievement of 36 hours of continuing legal education, specifically related to the area of specialty, in the three years prior to application (an average of 12 hours per year).

26. The Committee is of the view that the reduction is reasonable, particularly given the reality that it continues to be a challenge for lawyers at the level of knowledge, skills and experience of certified specialists to find sufficiently challenging CLE programs to meet their needs.

C.S. Designation

27. The Review Group as well as the specialists who provided comments to the Committee continue to be of the view that more incentives must exist that will enable lawyers to see the benefit of becoming certified specialists. A number of people are strongly of the view that the creation of a designation to follow certified specialists' names would increase awareness of the program and the accomplishment both within and outside the profession. The Review Group noted:

> the "C.S." designation addresses professional interest in showing the public and colleagues that one is accomplished and has been acknowledged to be so in an official process. The designation provides a value-added opportunity that may increase applications to the Program and provides a recognizable designation for the public when making decisions to retain a lawyer.

28. The Committee agrees that added incentives could only assist the program's profile and agrees that the C.S. designation makes the most sense.

Specialty Committees

29. Specialty Committees played an essential role in the redesign of the program to ensure that representatives of practice in the specialty area validated the substantive requirements for that area. One of the key purposes of this validation was to instill objectivity into the program as the previous program had suffered under the perception that acceptance into the program was done on the basis of who, not what, an applicant knew. Each specialty now has,

    a. learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of practice activity;

    b. a wide range of programs accredited on the basis of the learning criteria. Program providers are entitled to advertise the accreditation of their programs; and

    c. detailed experience requirements for certification used to determine a lawyer's eligibility to be certified.

30. In considering the role of the Specialty Committees the Review Group noted:

> The standards and criteria that have been developed as a result of the revision to the Program that took effect in January 2004 are well articulated and, after three full years of application, reflect a validated set of competencies and achievement benchmarks. The Specialty Committee members and others who participated in the development of those standards put substantial time and effort into that development and the criteria are widely accepted within the profession as accurately defining the knowledge and skills requirements for each of the specialty areas.

31. The Review Group also noted, and the Committee has made similar comments in its discussions and its original draft report, that despite the existence of objective criteria "there is some difficulty both within and between specialty areas in the application of the standards in a consistent manner." It further noted:

> The standards are being applied too stringently, failing to give effect to the spirit and intent of the approved criteria. This often effectively excludes those who have achieved all of the benchmarks and who would, in the normal course, be considered by their practice area peers as 'experts' in their chosen fields.

32. The Committee echoes the view of the Review Group that the criteria have been thoroughly developed and can stand independently. It is no longer necessary, nor advisable, that Specialty Committees vet each application individually. The program application process should be an administrative one. This streamlining, and corresponding reduction in staff resources, would also assist in the effort to minimize increases in application fees. Most importantly, potential applicants who understand that their applications will be considered purely on the basis of the criteria may be more willing to apply.

Conclusion

33. The Committee has been persuaded that despite the small number of certified specialists in the province, the belief in the importance of having such a program appears to be deeply held, at least by those who have committed the time and effort to become certified. There has been the suggestion that some of the proposed changes set out in paragraph 2 above, may well make a difference to the numbers of lawyers interested in applying. The Review Group believes they are sensible changes for the program to adopt.

34. Assuming all of the changes proposed are approved, it is anticipated that the program will be self-funding in 2008 based on an anticipated annual renewal fee for certification in the range of between $300[2] and $375 per specialist.

35. The Committee has also been persuaded that other than the usual operational reviews that all Law Society programs are required to undergo periodically, the program should not be subjected to a specific review based on projected goals for membership. Positioning a review based on membership goals over the program could have the unintended effect of convincing people that the program is likely to be terminated and accordingly it is not worth the effort to apply. The Committee does not wish to leave this impression. On the contrary, the purpose of the changes is to encourage more people to apply.

36. The review of the Certified Specialist Program has been a long and thorough one. The Committee believes that the proposed changes, as set out in the motion above, will allow the program to continue, reflecting the strongly held views of the many specialists who provided feedback on the issue.

37. Specialty Committee members have dedicated a great deal of time and expertise to the program over a number of decades. Their dedication to enhanced competence for lawyers is gratefully acknowledged. The criteria they have participated in developing are of use not only to the Certified Specialist Program, but also to the development of competence based educational programs in general. The Committee thanks them for their dedication and contribution to the profession.

APPENDIX 1

Recommendations for the
Certified Specialist Program

Report of the Certified Specialist Review Group to the
Professional Development and Competence Committee

[2] The current fee.

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September 2007

Recommendations for the Certified Specialist Program

1. In February 2007, the Professional Development and Competence Committee submitted an evaluation report on the Certified Specialist Program to Convocation for information only.

2. Immediately following February Convocation, the Committee's report was provided to members of specialty committees for comment.

3. As a result of the number of comments received the Committee was of the view that it should discuss the issue further before the Report goes forward to Convocation for consideration.

4. The Committee decided to convene a group of Specialty Committee members and other specialists to consider the comments received and provide input on the Program.

5. Participants in the Review Group and their specialty and membership affiliation are as follows:

| | Firm/Organization | City | Specialty | Membership |
|---|---|---|---|---|
| R. Lee Akazaki | Gilbertson Davis Emerson LLP | Toronto | Civil Litigation | Certified Specialist |
| Mary Ellen Bench | City of Mississauga | Mississauga | Municipal Law | Specialty Committee |
| Judie L. Bennett | Canadian Blood Services | Ottawa | Health Law | Specialty Committee |
| S. Margo Blight | Blight Law Office | Toronto | Labour Law | Specialty Committee |
| Kim A. Carpenter-Gunn | Kim A. Carpenter-Gunn Law Offices | Hamilton | Civil Litigation | Bencher, Certified Specialist Board |
| Paul J. Henderson | Barrister and Solicitor | Oakville | | Bencher |
| Alfred A. Mamo | Alfred A. Mamo & Associates | London | Family Law | Certified Specialist Board |
| Edward Olkovich | Barrister and Solicitor | Toronto | Estates and Trusts | Specialty Committee |

| | | | | |
|---|---|---|---|---|
| | | | Law | |
| William J. Simpson, Q.C. | Barrister and Solicitor | Ottawa | | Bencher (term completed) |
| Joseph J. Sullivan | Camporese & Associates | Hamilton | Civil Litigation | Specialty Committee |
| Gerald A. Swaye, Q.C. | Gerald Swaye & Associates | Hamilton | Civil Litigation | Bencher, Certified Specialist Board |
| Jerry B. Udell | McTague Law Firm LLP | Windsor | Real Estate | Specialty Committee |
| Stanley M. Tick, Q.C. | Tick & Associates | Hamilton | Civil Litigation | Certified Specialist |

6. The Review Group met on May 31, 2007 and June 25, 2007. During those meetings the Group analyzed the issues affecting the Certified Specialist Program as set out in the Committee Report and the comments received from specialists and others.

7. The Certified Specialist Review Group submits the following recommendations to the Professional Development and Competence Committee for its consideration.

Points of Consensus

8. The Review Group reached a consensus, in keeping with the majority of the submissions received from other specialists in the profession, that the Certified Specialist Program supports the Law Society's public interest mandate and should be maintained.

9. It is the position of the Review Group that there is sufficient value and benefit in the Program that most Certified Specialists would be willing to pay an increased annual fee to ensure that the cost-recovery requirement set by Convocation for this Program is met.

10. Further consensus was achieved on the following, in no particular order:

    a. The standards and criteria that have been developed as a result of the revision to the Program that took effect in January 2004 are well articulated and, after three full years of application, reflect a validated set of competencies and achievement benchmarks. The Specialty Committee members and others who participated in the development of those standards put substantial time and effort into that development and the criteria are widely accepted within the profession as accurately defining the knowledge and skills requirements for each of the specialty areas.

    b. There is some difficulty both within and between specialty areas in the application of the standards in a consistent manner.

    c. The standards are being applied too stringently, failing to give effect to the spirit and intent of the approved criteria. This often effectively excludes those who have achieved all of the benchmarks and who would, in the normal course, be considered by their practice area peers as 'experts' in their chosen fields.

d. The application process and annual renewal process are not too onerous. The competence focus of the Program must be maintained and this would be difficult to reconcile with a reduced application requirement. The Review Group assessed the application requirements for other jurisdictions and noted that Ontario's requirements are less onerous than most. See Appendix 1 for further discussion of requirements.

e. The requirements for Continuing Legal Education are too restrictive given the need for specialists to undertake professional development at an advanced level of learning.

f. The Program will only receive an increasing number of applicants if lawyers believe that it will be of benefit to hold the designation. It is acknowledged that this is an individual decision dependent upon personal circumstances. The Review Group agreed that it would be impossible for the Law Society to find a 'one size fits all' solution to making this Program more attractive to the profession.

11. As a result of these and other considerations, the Review Group developed a list of revisions that it believes would be useful in improving the status and administration of the Program. These recommendations will make the program more appealing to the profession while still maintaining its competence focus in the public interest.

12. At no time did the Review Group discuss or consider the dissolution of the Program.

Program Revision Recommendations

13. To summarize, the Review Group proposes the following changes to the Certified Specialist Program:

a. Certified Specialists should be entitled to place the credentials "C.S." behind their names as an acknowledgement of the achievement;

b. Marketing activities related to public awareness of the program should be continued and should focus on regional awareness;

c. The annual Continuing Legal Education requirement should be 12 hours;

d. All specialties should require the lawyer's practice concentration for eligibility to be 30%;

e. The work of the Specialty Committees has been successfully completed, and the criteria sufficiently validated. The Specialty Committees should be dissolved and the Program application process should move to an administrative compliance process;

f. As a result of these streamlining changes, the application and recertification fees for the Program can remain at the current levels and achieve cost-recovery at the current level of membership in the program.

14. The following sections of this report elaborate on each recommendation.

C.S. Designation

15. The Review Group engaged in substantial discussion about the use of the initials “C.S.” by specialists. It was acknowledged that the legal profession appears to favour the return of the Q.C. designation. However, this is a matter outside of the control of the Law Society and, indeed, the profession itself.

16. In addition, the Group noted that the Q.C. has little meaning to lawyers who are new to the profession and will be joining in the future.

17. It was noted that the Q.C. designation did not signify achievement in a specified area of law, but rather a broad set of accomplishments in the profession generally. The Certified Specialist Program has a more defined focus and should have its own designation.

18. Many of the submissions to the Professional Development and Competence Committee indicate an interest in having such a designation as it would create greater awareness of the certified status and its meaning both within and outside of the profession.

19. It is the Group’s opinion that the “C.S.” designation addresses professional interest in showing the public and colleagues that one is accomplished and has been acknowledged to be so in an official process. The designation provides a value-added opportunity that may increase applications to the Program and provides a recognizable designation for the public when making decisions to retain a lawyer.

Marketing of the Program

20. The Review Group considered the scope and application of marketing activities for the Program. Advertisements placed in the largest news dailies, the Globe and Mail and National Post, although directed to public awareness, were considered wasteful in light of the high costs associated with them.

21. It was agreed that the placement of advertising in smaller and regional news dailies continues to be a useful way to get the specialist message out to the public.

22. The Review Group recommends that marketing activities continue at the same level of expenditure as currently allocated. Those activities should focus on regional newspapers that are more likely to be noticed by the public and colleagues in the practitioners’ own geographic area of practice.

23. The Review Group also acknowledged that, other than marketing activities focused on creating top-of-mind awareness in the public as a matter of public interest, all other marketing should be undertaken by each individual specialist as that activity benefits the lawyer personally.

Continuing Legal Education Requirement

24. Following a review of the annual education requirements of similar specialization programs in other jurisdictions, the Review Group is recommending a reduction in the number of continuing education hours for specialists from 18 hours to 12 hours. In most

other jurisdictions, between 10 and 15 hours was required. See Appendix 1 for a comparison of jurisdictions.

25. The Review Group noted with interest that the Law Society has approved, since the inception of the new Certified Specialist Program and CLE Accreditation Process in January of 2004, over 2300 education programs from over 50 providers across the province. The activity of reviewing and accrediting each program for a specified number of accredited hours toward the designation is administratively onerous, but essential to support the achievement of adequate education to maintain the designation.

26. Previously, specialists were required to achieve six of their 18 hours of continuing education directly related to their field of specialty and as a learner (as opposed to an instructor). Submissions indicated, and the Review Group agrees, that more flexibility is necessary in the number of education hours and how they are achieved.

27. Specialists should be entitled to choose education based on practice needs and nuances. Often the best education for specialists is outside of the specialty in areas of law that add specific or particular value to the manner in which the specialist might apply his or her core practice skill.

28. Specialists should be entitled to obtain the education as a learner or as an instructor or seminar leader.

29. The Review Group further recommends that those applying for specialization should be required to show the achievement of 36 hours of continuing legal education, specifically related to the area of specialty, in the three years prior to application (an average of 12 hours per year).

30. Specialists will continue to have an annual reporting requirement for continuing legal education, submitted with their recertification fee.

Practice Concentration

31. When the new Program was approved, Specialty Committees were given the responsibility of determining the level of practice concentration that would be required. The goal of the new Program, as approved by Convocation, was to increase accessibility for lawyers and particularly those lawyers outside of the Greater Toronto Area.

32. In establishing the Specialty Committees, the Law Society requested that they consider a practice concentration between 30% and 50% with a view toward keeping the percentage to a reasonably lower level to facilitate access. Despite this direction, the majority of the specialties opted for a 50% practice focus.

33. The Review Group believes that the requirement for a 50% practice focus is unreasonable in today's practice environment. Percentage of practice focus is not as relevant as the scope of activities, skills and knowledge. Particularly in areas outside of Toronto, few practitioners are able to engage in such a significant level of activity in any one area of substantive law and still be in a position to maintain a viable business. This restricts the ability of those practitioners to apply for the Program.

34. Comparatively, the Review Group noted that most of the 19 American states with specialization programs and New South Wales (these specialist programs most closely approximate the Ontario program) have requirements that a lawyer spend no less than 25% of their full time practice in the specified area of law. On average most jurisdictions fall between 25% and 40% in the individual practice areas. See Appendix 1 for selected comparisons.

35. The Review Group recommends that the Law Society establish a consistently lower practice concentration and require all applications to be assessed based on a 30% practice focus.

Assessment Process

36. The standards for the Certified Specialist Program were developed with the intention of assisting lawyers to acquire the requisite skills and knowledge to qualify for certification in a given practice area. To that end, each specialty now has,

    a. learning criteria setting out required procedural and substantive knowledge and skills at the essential, intermediate and advanced levels of practice activity;

    b. a wide range of programs accredited on the basis of the learning criteria. Program providers are entitled to advertise the accreditation of their programs;

    c. detailed experience requirements for certification used to determine a lawyer's eligibility to be certified.

37. The standards and criteria for each specialty were developed over a two-year period leading up to the launch of the new program in January 2004. New specialties have also been added since that time.

38. On average, it takes 18 months to derive the knowledge and skills criteria used in the assessment process for certifying specialists.

39. In each of the existing specialty areas, members of the Specialty Committees from the previous program and or exemplars in the profession who made the commitment to become specialists participated in working groups with Law Society staff to develop the criteria. In doing so, the participants were charged with responsibility for setting standards that reflected the current nature of practice. Standards were developed that would ensure consistency of application across specialties while still recognizing the unique nature of each area of practice.

40. The Program has now been in place for over three years and the criteria have proven to be extremely effective in benchmarking specialists. Without the dedication of the Specialty Committee members, the initial development and validation of standards would not have occurred. The quality of the product the Specialty Committees is both commendable and durable.

41. Evidence remains, however, as was the case in the previous program, that in assessing applications Specialty Committees continue to apply criteria inconsistent with the articulated standards, leading to subjective assessments.

42. These subjective assessments result in applicants being denied the designation based on non-standardized/non-approved criteria. An example of this would be in litigation areas where some Specialty Committees continue to insist upon extensive trial experience despite the fact that the approved standards were not drafted that stringently and the reality of practice is that trials are now quite uncommon.

43. Where subjectivity is applied to the consideration of applicants it leads to an inequitable assessment and lack of transparency. Those who are denied accreditation go on to advise their equally well-established, but yet to be certified colleagues of this result leading lawyers to reject certification as inconsistent and unfair.

44. The Program is now at a point in its development where the criteria can stand independently. The criteria are clearly articulated and definitive and no longer require Specialty Committees to vet each application.

45. The Review Group therefore recommends that the Program is ready to move away from the original administrative requirements. The Specialty Committees should now be dissolved and the application process should become an administrative compliance process.

46. In this process staff lawyers would review all applications and make a recommendation for approval or denial of certification directly to the Certified Specialist Board.

47. The Review Group recommends the Certified Specialist Board should serve in a predominantly advisory capacity. It should be reconstituted to be more representative of the profession. The need for Benchers of the Law Society to be a part of the Board is acknowledged, but not to the extent of the current requirement. It is more useful for this Board to have representatives from a variety of solicitor and barrister practices and from geographically diverse areas of the province.

48. The Review Group recommends a Certified Specialist Board of eight to 12 members, including two Bencher representatives. All Board members should be specialists. This will support the goals of the Program while ensuring efficient and timely decision-making.

49. In the past, the average amount of time between receipt of application and communication to the applicant of approval or denial of certification was approximately four months. The recommended process is anticipated to reduce the time to six to eight weeks, assuming no substantial further or other information is required from the applicant in support of the application.

50. An objective of the Specialty Committees was to review the standards and learning criteria for the specialty to confirm continuing applicability or the need for revision. Under the Review Group's recommendation, the Law Society would continue to undertake a review of the criteria and the review would be conducted in consultation with specialists from differing backgrounds to ensure that a variety of experiences and viewpoints are applied to the standards. In this manner, the quality and validity of the standards is maintained.

Cost Recovery and the Program Budget

51. The Review Group was keenly aware of Convocation's requirement that the Certified Specialist Program achieve full cost recovery. This has not been achievable in either the previous or current programs.

52. Although the Review Group does not agree that a competence based initiative must be fully self-funding, it is mindful of the comments of non-specialists who do not wish to support a program that they believe only provides benefit to a defined group of lawyers.

53. The administration of the Certified Specialist Program is quite onerous. It is important to note the following when considering the costs of this program:

    a. Staff at the Law Society organize and attend between 70 and 90 Specialty Committee and Certified Specialist Board meetings per year.

    b. Specialty Committee members attend many of those meetings in person, resulting in travel and other expenditures.

    c. Each application must go through an initial staff compliance vetting process which includes further communications with each applicant in the event that more information is required or information is missing, preparation of the application package for Committee consideration, follow up with applicants on behalf of the Committee if further information is required, and scheduling of interview panels where required.

    d. Monthly statistical reporting, marketing initiative development and implementation and the ensuing costs of advertising and other awareness initiatives.

    e. Staff at the Law Society receive, review and approve the hours of specialty accreditation for an average of over 600 continuing education programs per year (a total of over 2300 programs have been accredited to date in the new system) and communications to providers of approvals or denials. Over 50 unique providers of legal education have had programming accredited under this system.

    f. Annual review of and consultation on knowledge and skills criteria and required revisions.

    g. Annual processing of recertification documents including multiple reminders to specialists and review of all submissions to ensure applicants have fulfilled the requirements to maintain the designation.

    h. Annual invoicing of recertification fees and processing of payment.;

    i. Development of new policies or changes to policies or by-laws related to the program.

    j. Further administration as required including daily communications with specialists, those entering the application process, general client service supports and responding to public enquiries.

54. The Director, Professional Development and Competence has advised the Review Group that, based on the current metrics, it is possible to bring the Program to cost-recovery status in the 2008 fiscal period if the administrative changes related to the dissolution of Specialty Committees and assignment of assessment processes to staff is approved.

55. The Review Group has made no recommendations that would result in increased expenditures, understanding that the Program must show improvements in the number of specialists before such increases could be contemplated. The Review Group understands that it was not the Law Society's goal to create a profit from this Program, and that the original business plan indicated that any such excess revenue above total expenses would be reinvested into the program and used to promote awareness in the public and the profession.

Evaluation of Program

56. It is acknowledged that all Programs at the Law Society are subject to operational review and evaluation. The Review Group recommends that the Law Society, if approving the continuation of the Program under these or other terms, should commit to maintaining and evaluating the Program in five years. This time period will address the questions that have been posed in the profession about the future of the program, providing a substantial time within which to become and maintain specialization. It will also allow time to work toward greater awareness and acceptance of the designation in the public and the profession before the next business evaluation is compiled.

CERTIFIED SPECIALIST PROGRAM: SELECTED COMPARISONS

APPENDIX 1

APPENDIX 2

Certified Specialist
Submissions on Behalf of
The Toronto Lawyers Association (TLA)
June 2007

The Toronto Lawyer's Association (founded as The County of York Law Association in 1885) represents lawyers in the city of Toronto. Our Civil Practice Committee has reviewed the Report to Convocation of February 22, 2007, by the Professional Development, Competence and Admissions Committee of the Law Society of Upper Canada. The TLA reviewed the various issues contained in that report, and the Committee met to discuss any submissions that should be made on behalf of the TLA membership.

The Committee was concerned that the report canvassed 51 lawyers only, handpicked as being perceived to be Specialists with out certification. We wondered if there was any appropriate way to gather more information, from more lawyers, both Certified Specialists, and non Certified Specialists.

The TLA therefore e-mailed a questionnaire to its members, and received 237 responses. Attached as addendum A is the tally from that survey.

RESPONSES

237 members took the time to complete the questionnaire.

Of these, 164 were non Specialists. The TLA thought that it was important to get the view of non Specialists, as well as Certified Specialists.

73 of our responses were from Specialists.

AWARENESS OF THE PROGRAM

234 or 98.7% were aware of the program. The TLA notes this extraordinarily high statistic, and compliments the Law Society for its efforts in making nearly every member aware of the existence of this program.

SUPPORT FOR THE CONTINUATION

156 members, being 65.82% supported the continuation.

Most Specialists (68 of 73, being 93%) supported the continuation, which was of no surprise to our committee.

We were impressed with the commitment of non Certified Specialists to the continuation. 88, or 53.6% thought that it should be continued.

This committee reviewed this support, by Specialists as well as non Specialists, and therefore urges the Law Society to continue with the certification program.

VALUE TO THE PROFESSION

153 responses, being 64.5% thought that there was value to this program.

Certified Specialists overwhelmingly thought that is was valuable.

Most non Specialists, (52.4%) also thought that it was valuable for the profession.

The TLA committee similarily views the program as valuable for the profession, and urges the Law Society to keep and maintain it.

VALUE TO THE GENERAL PUBLIC

157 of our members, being 66.2%, thought that there was value to the public in maintaining this program.

Certified Specialists were again strongly of this view.

We noted the higher percentage of non Specialists who considered this a valuable program for the public (56.1%), which was higher than their belief in the value of the program for the profession.

The TLA supports the view that there is a considerable value to the public in the Certified Specialist program, and urges the Law Society to keep and maintain it.

## AWARENESS OF THE REDESIGN

52.3% of the respondents knew of the redesign, but most of these were Specialists. Only 37.2% of non Specialists were aware of the redesign.

This may well be "old news". The TLA suggests that the Law Society consider this statistic if and when there is any future redesign of the program. The TLA is prepared to assist the Law Society in getting the message out to the members of the legal profession, as it would appear that many members did not get the message in 2004.

## QUESTIONS FOR NON SPECIALISTS

We asked the non Specialists whether they had considered applying for certification. 97, being 59.1% had considered doing that.

The TLA therefore encourages the Law Society to review the certification process with its members. Some comments suggested that it was a difficult process, although those who have gone through the process did not necessarily agree, as will be noted below.

Our non Specialists were asked if they thought that becoming a Certified Specialist would benefit the lawyer or the lawyer's practice. This was our closest split decision. 81 (49.4%) thought that there would be a benefit, while 83 (50.6%) did not believe there was a benefit.

The TLA notes that there will always be a significant percentage of lawyers who do not believe that a Certified Specialist designation will be of any benefit, but the TLA does not believe that that should deter the Law Society from continuing to maintain the current program.

## QUESTIONS TO SPECIALISTS

We asked our respondents who were Specialists to advise us if they found the application process to be an onerous one. 29 (39.7%) thought that it was.

Although most thought that it was not an onerous process, the fact that this percentage found that it was an onerous, and the comments by numerous non Specialists leaves the TLA to ask the Law Society to review the process and to consider ways to make it less onerous.

The Specialists were further asked if becoming a Certified Specialist has benefited the lawyer or the lawyer's practice. 62 respondents (84.9%) thought that it was a benefit.

The TLA agrees with this, and supports the continuation of the Certified Specialist program.

## QUOTES FROM SPECIALISTS

DO YOU SUPPORT THE CONTINUATION OF THE CERTIFED PROGRAM?

"Yes – I believe that clients/the public consider the designation significant and prestigious (as do I.)"

"Absolutely and it should be strengthened, high standards, publicity, make it a mark of respect for accomplishment recognized by the profession and the public and worth achieving both for professional and community respect which, is a marketing advantage."

"No. It does not certify Specialists; it certifies people with paper credentials."

"Yes, it provides an incentive for those practicing lawyers who wish to specialize in a certain area to do so, and provides them with a recognition for the efforts spent on that specialization."

DO YOU BELIEVE THE PROGRAM IS VAULUABLE FOR THE PROFESSION?

"Yes - it is a significant demonstration of professional development."

"Yes – I have had several initial calls from people saying they found my name in the Certified Specialists lists."

"Yes – it provides a merit based system to recognize and demonstrate expertise to a market that is full of non-merit approaches to same (such as Lexpert and other rankings which are often more about buying advertising etc.)"

DO YOU BELIEVE THE PROGRAM IS VALUABLE FOR THE GENERAL PUBLIC?

"Yes – it provides a way for the public to know that a lawyer is actually recognized in a merit based system to be a specialist. This helps the public to identify lawyers with expertise in the areas in which assistance is required."

"The nomenclature of certified specialist easily identifies those who are certified and can be used by those who are desirous of finding a specialist for purposes of retaining or referring a matter to a specialist in a particular area."

"Yes, very beneficial. It serves its purpose. The public feels more confident having a specialist deal with their problem."

"Yes, for several reasons, including ensuring competence and access to justice."

"Probably not, at least for commercial litigators. Perhaps for personal injury, but probably not."

"Yes. I find in my interaction with the public, that there is a general fear and trepidation over who is the right lawyer is to hire, and whether they have a good one or a not so good one. Given the stringency with which the specialist program is administered, an added level of

confidence can be placed by the public, and rightly so, when dealing with a specialist in a specific field."

"The lists maintained by the Law Society of those who are specialists allow those members of the public to have access to that information. Without the specialization, the public would not have the necessary information to be able to make an informed choice to suit their particular needs."

SPECIALIST – DID YOU FIND THE APPLICATIION FOR CERTIFICATION TO BE AN ONEROUS PROCESS?

"Having sat as panelist, on a couple of occasions, to determine a candidate's suitability for certification, I believe the process for certification is somewhat onerous."

"Not when I did it, but it did become onerous and unrealistic (I sat on various interview panels and we rejected good candidates because of lack of trial experience - few trials are available realistically speaking.)"

"Yes, it is onerous. But, that is a good thing. To have benefit in the program, not just anyone should qualify. It needs to be onerous to ensure only those that have significant experience and ability qualify for designation. If it acts as a disincentive for some to apply due to concern that they are not worthy, then this may actually be of benefit. If it is simply a matter of time dedication not being invested, and the onerous nature creating a disincentive to those that are worthy, then, simply put, the designation does not mean enough to the candidate to invest the time, and this is a personal choice. Those of us that have made the choice to invest the time, and continue the invest the time annually to re-apply clearly believe it is of value to us and our practice."

SPECIALIST – DO YOU THINK THAT BECOMING A CERTIFED SPECIALIST HAS BENEFITED YOU AND YOUR PRACTICE?

"Yes. It is impossible for the general public to know if a lawyer knows his/her area, without the Certified Specialist program."

"Yes. Anything that requires you to qualify every year and meet the requirements in that area in which you practice can only motivate one to stay on top of his/her chosen practice."

"Yes – it has helped validate my actual expertise both to others in the bar and to clients. I believe that in areas the truly require specialized knowledge, it provides great service to the public using legal services by helping them know that someone practices as a specialist in a field and that governing body of the profession has some oversight over the claim that a person is such a specialist."

## QUOTES FROM NON SPECIALISTS

### IN FAVOUR

"The specialist program enables lawyers to let the public know about their specialist qualification and enables the public to more easily find these experts. Further, the program allows for greater protection of the public as it provides for standards for those lawyers in the program (as opposed to a lawyer proclaiming to be an "expert" or "specialist" without having had to meet any standards or special requirements)"

"It is a key marketing tool for small firms and solo."

"It allows non-specialists to find specialists, when required, for referral"

"[It] assists the public to make a more informed choice of counsel."

"The Law Society should continue to support this program. It does not matter that it does not make money. This program was in part a response to the elimination of "Q.C.'s" and we need to maintain it. It is outrageous that the Law Society is considering getting rid of this program given how little the Law Society does for the average member of the Society"

### NOT IN FAVOUR

"From what I have seen, there are some "B" list lawyers who have obtained certification and a lot of "A" list lawyers who haven't bothered. This suggests to me that the program can serve to mislead the public"

"If certification in a specialty leads to a higher standard for care for physicians, logically it should have the same effect for lawyers sued for malpractice …why would [a lawyer] accept a potential increase in the standard of care owed to a client?"

"It can be misleading to the public and the rest of the profession because many very good lawyers are specialists but don't bother with a certification because it is such a cumbersome task to apply."

"It risks misleading the public by being under-inclusive, suggesting that "specialists" are highly capable lawyers. Specialization actually denotes the amount of concentration in an area … the title is conferred for quantity and the public will use it to denote quality"

"Generally speaking, any person who is going to be influenced by the "certified as a specialist in …" words, is probably a client you don't want anyway"

## A PAST PRESIDENT OF THE TLA SPEAKS.

I was part of the group of concerned lawyers who urged the Law Society to institute a specialist program many years ago.

The program for specialists in civil litigation began by following a tried and true method that had been used by the medical profession for many years. That is, a select group selected those lawyers practicing civil litigation that all would agree were at the top of their profession and accordingly would be considered by most as "specialists". As in medicine, the concept was that these individuals would establish a framework and some objective standards by which others could be measured in terms of their achieving these specialists certificates.

Indeed, I was one of those who chaired the original committee that selected the first group of "anointed" specialists.

I later applied for and received my own specialists certification which I continue to hold with pride until this day. Having said that, I am very disappointed in the advancement of the overall specialist certification program.

This program was not intended to benefit lawyers. It had nothing to do with lawyers. It was created because lawyers and the Law Society had, in our view, totally failed the public. Absent some specific designation, members of the public seeking assistance of lawyers would have absolutely no way of determining whether their lawyer knew how to do a real estate transaction, a Will or plead a case in court. In the all the health sciences fields there are clearly marked areas in which health care professionals provide services. One does not go to a skin specialist to have cardiac surgery.

More importantly, members of the public know who the cardiologist is and who the skin specialist is. The purpose of the specialist program brought in by the Law Society was to deal with that issue. In order for that program to have any real effect, it was necessary for the Law Society to do more than simply administer the specialist program.

The failure of the program to grow and to have any real impact is because a series of elected benchers have failed to address this important issue and to put some force and effect behind the idea. What should have happened many years ago, in the interim years and in going forward is that lawyers, who are not specialists, should be required to report to their clients pursuant to a standardized Law Society form that states that they are not a specialist (or that they are a specialist) in real estate, civil litigation, criminal law, wills and Estates or hold a certificate as a general practitioner which entitles them to practice in these areas. That would permit all members of the profession to dabble in area in which they may not have real expertise, but to do so only with the full knowledge and consent of their clients.

My preference would be to emulate what has happened in the medical profession and to restrict the privileges of those who have the right to practice in areas in which they are actually trained. Is there something wrong with that?

Hospital privileges and medical privileges are restricted in this way without the complaint of the members of that great profession, why can't lawyers do the same?

If, those in the profession understood clearly that their ability to practice might be limited unless their obtained a specialist certification there would be no absence of applicants for specialization. If, the concept of specialization is withdrawn, it represents the failure on our part to live up to the obligation to the public that is required of us. I would respectfully suggest that that obligation can only be satisfied when lawyers are required to do so.

I would be happy to discuss this with any and with all if someone thought it would be beneficial.

Regards,
Brian Brock.
Partner
Certified Specialist – Civil Litigation
Dutton Brock
Barristers & Solicitors

## THE EDUCATION ISSUE

In March 2001, Convocation approved a redesign of the Certified Specialist Program, which, at that time, had been in existence for thirteen years.

The idea was that the program should be reformulated to replace the existing "recognition" program that recognized lawyers that by experience and training had become de facto specialists, with a "developmental" program that provided pathways and supports for the development of specialists.

The goals of the new reformulated "developmental" plan were:

a. that the program be designed as a continuum with identified staged requirements intended to promote the increasing accumulation of expertise and knowledge leading ultimately to a specialist designation; and

b. the practice categories identified as eligible for designation should be increased.

Changes to continuing legal education ("CLE") programming was to be a key component of the implementation of the above goals and it was decided that CLE programming was to be made available at three stages of learning: essential, intermediate and advanced. Further, Specialty Committees were to identify gaps in training that would need to be filled. It was decided that if CLE providers would not fill those gaps, the Law Society was to hire an instructional design consultant to assist the specialty groups to develop the modules required.

In its Report to Convocation of February 22, 2007, the Professional Development, Competence & Admissions Committee states that accreditation of CLE is an integral part of the program and in the last two and a half years over 1200 programs have been accredited in support of the various areas of specialties, but that, overall providers such as the Ontario Bar Association, Advocates' Society, Criminal Lawyers' Association, etc. have not been interested in "gap" – type programming as it tends to be for smaller numbers of participants. As a result, the Professional Development, Competence & Admissions Committee states that the Law Society has had to use its in-house expertise to develop relevant CLE.

Also in its Report to Convocation of February 22, 2007, the Professional Development, Competence & Admissions Committee states that a number of senior certified specialists decided to drop out of the redesigned program, largely because they were unwilling or unable to fulfill the requirements for 18 hours of CLE in the specialty area, including 6 hours of live interactive CLE as an attendee and an annual report on CLE participation.

Also in its Report to Convocation of February 22, 2007, the Professional Development, Competence & Admissions Committee states that it is satisfied that whether the program continues, the Society's commitment to professional competence has never been stronger or better positioned

It appears to the TLA that the approach to CLE which has been adopted with the reformulated developmental plan has caused CLE programming to become too fragmented and specialized and too onerous and time consuming to participate in and to administer. The TLA therefore recommends that the Society review the certification process and CLE program with a view to making the process and program less onerous.

It is the TLA's recommendation that Convocation should consider accreditation of a greater number of CLE programs offered by groups other than the Law Society as this would put less pressure on the Society to offer and administer such a wide array of CLE programs.

It is also the TLA's recommendation that Convocation should consider placing less emphasis on specialization and "gap" programming as these programs tend to be for smaller number of participants.

It is also the TLA's recommendation that that Convocation should consider reducing, but not eliminating, the number of hours of CLE within the specialty area required by those already with the designation as these individuals likely already spend a great deal of time focused on that specialty area and might, for example, prefer to spend some of their CLE hours becoming exposed to a new area.

## THE COST OF THE PROGRAM

*"The Law Society of Upper Canada exists to govern the legal profession in the public interest by:*

- *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct; and*
- *upholding the independence, integrity and honour of the legal profession;*

*for the purpose of advancing the cause of justice and the rule of law"*

This is the stated mandate of the Law Society as found on its website.

The TLA strongly believes that certification program falls within the core mandate of the Law Society as an important element ensuring that members of the public are served by "lawyers who meet the high standards of learning, competence and professional conduct."

While the TLA recognizes that the Law Society and the profession are legitimately concerned about rising bureaucracy costs, and the corresponding relationship to membership fees, we cannot accept that a core service needs to operate with a view to earning an operating profit. A goal of a "10% profit margin" (see page 4 of the Report) is not a meaningful criteria with which to judge a program designed to achieve such an important public service.

While fiscal concerns are relevant, the allocation of resources to the program (page 16 of the Report) would need to closely examined. Are these staff resources that would otherwise be

spent, meaning that there will be no actual salary savings if the certification program is eliminated? Are the “staff costs” being allocated against the certification program?

Many TLA members who responded to our survey were passionate in expressing the view that profit, and the costs of the program, should not be a prime consideration upon which to judge the success of the program. A TLA member, and specialist Mervyn Abramowitz, sent us an unsolicited email, in which he articulates his perspective on this issue:

“…[F]urther] … I note that I failed to address
one other item contained in the report of the committee regarding the certified specialist program, and that is the notion that the certified specialists program should be profitable, and indeed that the program should generate a profit margin of some 10%.

I find this proposition quite astounding. The certified specialist program is run by the Law Society of Upper Canada for the benefit of its members and the public. The Law Society itself is not, to my knowledge, run as a "for profit" corporation (much less to earn a specific profit margin), nor, to my knowledge is any specific part of it. Nor should it be. The Society has a statutory mandate, indeed monopoly, for ensuring that the legal services provided to the public are of a sufficiently high calibre by trained and licensed practitioners. …

The Society's function, as a self-governing body, is and ought to be primarily the protection of the public vis-a-vis legal services and how they are delivered. If education is part of that mandate, then so be it.

The presentation of a certified specialist program is in keeping with the mandate of the Society regarding protection of the public and education of the Society's members so that the quality of legal services is regulated. Members of the public have an opportunity to purchase legal services from practitioners who are licenced to provide all manner of legal services, or they may choose to purchase legal services from those members who have chosen to pursue certification and are thus able to provide specialized services. This appears to go to the very heart of the Society's purpose and function.

The notion that these services should only be provided if the specialist program is self-financing or profitable seems inconsistent with the Society's mandate. Services to the public are provided, not always for a profit, but to ensure the public is protected or at least informed of the choices it is making. This ought to be the way in which the specialist program is operated. If the program can earn a profit, so be it. However, it makes no sense to purport to discontinue the program simply because it is either unprofitable, or worse, because it doesn't "meet margin". No one would support terminating the Law Society's mandate regarding protection of the public, simply because it isn't profitable, or profitable enough. No one would support terminating any layer of government (well, maybe some would!) simply because it is not profitable or profitable enough. Yet that is what is being proposed for

the certification program. It simply does not make sense. Public services come at a cost. Lawyers are already paying fees to cover the Society's costs. If anything, the cost of running the specialist program should simply be included in the fees paid by all members of the Society. We all benefit.

Mr. Abramowitz' position is one which the TLA endorses and one which articulates a vision for the Law Society, with respect to the certification program, which is consistent with its stated mandate and our views as to the value of program and costs associated with it.

## THE DESIGNATION ISSUE

The Committee, on behalf of the TLA, supports the proposal that the initials "C.S." be used after the name of those with a Certified Specialist designation.

The public must be educated that the grandparented QC designation was not a merit based designation, or any signature of competence.

The current Certified Specialist program is considered by the TLA to be such a program. In order to add value to the designation, the TLA recommends that the member with such a certification be allowed to use the initials "C.S." after the Specialists name.

It is anticipated that this will encourage worthy candidates to apply for and obtain their designation.

All of which is duly submitted on behalf of the Toronto Lawyers Association.

Nestor Kostyniuk
Sam Marr
Christopher Matthews
Miriam Young
Members of the Civil Practice Committee of the TLA.

## Toronto Lawyers Association – The Questions and The Answers

C= Certified Specialist
N= Non Certified Specialist

1. Are you aware of the Certified Specialist Program?

Yes – 234 (C. 73, N. 161) 98.7%
No – 3 (C. 0, N. 3) 1.3%

2. Do you support the continuation of the Certification Program?

Yes – 156 (C. 68, N. 88) 65.8%
No – 81 (C. 5, N. 76) 34.2%

3. Do you believe the Program is valuable for the profession?

Yes – 153 (C. 67, N. 86) 64.6%
No – 84 (C. 6, N. 78) 35.4%

4. Do you believe the Program is valuable for the general public?

Yes – 157 (C. 65, N. 92) 66.2%
No – 80 (C. 8, N. 72) 33.8%

5. Are you aware that the Certified Specialist Program was redesigned in January 2004?

Yes – 124 (C. 63, N. 61) 52.3%
No – 113 (C. 10, N. 103) 47.7%

6. Non Specialists - Have you considered applying for certification?

Yes – 97 (C. 0, N. 9) 59.1%
No - 67 (C. 0, N. 67) 40.9%

7. Non Specialist - Do you think that becoming a Certified Specialist will benefit you or your practice?

Yes – 81 (C. 0, N. 81) 49.4%
No – 83 (C. 0, N. 83) 50.6%

8. Specialist - Did you find the Application for Certification to be an onerous process?

Yes – 29 (C. 29, N. 0) 39.7%
No – 44 (C. 44, N. 0) 60.3%

9. Specialist - Do you think that becoming a Certified Specialist has benefited you and your practice?

Yes – 62 (C. 62, N. 0) 84.9%
No – 11 (C. 11, N. 0) 15.1%

INFORMATION/MONITORING
DIRECTOR'S THIRD QUARTER BENCHMARK REPORT AND PLACEMENT REPORT

38. The Professional Development and Competence Department's quarterly benchmark report for the 3rd quarter of 2007 and the Placement Report for the 2006 Licensing Process are set out at APPENDIX 3.

PLACEMENT REPORT
2006 Licensing Process

Office of the Registrar
Law Society of Upper Canada
August 2007

Placement Report 2006 Licensing Process

Report Highlights

- ☐ 98% of all 2006 Licensing Process candidates who were actively seeking an articling position had secured a placement by June 2007. This year's placement rate is consistent with last year and remains one of the highest rates seen in recent years. Placement rates have steadily been on the rise since 2003 (94.8%), 2004 (95.5%), 2005 (96.8%) and 2006 (98%). This trend demonstrates stability and is in keeping with the positive economic situation in the Province.

- ☐ 38.3% of 2006 Licensing Process candidates self-identified as being from an equality-seeking community (Aboriginal, Persons with a Disability, Francophone, Gay/Lesbian/Bisexual/Transgendered, Mature, Racialized Community). The average overall articling placement rate for this group has increased this year to 94%.

- ☐ A variety of options offer students a high degree of flexibility in completing the Licensing Process and the Articling Phase, in particular. The availability of non-traditional placements such as International Articles, National Articles, Joint Articles, Part-time Articles, and Split Articles continues to be emphasized to students. Candidates may also apply to reduce (abridge) the articling requirement for those who have practiced law in other jurisdictions or who have demonstrated sufficient previous legal experience.

- ☐ 65.6% of students-at-law indicated that they had secured employment at the time of their call to the bar. The 2006 post call employment rate is in keeping with last year's rate of 65.1%. The hire-back rate of students-at-law returning to the firm they articled with remains steady at 49.0%.

Placement Report 2006 Licensing Process

Table of Contents Page

I. Introduction

1. In 2006, the new Licensing Process for lawyers was launched. The new process included a five-week Skills and Professional Responsibility Program (Skills Program), two licensing examinations and a ten month articling term. Once candidates completed the Skills Program, they were able to commence articling two months earlier than with the Bar Admission Course and those who successfully completed all components of the Licensing Process were called to the bar in June 2007 one month earlier than the July call to the bar of previous years.

2. The annual Placement Report summarizes the activities and initiatives that were undertaken by Articling and Support Services in the Office of the Registrar throughout 2006 and into the first half of 2007. This report also provides statistical data that relates to articling and post-call employment for candidates who entered the 2006 Licensing Process in May 2006 and were called to the bar in June 2007.

II. Articling Placement Data

2. The majority of candidates commenced articles in July 2006 after completing the Skills Program. In order to be eligible for the June 2007 call to the bar, students-at-law must have started their articles by mid-August 2006.

3. As students-at-law start their articles and file Articles of Clerkship, the Office of the Registrar updates their records to reflect their current articling status. The unplaced statistics reflect those candidates who have not secured articles and/or have not yet filed Articles of Clerkship, as required.

4. The 2006 Licensing Process application asks candidates to voluntarily disclose their membership in one or more of six groups that continue to strive for equity within the legal profession. The groups identified on the application were: Aboriginal, Francophone, Gay/Lesbian/Bisexual/Transgendered, Mature, Persons with a Disability, and Racialized Community. The membership of candidates who have identified as belonging to one or more of these groups represents 38.3% of the total 2006 Licensing Process class (see Table 1 below). Since 2002, the percentage of these groups has steadily increased from 33.5% to 38.3 % in 2006.

Table 1: Percentage of the 2006 Licensing Process candidates who voluntarily identified as members of six equality-seeking communities.

| Student Group | Percentage of class |
|---|---|
| Aboriginal | 1.8 |
| Francophone | 5.1 |
| Gay/Lesbian/Bisexual/Transgendered | 2.4 |

| | |
|---|---|
| Mature | 11.6 |
| Persons with a Disability | 2.1 |
| Racialized Community | 15.3 |
| Total | 38.3 |

5. Table 2, on page 6, reports on the success of the 2006 candidates who have secured articling placements at various points throughout the year. The statistics begin in July 2006, when the candidates have completed the Skills and Professional Responsibility Program, and continue until the following June 2007, when the majority of candidates will be completing articles. The total number of those who have not found placements is reported, as are the statistics for candidates in each of the equality-seeking groups.

6. As some candidates self-identified as being from more than one equality-seeking community (i.e., mature/francophone) the number in each group exceeds the total number of unplaced equity candidates. Those who did not voluntarily self-identify as being from an equality seeking community are represented in the non self-identified category.

7. At various times throughout the year, Support Services attempts to reach all candidates who have not filed articling documentation by telephone to confirm whether they have secured an articling placement and to confirm their articling status (i.e., still seeking, not actively seeking, etc). Those who indicated that they were still seeking articles were advised of the various placement initiatives and opportunities provided by the Law Society (see page 7).

8. Table 3, on page 7, provides the breakdown of unplaced candidates' current status. Those who were contacted by telephone were put into three categories:[1] candidates who indicated they were currently looking for an articling position were classified as 'actively seeking articles'. Candidates who decided to pursue further education or obtained full-time employment in another field were categorized as 'not actively seeking articles'. Those who did not respond at all to our repeated communications were classified as 'status unknown'.

[1] No distinction was made, during the telephone survey, between unplaced students-at-law who voluntarily self identified as belonging to an equality-seeking community and those who did not identify with an equality-seeking group.

Table 2: Candidates' Articling Status from July 2006 to June 2007

| 2006 Licensing Process Candidates | July '06 | Sept. '06 | Nov. '06 | Feb. '07 | June '07 |
|---|---|---|---|---|---|
| Total Candidates | 1392 | 1396 | 1336 | 1327 | 1318 |
| Total Non self-identified candidates[2] | 943 | 946 | 930 | 901 | 896 |
| Total Unplaced Candidates[3] | 283 | 168 | 102 | 79 | 56 |
| Unplaced Non self-identified candidates | 158 | 89 | 51 | 37 | 32 |
| Total Self identified Aboriginal Candidates | 21 | 21 | 21 | 21 | 21 |
| Unplaced self-identified Aboriginal Candidates | 9 | 4 | 3 | 3 | 2 |
| Total Self-identified candidates with Disabilities | 26 | 26 | 26 | 26 | 25 |
| Unplaced self-identified Candidates with Disabilities | 7 | 3 | 2 | 2 | 1 |
| Total Self-identified Francophone Candidates | 60 | 60 | 59 | 61 | 61 |
| Unplaced self-identified Francophone Candidates | 17 | 14 | 11 | 10 | 7 |
| Total Self-identified Gay/Lesbian/Bisexual/Transgendered Candidates | 25 | 25 | 25 | 24 | 24 |
| Unplaced self-identified Gay/Lesbian/Bisexual/Transgendered Candidates | 7 | 3 | 2 | 2 | 2 |
| Total Self-identified Mature Candidates | 156 | 158 | 150 | 143 | 139 |
| Unplaced self identified Mature Candidates | 56 | 36 | 26 | 20 | 13 |
| Total Self-identified Candidates from Racialized Communities | 227 | 227 | 221 | 213 | 212 |
| Unplaced self-identified Candidates from Racialized Communities | 66 | 38 | 22 | 15 | 13 |

2 Candidates who did not voluntarily identify as being from an equality–seeking community on the 2006 Licensing Process application are represented in the "non self-identified" category. Equality-seeking groups are not mutually exclusive as candidates may self-identify as belonging to more than one group. Therefore the total may not equal the sum of the candidates in each group.

3 This represents the number of registered candidates who have not filed Articles of Clerkship with the Society. See Table 3 for a breakdown of candidates' articling status.

Table 3: Candidates Actively Seeking Articles

| Licensing Process 2006 | December 2006 | February 2007 | May 2007 | June 2007 |
|---|---|---|---|---|
| Class Size | 1336 | 1327 | 1318 | 1318 |
| Total Unplaced Candidates | 97 | 79 | 72 | 56 |
| Candidates Actively Seeking Articles | 47 | 28 | 22 | 22 |
| Candidates Not Actively Seeking | 32 | 29 | 26 | 20 |
| Status Unknown | 18 | 22 | 24 | 14 |

9. This year's telephone survey, as shown in Table 3 above, was conducted in November/December 2006, February 2007, May and June 2007. Candidates were asked if they had secured an articling placement or were actively seeking an articling placement. By June 2007, 56 out of 1318 candidates in the 2006 Licensing Process had not articled. This means that 4.2% of the total group had not yet secured articles by the time of the first call to the bar ceremonies available for their cohort. Of the 56 unplaced candidates, 22 (1.6% of the total group) were actively seeking articles at the end of June 2006, 20 indicated that they were pursuing other career or educational paths and were classified as 'not actively seeking articles and 14 candidates were classified as 'status unknown' as we did not have updated contact information or they did not return messages left for them. We have therefore determined an overall placement rate of 98.3% for the candidates in the 2006 Licensing Process, based on those unplaced candidates who were actively seeking articles at the end June 2007.

10. This year's overall placement rate of candidates representing equality-seeking communities is 94%, an improvement from last year's 91% placement rate. The average placement rate for each equality seeking group is as follows:[4] Aboriginal- 90%, Persons with a Disability- 96%, Francophone - 89%, Gay/Lesbian/Bisexual/Transgendered- 92%, Mature - 91%, Racialized Community- 94 %. By June 2006, 24 candidates from equality seeking communities had not articled (56 total unplaced candidates minus 32 non self-identified candidates). This represents 1.8% of the total 2006 Licensing Process group, a decrease from last year's figure of 2.4%.

11. We continue to offer candidates a high degree of flexibility in completing the Licensing Process, and the Articling Program in particular. We continue to emphasize the

[4] Some candidates identified as being from more than one equality-seeking community (i.e., Mature and Francophone or Gay/Lesbian/Bisexual/Transgendered and Aboriginal), as such the number of candidates in each group exceeds the total number of unplaced equity candidates. It is therefore difficult to allocate percentages for placement rates from this group with mathematical accuracy.

availability of non-conventional placements such as International Articles, National Articles, Joint Articles, Part-time Articles and Split Articles.

12. We also continue to offer candidates who have practiced law in other jurisdictions or who have demonstrated sufficient previous legal experience, an abridgement (reduction), and in some cases a full waiver, of the articling requirement.

III. Articling Placement Initiatives

13. *Online articling job postings*: Throughout 2006 and 2007 Support Services continued to post articling vacancies on the Law Society's web pages. The job posting web page continues to be extremely active and useful for both candidates and articling employers.

14. Only firms who have an approved articling principal may use the free posting service. Employers may complete the job posting form available on the web site and email it to the Articling account (articling@lsuc.on.ca). Since its inception in December 2002, over 475 positions have been posted on the articling website. 110 positions were posted on the site in 2006 and 66 positions were posted in the first half of 2007.

15. *Biographical Paragraph Program*: Candidates who had not yet secured an articling placement may participate in our Biographical Paragraph Program. This Program asks candidates to submit a short biography that succinctly describes their experience, interests, and qualifications. This compiled list is provided, electronically or by mail, to potential employers on request. The list can be customized for employers according to geographical region, specific areas of law, etc. Employers may browse through the biographies and contact candidates directly to arrange for an interview. In 2006, 43 candidates submitted biographical paragraphs and 26 submitted a biography in the first half of 2007. The feedback regarding this initiative from licensing candidates and employers is extremely positive. In 2006, 62 employers received a copy of the list of Biographical Paragraphs and 20 employers requested the list in the first half of 2007.

16. *Mentor Program:* The articling Mentor Program is promoted as one of three ways to become a volunteer mentor through the Law Society's Mentor Program. The articling Mentor Program matches candidates seeking articles with a lawyer mentor of the profession in order to receive advice, support and encouragement in the candidate's search for an articling position.

17. Mentors communicate with their assigned mentee periodically to discuss any concerns the mentee might have and to provide advice or strategies that they might employ in their job search. The mentor's role is to encourage the candidate to maintain a positive, constructive attitude and approach to securing an articling position. In 2006, 27 candidates were matched with lawyer mentors for career mentoring.

18. *Job search skills workshop and counseling – Articling*: Last year, the Law Society hired ZSA Legal Recruitment (ZSA) to conduct two job search skills workshops for interested candidates. These workshops were designed by ZSA as an interactive session in order to assist candidates with market research, cover letter, resume writing, networking and interviewing skills. In September 2006, two workshops were conducted for candidates seeking articling positions. 26 candidates attended these workshops. Materials were created to accompany the workshop and were posted on the website.

19. All those who attended the workshops were eligible for a free individual consultation with ZSA to discuss job search skills and strategies and have their resume individually reviewed. Some were counseled in person and other meetings were conducted over the phone. 14 candidates expressed an interest in receiving this additional benefit.

20. *Other Support*: Students-at-law may book appointments with the Associate Registrar to discuss issues related to articling, special needs and equity. In addition, the Associate Registrar meets with unplaced candidates year round to review resume and cover letters and to discuss job search strategies.

21. *Law School Visits:* In 2006, the Registrar and Associate Registrar visited six Ontario law faculties to speak with the third year class about the Licensing Process, articling recruitment and placement initiatives offered by the Law Society. The Aboriginal Issues Equity Co-ordinator also attended and addressed law students on matters pertaining to equity issues.

22. *Outreach:* In addition to law school visits, the Associate Registrar attended the following outreach activities in 2006:

    a. National Association for Legal Professionals (NALP) Annual Conference, April 2006
    b. "Aboriginal Law Student Professional Development Symposium", March 30, 2006, Law Society of Upper Canada.
    c. "On Campus Interview-Demystified", July 19th 2006, Ontario Bar Association, sponsored by University of Windsor, Faculty of Law

IV. Post-Call Employment

23. With the new Licensing Process the large ceremonial calls to the bar took place one month earlier than in previous years. Candidates were called to the bar in Toronto, London and Ottawa in June 2006. At the signing of the rolls, candidates are asked to complete a voluntary survey of their employment status. This year out of 1111 candidates who were called to the bar in June 2007, 824 responded to our survey, indicating a response rate of 75%. Table 4 (page 10) provides this year's post-call employment rate as well as rates dating back to 1995.

Table 4: Rate of Employment following the Call to the Bar (1995-2007)

| Date of Call | Response to survey - % of class[5] | % Of respondents hired back by articling firm | % Of respondents employed elsewhere[6] | % Of respondents employed at time of Call |
|---|---|---|---|---|
| June 2007 | 75.0 | 49.0 | 16.6 | 65.6 |
| July 2006 | 89.3 | 49.1 | 18.5 | 65.1 |

5 Since Feb. 2000, call to the bar candidates have been asked to voluntarily complete an employment survey in London, Ottawa and Toronto when signing the rolls for call to the bar.
6 'employed elsewhere' includes those who have accepted an offer from an employer other than their articling employer, those who are starting their own practice, and those who will be working outside the practice of law.

| | | | | |
|---|---|---|---|---|
| July 2005 | 89.3 | 52.3 | 14.0 | 66.3 |
| July 2004 | 61.5 | 49.7 | 16.7 | 66.4 |
| July 2003 | 60.3 | 49.6 | 12.9 | 62.5 |
| Sept. 2002[7] | 26.1 | 39.4 | 25.1 | 64.5 |
| Feb. 2002 | 48.5 | 52.5 | 25.4 | 77.9 |
| Feb. 2001 | 63.3 | 51.3 | 26.9 | 78.2 |
| Feb. 2000 | 59.9 | 46.7 | 23.1 | 69.7 |
| Feb. 1999 | 55.5 | 44.5 | 19.4 | 63.9 |
| Feb. 1998 | 56.5 | 38.7 | 28.4 | 67.2 |
| Feb. 1997 | 60.1 | 37.5 | 26.3 | 63.7 |
| Feb. 1996 | 77.0 | 35.3 | 30.7 | 66.0 |
| Feb. 1995 | 54.6 | 38.4 | 28.8 | 67.2 |

24. Our response rate to the voluntary survey has decreased this year to 75% from 89.3% in previous years. However, of candidates surveyed, the hire-back rate of students-at-law returning to the firm they articled with remained the same at 49%. The percentage of candidates employed elsewhere at the time of their call remained steady at 16.6%. The total percentage of 2006 Licensing Process candidates employed at the time of signing the rolls for the call to the bar in June 2007 remains steady at 65.6%.

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

(1) Copy of the Report of the Certified Specialist Review Group to the Professional Development and Competence Committee.

(Appendix 1, pages 25 – 28)

(2) Copy of the Director's Third Quarter Benchmark Report and Placement Report.

(Appendix 3, pages 46 – 61)

Re: Certified Specialist Program

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that the Certified Specialist program continue as a Law Society program as follows:

a. Commencing January 1, 2008, or as soon thereafter as is feasible but not later than January 1, 2009, and thereafter on an ongoing basis the program be run on a self-funding, cost recovery basis out of fees generated by those lawyers applying for certification and certified specialists renewing their certification.

b. The threshold for eligibility for certification as a specialist in any given specialty area is set at 30% of practice in that area.

7 A double cohort effect resulting from revisions to the Bar Admission Course in 2001-2002.

c. A person may be certified in not more than two specialty areas at any one time.

d. Applicants for certification will demonstrate completion of 36 hours of continuing legal education, specifically related to the area of specialty, in the three years prior to application (an average of 12 hours per year) as well as 50 hours of self-study in the area related to the specialty per year in the three years prior to application.

e. Certified specialists will demonstrate, annually, completion of 12 hours of continuing legal education and 50 hours of self-study for each specialty.

f. Certified specialists will be entitled to include credentials "C.S." after their names.

g. The Specialty Committees will be disbanded and the program application process will move to an administrative compliance process.

h. The Certification Board will be reconstituted to be composed of between 8 and 12 members, one of whom will be a lay bencher, two of whom will be elected benchers and the balance of whom will be lawyers who are not benchers. All lawyers on the Board, including the elected bencher members, will be certified specialists.

2. That the necessary amendments be made to By-law 15 (Certified Specialist Program) for Convocation's approval.

It was moved by Mr. Wright and accepted as a friendly amendment that the last sentence in paragraph 1(h) read as follows:

"All lawyers on the Board, including the elected bencher members **if possible,** will be certified specialists".

The main motion as amended was approved.

ROLL-CALL VOTE

| | | | |
|---|---|---|---|
| Aaron | For | McGrath | For |
| Aitken | For | Marmur | For |
| Banack | For | Millar | For |
| Carpenter-Gunn | For | Minor | For |
| Caskey | For | Pawlitza | For |
| Chahbar | For | Porter | For |
| Chilcott | For | Potter | For |
| Conway | For | Pustina | For |
| Crowe | For | Rabinovitch | For |
| Dickson | For | Robins | For |
| Dray | For | Ross | Against |
| Go | For | Rothstein | For |
| Gottlieb | For | Ruby | For |
| Halajian | For | St. Lewis | For |
| Hare | For | Schabas | For |
| Hartman | For | Sikand | For |
| Heintzman | For | Silverstein | For |

| | | | |
|---|---|---|---|
| Henderson | For | C. Strosberg | For |
| Krishna | For | Swaye | For |
| Lawrie | For | Tough | For |
| Lewis | For | Warkentin | For |
| | | Wright | For |

Vote: 42 For; 1 Against

It was moved by Mr. Wright, seconded by Mr. Crowe, that in paragraph 1a. the words “if possible” be added after the word “run” in line 3.

Lost

*Item for Information Only*

- Quarterly Benchmarking Report

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EQUITY AND ABORIGINAL ISSUES COMMITTEE REPORT
*Item for Information*

- Equity Public Education Series Calendar

Report to Convocation
October 25, 2007

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

Committee Members
Joanne St. Lewis, 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)

TABLE OF CONTENTS



COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on October 11, 2007. Committee members Joanne St. Lewis, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson and Avvy Go attended. Nathalie Boutet, representative of the Association des juristes d'expression française de l'Ontario ("AJEFO") and Milé Komlen, Chair of the Equity Advisory Group (the "EAG") also attended. Staff members Josée Bouchard and Marisha Roman attended.

FOR INFORMATION

EQUITY PUBLIC EDUCATION SERIES CALENDAR
2007 – 2008

*Louis Riel Day Annual Forum*
*Topic: Perspectives on Co-Management: Creating partnerships between The First Nation and the Métis Communities*

Date: Friday, November 16, 2007

Time: 4:00 p.m. – 6:00 p.m.
Location: Convocation Hall

*Professional Regulation and Practice Management Seminar*
(Continuing legal education program)

Presented by The Law Society of Upper Canada and the Canadian Association of Black Lawyers

Date: Friday, November 30, 2007
Time: 1:00 p.m. – 3:00 p.m.
(Light lunch will be provided at 12:30 p.m.)
Location: Donald Lamont Learning Centre

*Persuasion – From the Breakfast Table to the Boardroom to the Court Room: A Professional Woman's Guide to the Art of Negotiation and Presentation*

Presented by The Women's Law Association of Ontario and The Law Society of Upper Canada

Date: December 4, 2007
Time: 5:30 p.m. – 8:00 p.m.
(Light dinner will be served.)
Location: Donald Lamont Learning Centre

Description of Program: We negotiate all day long, from the breakfast table to the boardroom. The results of those negotiations affect the quality of our lives, the resources we get for a project, the assignments we land and the compensation we receive for our work. As a professional woman and a leader, are you as effective in negotiation as you would like to be? Learn: how to get the best results with a repertoire of negotiation strategies and how to navigate socialized habits that may be undermining your success and leadership at work.

Presenting with impact announces your leadership, inspires employees, and promotes your business to outside interests. As a presenter, you would like to persuade, engage, and inspire your audiences. Learn how to tailor your message to your audience, deliver in a style that is both comfortable and powerful, and handle questions and answers with confidence.

Presenters:
*Delee Fromm* is both a lawyer and a psychologist with over 20 years of experience in negotiation training and 17years of experience practicing commercial real estate at the largest law firm in Canada.

*Donna Goodhand* combines over 11 years of experience in executive speaking training together with over 30 years of professional acting experience.

(A fee may be charged to cover the costs of dinner)

2008 SCHEDULE

| Event | Event Date |
|---|---|
| Black History Month | February 6 |
| Access Awareness | February 26 (revised date) |
| International Women's Day | March 5 |
| International Day for the Elimination of Racial Discrimination (reception organized in the context of the Bicentenary of the Abolition of the Atlantic Slave Trade, University of Ottawa, Ottawa) | March 14 |
| National Holocaust Memorial Day | April 30 |
| South Asian Heritage Month | May 12 |
| National Aboriginal Day | June 16 |
| Pride Week | June 24 |
| Louis Riel Day | November 13 (revised date) |

LAW FOUNDATION OF ONTARIO

Mr. Banack presented an information report on the Law Foundation of Ontario.

*REPORTS FOR INFORMATION ONLY*

PARALEGAL STANDING COMMITTEE REPORT

- Reporting Letters on Outstanding Files
- Licensing Examination Locations
- Communications
- Transitional Graduates

Report to Convocation
October 25th, 2007

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: Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

COMMITTEE PROCESS

1. The Paralegal Standing Committee met on October 11th, 2007. Committee members present were Paul Dray (Chair), Bonnie Warkentin (Vice chair), Marion Boyd, James Caskey (by telephone), Seymour Epstein, Michelle Haigh, Paul Henderson, Brian Lawrie, Margaret Louter, Stephen Parker and Cathy Strosberg. Staff members in attendance were Malcolm Heins, Katherine Corrick, Elliot Spears, Fred Grady, Sheena Weir, Helen Stone, Sybila Valdivieso and Julia Bass.

## FOR INFORMATION

## TRUST ACCOUNTS - REPORTING LETTER

2. On September 20th Convocation approved the Committee Report on Trust Accounts and Record Keeping requirements, including the transitional provisions for grandparents, permitting them to retain in their operating accounts any retainers paid prior to licensing.

3. During the debate, it was requested that the Committee give consideration to requiring that paralegal licensees send a reporting letter to all clients with fees on hand, setting out where the file stands. The Committee Chair undertook to discuss this proposal with the Committee and report back to Convocation.

The Committee's Deliberations

4. The Committee was of the opinion that sufficient protection for the public would be provided by the requirement to keep proper books and records, effective immediately upon licensing. Knowledge of these requirements will be tested on the licensing examination and will be subject to audit. Accordingly the Committee did not favour the imposition of this requirement.

## LICENSING EXAMINATION LOCATIONS

5. The Professional Development & Competence Department has announced that the Paralegal Licensing Examination on January 17th will now be offered in the following locations:
   a. Toronto (morning and afternoon)
   b. Ottawa (afternoon, and morning if necessary)
   c. London
   d. Sudbury and
   e. Thunder Bay

## COMMUNICATIONS

6. The Committee Chair and Malcolm Heins attended the meeting of the Prosecutors Association at Cleveland House on September 26th.

7. The Committee Chair and Julia Bass attended the meeting of the Paralegal Society of Canada at Richmond Hill Country Club on September 29th.

8. The Law Society has issued Paralegal Update Number 3, attached at Appendix 1.

## STUDENTS GRADUATING AFTER OCTOBER 31ST

9. A number of enquiries have been received from students currently taking college courses in paralegal studies or court and tribunal agent studies who will graduate after the October 31st deadline for 'grandparent' applicants. They are concerned that they will not qualify to take the licensing examination since no courses have as yet been accredited. In fact such applicants will be considered as part of the transitional category. Clarification on this point has been added to the website.

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

(1) Copy of the Law Society's paralegal Update (September 2007).
(Tab B, Appendix 1, pages 5 and 6)

PRIORITY PLANNING COMMITTEE REPORT (oral report)

PROFESSIONAL REGULATION COMMITTEE REPORT
- Consultation on the Model Rule on Client Identification



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 Finalyson
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Information

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

## COMMITTEE PROCESS

1. The Professional Regulation Committee ("the Committee") met on October 11, 2007. In attendance were Clay Ruby (Chair), Julian Porter, Heather Ross and Linda Rothstein (Vice-chairs), Tom Conway (by telephone), George Finlayson, Patrick Furlong, Gary Gottlieb, Brian Lawrie Ross Murray, Sydney Robins and Bonnie Tough. Staff attending were Naomi Bussin, Lesley Cameron, Malcolm Heins, Zeynep Onen, and Jim Varro.

## CONSULTATION ON THE FEDERATION OF LAW SOCIETIES' MODEL RULE ON CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS (ANTI-MONEY LAUNDERING INITIATIVE) AND FEDERAL DRAFT REGULATIONS ON VERIFYING THE IDENTITY OF CLIENTS

2. The Federation of Law Societies of Canada has launched a number of initiatives to combat the threat of money laundering and terrorist financing, while maintaining the public interest in a strong and independent legal profession.

3. The most recent of these initiatives is a proposed Model Rule on Client Identification and Verification. A further development that impacts on this initiative is the release of draft federal regulations in June 2007 on verifying client identity.

4. The Committee, which first reviewed the Model Rule in the spring of 2006, agreed in principle with substance of the Rule. At that time, the Committee requested that staff

engage in an initial consultation with a small group of lawyers on the Model Rule. This was completed and some helpful comments were received on the scope and content of the Rule.

5. The June 2007 draft regulations purport to regulate how lawyers should identify clients and verify and record that identity. The Federation is continuing its dialogue with the federal government (Department of Finance) on this matter. The Federation is also seeking the input of the law societies on the Model Rule and the regulations for two purposes: to inform the dialogue and to complete a review of the Model Rule so that the Federation can finalize it for consideration by each law society in Canada as a law society regulation.

6. A consultation document, at Appendix 1, was prepared for this purpose, and is being used by law societies for consultation with the profession. It explains in some detail the Federation's anti-money laundering initiative, the purpose of the Model Rule and the scope of the consultation.

7. The Law Society is currently engaged in this consultation with a request for responses by October, 31, 2007. It has posted the material and request for input on its website, has sent a broadcast e-mail to all lawyers who have provided an e-mail for such purposes, and has written to various legal organizations and large firms requesting comment. Comments received will be relayed to the Federation, and the Model Rule will return to the Committee for review once the input has been assessed and modifications made to the Model Rule, as may be appropriate.

8. The next step will be to prepare a by-law based on the Model Rule for review by the Committee and consideration by Convocation.

APPENDIX 1

FEDERATION OF LAW SOCIETIES OF CANADA/LAW SOCIETY OF UPPER CANADA

INFORMATION FOR CONSULTATION ON FEDERAL REGULATIONS FOR CLIENT IDENTIFICATION, VERIFICATION AND RECORD-KEEPING

Introduction

As part of its continuing initiative to combat money laundering and terrorist financing, the federal government has released new draft regulations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. These regulations are drafted to apply to the way members of the legal profession (and others) identify clients, verify their identity, and maintain client records. The regulations were published in Part 1 of the June 30, 2007 edition of the *Canada Gazette* for a 60-day comment period, to be followed by consultations. This is "pre-publication" of the regulations only. They are not yet in force.

The government's objectives through these regulations are to continue the fight against money laundering and terrorist financing and to demonstrate to the global community that Canada's anti-money laundering regime meets international standards in this area.

The Federation of Law Societies of Canada, the national coordinating body of Canada's 14 law societies, through its Anti-Money Laundering Committee, has been in discussions with the Department of Finance on the subject of these new regulations for the past year. The Federation has made a submission to the Department of Finance with its comments on the regulations. The Department will continue its discussions with the Federation and other stakeholders on the draft regulations through the consultations that will follow the pre-publication.

These ongoing discussions are part of a dialogue about the Act that began a number of years ago between the Federation and the federal government. The primary concern for the legal profession at the outset was the threat to the independence of the bar arising from the requirement that lawyers throughout Canada and notaries in Quebec secretly report confidential client information to the government with respect to suspicious transactions, and to report large cash transactions.

The Federation, with the Law Society of British Columbia, commenced a constitutional challenge to the Act and applied successfully for injunctive relief from the application of the reporting requirements to the legal profession pending the hearing of the challenge. The injunction continues to apply and covers any new regulations under the Act affecting members of the legal profession. Individual law societies then adopted the Federation's Model "No Cash" Rule and implemented it through by-laws or rules. The government subsequently decided to exempt "legal counsel" (i.e. lawyers and Quebec notaries) from the reporting requirements through an amendment to the Act. The Minister of Finance, in speaking to the amendment, acknowledged that the Model No Cash Rule was intended to deal with risks in the legal profession associated with cash placement and money laundering.

Independent of the government's current initiatives, the Federation has prepared and referred to law societies a second model rule, this one focused on client identification and verification requirements.

The government is committed to demonstrating that its anti-money laundering regime meets international standards by including the regulation of the legal profession. As a matter of appropriate regulation, law societies, in the public interest, must move proactively to reduce any risks that money laundering may raise within the legal profession in a manner that preserves and protects solicitor-client privilege and the independence of the bar. Law societies used this approach successfully through their adoption of the Model No Cash Rule. The second model rule will be an important addition to law societies' regulations.

Consultation Process

A review of the draft regulations indicates that there is a measure of overlap between the requirements in the model rule and the draft regulations. As the model rule is intended to set an appropriate and reasonable standard for regulation of the legal profession in this area, the Federation's view is that the draft regulations may inform the content of the model rule, where appropriate and practicable.

As part of the process of formulating the model rule, the Federation needs the input of its member law societies on the regulations and the current version of the model rule, which was drafted prior to publication of the regulations. To ensure that the practical implications of regulation in this area are understood, the consultation process must also be informed by the views of members of the profession.

The Federation has requested that the Law Society of Upper Canada, and other Canadian law societies, consult with their members and provide feedback to the Federation. This document has been prepared for this consultation process. In addition to describing the requirements for members of the profession in the model rule and the regulations, this material requests comments on appropriate regulation with respect to

a) the application of a rule requiring client identification,
b) the information to be obtained for client identification, and
c) record-keeping requirements respecting that information.

The input the Law Society is seeking is not limited to these questions – comments, general or specific, on all aspects of the regulations are requested.

Input from law societies and the profession will help to inform the final draft of the model rule and assist the Federation in its discussions with the Department of Finance on the regulations.

Comments on the model rule and the draft regulations should be sent by October 31, 2007 to Jim Varro at the Law Society by e-mail at jvarro@lsuc.on.ca or by mail to:

Jim Varro
Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, Ontario
M5H 2N6

APPLICATION

*Question 1:* What circumstances should trigger client identification requirements?

*Model Rule*

As currently drafted, the model rule imposes client identification and verification requirements on a lawyer or notary in Quebec[1] when the lawyer or notary receives, pays or transfers funds, or purchases or sells securities, real property or business assets or entities on behalf of a client or gives instructions for such activities on behalf of a client. The model rule exempts funds received from a financial institution or public body, a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity, funds paid pursuant to a court order, or to pay a fine or penalty and funds received for professional fees, disbursements, expenses or bail.

A Law Society of Upper Canada (LSUC) committee that has looked at the model rule suggested that the exemptions be more specific and include funds paid as a settlement in a court action or for the purpose of negotiating settlements or for restitution not included in a court order.

*Question 1A*: Should the exemptions be more specific as suggested by the LSUC committee?

[1] Throughout this document, the terms “notary” and “notaries” refers to those licensed as notaries in Quebec.

*Draft Regulations*

The draft federal regulations would require a lawyer or a notaries to identify clients and record information about client identity when the lawyer or notary receives or pays funds, other than funds received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or organization, or give instructions on behalf of any person or organization in respect of receiving or paying funds.

The draft regulations would exempt lawyers and notaries who perform these activities for their employers (e.g. in-house counsel) from these requirements.

CLIENT IDENTIFICATION REQUIREMENTS

*Question 2:* What information should lawyers and notaries be required to obtain to verify the identity of a client and what methods for verifying identity should be used?

*Model Rule*

The Federation's draft model rule requires lawyers and notaries to ascertain:

a) the client's first and last name;
b) the client's home or business address;
c) the client's home or business telephone number;
d) where the client is an individual, the client's occupation;
e) where the client is an organization, the general nature of the type of business engaged in by the organization, where applicable;
f) where the client is an organization, the individuals authorized to give instructions with respect to that organization; and
g) where the client is acting for a third party beneficiary, necessary information about the beneficiary, such as that set out above.

The documents through which identity is ascertained in the model rule include government-issued identification, such as a driver's license, birth certificate, provincial health card or passport or any similar record for personal identification. For organizations, the model rule requires the incorporating document of the organization, or a confirmation from a government registry as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s).

*Draft Regulations*

Members of the legal profession who receive $3000 or more from a client, except for funds received from a financial entity or public body, would have to identify clients in the following ways.

1. If the client is a person, the lawyer or notary would have to refer to a valid original of a birth certificate, driver's license, provincial health insurance card, passport or similar document at the time of the transaction.

2. If the person is not physically present, the lawyer or notary would have to identify the client at the time of the transaction through combinations of the following methods, the information from which must be consistent:

a. Referring to an independent and reliable identification product ("identification product") based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration,
b. Confirming the person's name, address and date of birth by referring to a credit file in Canada in respect of that person, after receiving the person's authorization, that has been in existence for at least six months;
c. Obtaining an attestation from a commissioner for oaths in Canada or guarantor in Canada (see Appendix 1);
d. Confirming that a cheque drawn by the person on a deposit account of a Canadian financial entity has been cleared, or
e. Confirming that the person has a deposit account with a Canadian financial entity.

3. The required combinations are:

identification product and attestation;
identification product and cleared cheque;
identification product and confirmation of deposit account;
credit file and attestation;
credit file and cleared cheque;
credit file and confirmation of deposit account;
attestation and cleared cheque; or
attestation and confirmation of deposit account.

4. An agent, such as another lawyer or any other reliable person, could provide the above information if the lawyer or notary has an agreement with the agent for such a purpose.

*Question 2A:* The draft model rule makes no distinction between in-person transactions and those in which the client is not present. The draft regulations prescribe particular methods for verifying the identity of a client with whom the lawyer or notary is not dealing in person. Are more detailed requirements necessary in such situations and if so, what should they be? Are the requirements in the draft regulations workable?

5. If the client is a corporation, a lawyer or notary would have to confirm its existence and ascertain its name and address and the names and addresses of its directors by referring to a certificate of corporate status, annual filing record under provincial securities legislation or other record that ascertains its existence as a corporation. The existence of the corporation would have to be confirmed within 30 days of the transaction.

6. For an organization other than a corporation, the lawyer or notary would have to confirm its existence by referring to a partnership agreement, articles of association or other record that confirms its existence. The existence of the organization would have to be confirmed within 30 days of the transaction.

7. At the time the existence of an organization is confirmed, the lawyer or notary would have to take reasonable measures* to obtain:

a) For corporations, the name and occupation of all directors and the name, address and occupation of all persons who own/control directly or indirectly 25% of the shares.
b) For organizations other than corporations, the name, address and occupation of all persons who own/control directly or indirectly 25% or more of the organization.

* The draft regulations do not define "reasonable measures." The Federation has been advised that guidance will be provided from FINTRAC[2] on the concept of "reasonable measures".

*Question 2B:* Would a requirement to ascertain the names, addresses and occupations of directors and those owning or controlling 25% of the shares of a corporation or other organization pose any practical difficulties?

*Question 2C:* Is a 30-day period for confirming the existence of a corporation or other organization reasonable?

8. When confirming the existence of a not-for-profit organization a lawyer or notary would have to determine whether it is a registered charity or solicits charitable financial donations.

*Question 2D*: Would such a requirement present any practical difficulties?

9. Unless the lawyer or notary has doubts about the veracity of the previously obtained client information, he or she would not be required to re-identify existing clients, even if the client is engaging the lawyer or notary on another legal matter.

10. Exemptions from the client identification requirements would include:

a) instances where the organization is a public body or a corporation that has minimum net assets of $75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchanged that is prescribed by section 3201 of the Income Task Regulations and operates in a country that is a member of the FATF[3] ; or
b) instances where the organization is a subsidiary of a public body or a corporation referred to in b. and its financial statements are consolidated with the financial statements of that public body or corporation.

*Question 2E*: Are these exemptions appropriate? Are they sufficient?

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[2] FINTRAC is the Financial Transactions and Reports Analysis Centre of Canada and receives, analyzes, assesses and discloses financial intelligence on suspected money laundering, terrorist financing, and threats to the security of Canada..

[3] The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

RECORD KEEPING REQUIREMENTS

*Question 3*: What records relating to client identification should lawyers and notaries be required to maintain and for what period of time?

*Model Rule*

The Federation's model rule requires lawyers and notaries to keep a copy of the government-issued personal identification, such as a driver's license, birth certificate, provincial health card or passport. For organizations, the model rule requires confirmation from a government registry, if applicable, as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s). The documents are to be kept for the duration of the relationship with the client and for as long as is necessary to fulfill the requirements of the retainer, but in no event less than six years.

*Draft Regulations*

Various records would be required to be kept for a period of five years, and most are required to include the client identification information described above. The various records are numbered for ease of reference.

1. A lawyer or notary would have to keep a "receipt of funds record" (record #1), a defined term in the regulations, when he or she has received $3000 or more. This record may already exist in part within the law office but it would have to include the following information:

    a) name, address and birth date of the person providing the funds, if a person, the nature of the person's principal business or occupation,
    b) if an entity, the address and nature of the entity's principal business, date of the transaction,
    c) account number affected by the transaction, type of account, full name of the person or entity who holds the account, monetary currency of the transaction,
    d) purpose and details of the transaction,
    e) if cash, how the funds are received,
    f) amount and currency of the funds received

2. If the client is a corporation, a lawyer or notary would also have to include with the receipt of funds record a copy of the part of the official corporate records that contains any provisions relating to the power to bind the corporation in respect of the transactions with the lawyer or notary.

3. The regulations indicate that the receipt of funds record is to contain the information specified if the information is not readily obtainable from other records that the lawyer or notary keeps under the regulations.

*Question 3A:* Is the information required for the receipt of funds record readily available in all cases? Would there, for example, be any impediments to obtaining the number of an affected account or the full name of the person holding the account?

*Question 3B:* Is the requirement to include a copy of the official corporate records relating to the power to the bind the corporation to the transaction workable?

4. For personal identification, a lawyer or notary would have to keep a record of the following information or keep the required document, as the case may be (record #2):

   a) for the birth certificate, driver's license, provincial health insurance card, passport or similar document, the type and reference number of the record and the place issued,
   b) for the cleared cheque, the name of the financial entity and account number,
   c) for confirmation of the deposit account, the name of the financial entity, number of the account and the date of the confirmation,
   d) for the identification product, its name, the entity offering it, the search reference number and the date it was used to ascertain identity,
   e) for the credit file, the name of the company and date consulted,
   f) for the attestation, the attestation.

5. For corporate/organizational identity where the identifying document is in electronic form, a lawyer or notary would have to keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record (a similar record is required for other organizations); where the above information has been ascertained by referring to a paper copy of a record, a lawyer or notary would have to keep the record or a copy of it (*record #3*).

6. At the time the existence of an organization is confirmed, if the lawyer or notary has obtained the information about direct or indirect ownership/control, he or she would have to record it OR where the lawyer or notary is unable to obtain the above information, he or she would have to keep a record of the reasons the information could not be obtained (*record #4*).

7. Where the entity is a not-for-profit organization a lawyer or notary would have to keep a record (*record #5*) of whether it is a registered charity or solicits charitable financial donations.

8. The records would have to be kept in a form that it can be provided to an authorized person within 30 days after a request is made to examine them under section 62 of the Act. Section 62[4] gives FINTRAC authority to examine records of those who are subject

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[4] 62. (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(*a*) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(*b*) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(*c*) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

to the regulations. The application of this section to the legal profession would create serious problems for the protection of solicitor and client privilege and confidentiality. As s. 62 effectively authorizes warrantless searches of the offices of lawyers and notaries, it does not comply with the stringent requirements established by the Supreme Court in Lavallee, Rackel & Heintz v. Canada. It is the view of the Federation that this provision is unconstitutional.

*Question 3C:* What other issues may be of concern with respect to the record keeping requirements?

COMPLIANCE MEASURES

*Question 4:* What type of compliance provisions, including review or audit requirements, should be applicable to the client identification regime?

*Model Rule*

The model rule does not include compliance provisions. It is intended to be basis for a law society regulation to which lawyers and notaries would be subject as members of a particular law society. Existing audit, review and investigation functions within each law society as well as consequences of breaches would apply.

*Draft Regulations*

The draft regulations would require lawyers, notaries or law firms to establish detailed compliance and review programs.

1. A lawyer, notary or law practice would have to implement its own program to ensure compliance with the regulations by

    a) designating a person in the law practice - who where the program is being implemented by a person may that person (e.g. a sole practitioner) - who is to be responsible for the implementation of the program;
    b) developing and applying written compliance policies and procedures that are approved by the law practice's managing partner, as the case may be, and are kept up to date;
    c) assessing and documenting, in a manner that is appropriate for a law practice, the risk of money laundering or terrorist financing, taking into consideration

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(*d*) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

i. the clients and the business relationships of the law practice,
ii. the services and service delivery methods of the law practice;
iii. the geographic location of the activities of the lawyer; and
iv. any other relevant factor;

d) if the law practice has employees, agents or other persons authorized to act on its behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons;
e) instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external auditor of law practice, or by the law practice itself if it does not have such an auditor.

2. For the purposes of the compliance program, the law practice would have to report the following in written form to the managing partner, as the case may be, 30 days after the assessment described above:

a) the findings of the review referred to in e above;
b) any updates to the policies and procedures made within the reporting period; and
c) the status of the implementation of those policies and procedures and their updates.

3. If a law practice considers the risk of money laundering or terrorist financing in the course of its activities to be high, the lawyer, notary or law practice would have to develop and apply written policies and procedures for taking reasonable measures to keep client identification information up to date mitigating the risks.

*Question 4A:* Do the proposed requirements for lawyers, notaries and law firms to develop internal compliance programs and perform risk assessments and audits raise concerns?

Attachments:

Appendix 1

Tab 1 Federation of Law Societies draft model rule on client identification and verification requirements

Tab 2 Consolidation of regulations applicable to the legal profession

APPENDIX 1

ATTESTATION

A. The commissioner of oaths in Canada or the guarantor in Canada must attest that he or she has seen one of the documents referred to in paragraph 2, page 4 The attestation must be produced on a legible photocopy of the document (if such use of the document is not prohibited by the applicable provincial law) and must include

1. the name, profession and address of the person providing the attestation;

2. the signature of the person providing the attestation; and
3. the type and number of the identifying document provided by the person.

B. A guarantor is a person employed in one of the following professions in Canada:

1. dentist;
2. medical doctor;
3. chiropractor;
4. judge;
5. magistrate;
6. lawyer;
7. notary (in Quebec);
8. notary public;
9. optometrist;
10. pharmacist;
11. professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
12. professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
13. veterinarian.

TAB 2

FEDERATION OF LAW SOCIETIES OF CANADA

Consolidation of Provisions Applicable To The Legal Profession In Proposed Regulations (Amendments to Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations)
Introductory Note:

New proposed Regulations affecting the legal profession have been prepared by the Department of Finance. These Regulations amend current Regulations, but must also be read with (as they incorporate) other recent amendments to the Regulations adopted by the government and which come into force in June 2008. This consolidation includes those regulations relevant to the legal profession and contains provisions from:

- the current Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations,
- amendments to those Regulations made by Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2007-1) Registration SOR/2007-122 June 7, 2007 (published in Part II of the Canada Gazette, June 27, 2007), which generally come into force June 23, 2008, and
- further proposed amendments to those regulations made by Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act (2007–2) pre-published in Part I of the Canada Gazette on June 30, 2007

As a matter of information, a web link is provided to a separate set of proposed Regulations, also pre-published on June 30, 2007, that includes new administrative penalties for breaches of the Act and regulations: http://canadagazette.gc.ca/partI/2007/20070630/html/regle5-e.html

# PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING REGULATIONS

## INTERPRETATION

1. …

(2) The following definitions apply in these Regulations.

"Act" means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. *(Loi )*

"cash" means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the Bank of Canada Act that are intended for circulation in Canada or coins or bank notes of countries other than Canada. ( *espèces* )

"financial entity" means an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which that Act applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act, an association that is regulated by the *Cooperative Credit Associations Act,* a company to which the *Trust and Loan Companies Act* applies and a trust company or loan company regulated by a provincial Act. It includes a department or agent of Her Majesty in right of Canada or of a province where the department or agent is carrying out an activity referred to in section 45. ( *entité financière )*

"funds" means cash, currency or securities, or negotiable instruments or other financial instruments, in any form, that indicate a person's or an entity's title or interest in them. *(fonds)*

"legal firm" means an entity that is engaged in the business of providing legal services to the public *(cabinet juridique)*

"public body" means

(a) any department or agent of Her Majesty in right of Canada or of a province;
(b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them; and
(c) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act*, or any agent of such an organization. *( organisme public )*

"receipt of funds record" means, in respect of a transaction in which an amount of funds is received, a record that contains the following information:

(a) if the information is not readily obtainable from other records that the recipient keeps and retains under these Regulations, the name of the person or entity from whom the amount is in fact received and
  (i) where the amount is received from a person, their address and date of birth and the nature of their principal business or their occupation, and
  (ii) where the amount is received from an entity, their address and the nature of their principal business;

(b) the date of the transaction;

(c) the number of any account that is affected by the transaction, and the type of that account, the full name of the person or entity that is the account holder and the currency in which the transaction is conducted;

(d) the purpose and details of the transaction, including other persons or entities involved and the type and form of the transaction;

(e) if the funds are received in cash, whether the cash is received by armoured car, in person, by mail or in any other way; and

(f) the amount and currency of the funds received. *(relevé de réception de fonds)*

"securities dealer" means a person or entity that is authorized under provincial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services. *( courtier en valeurs mobilières )*

"senior officer" , in respect of an entity, means, if applicable,

(a) a director of the entity who is one of its full-time employees;
(b) the entity's chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or any person who performs any of those functions; or
(c) any other officer who reports directly to the entity's board of directors, chief executive officer or chief operating officer. (cadre dirigeant )

"signature" includes an electronic signature. (signature)

TRANSACTIONS CONDUCTED BY EMPLOYEES OR AGENTS

6. (1) Where a person who is subject to the requirements of these Regulations is an employee of a person or entity referred to in any of paragraphs 5(a) to (l) of the Act[5] , it is the employer rather than the employee who is responsible for meeting those requirements.

(2) Where a person or entity who is subject to the requirements of these Regulations, other than a life insurance broker or agent, is an agent of or is authorized to act on behalf of another person or entity referred to in any of paragraphs 5(a) to (l) of the Act, it is that other person or entity rather than the agent or the authorized person or entity, as the case may be, that is responsible for meeting those requirements.

7. For the purposes of these Regulations, a person acting on behalf of their employer is considered to be acting on behalf of a third party except when the person is depositing cash into the employer's business account.

…

INFORMATION ON DIRECTORS OR PARTNERS OR ON PERSONS WHO OWN OR CONTROL 25 PER CENT OR MORE OF A CORPORATION OR OTHER ENTITY

[5] These paragraphs include lawyers and Quebec notaries, through the Regulations.

11.1.(1) Every financial entity or securities dealer that is required to confirm the existence of an entity in accordance with these Regulations when it opens an account in respect of that entity, every life insurance company, life insurance broker or agent or legal counsel or legal firm that is required to confirm the existence of an entity in accordance with these Regulations and every money services business that is required to confirm the existence of an entity in accordance with these Regulations when it enters into an ongoing electronic funds transfer, fund remittance or foreign exchange service agreement with that entity, or a service agreement for the issuance or redemption of money orders, traveller's cheques or other similar negotiable instruments, shall, at the time the existence of the entity is confirmed, take reasonable measures to obtain and, if obtained, keep a record of

(a) where the confirmation is in respect of a corporation, the name and occupation of all directors of the corporation and the name, address and occupation of all persons who own or control, directly or indirectly, 25 per cent or more of the shares of the corporation; and

(b) where the confirmation is in respect of an entity other than a corporation, the name, address and occupation of all persons who own or control, directly or indirectly, 25 per cent or more of the entity.

(2) Where the person or entity is not able to obtain the information referred to in subsection (1), the person or entity shall keep a record that indicates the reason why the information could not be obtained.

(3) Where the entity the existence of which is being confirmed by a person or entity under subsection (1) is a not-for-profit organization, the person or entity shall determine, and keep a record that sets out, whether that entity is

(a) a charity registered with the Canada Revenue Agency under the Income Tax Act; or

(b) an organization, other than one referred to in paragraph (a), that solicits charitable financial donations from the public.

…

LEGAL COUNSEL AND LEGAL FIRMS

33.3.(1) Subject to subsection (2), every legal counsel and every legal firm is subject to Part 1 of the Act when they engage in any of the following activities on behalf or any person or entity:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or entity; or

(b) giving instructions in respect of any activity referred to in paragraph (a).

(2) Subsection (1) does not apply in respect of legal counsel when they engage in any of the activities referred to in that subsection on behalf of their employer.

33.4. Subject to subsection 62(2), every legal counsel and every legal firm shall, when engaging in an activity described in section 33.3, keep the following records:

(a) a receipt of funds record in respect of every amount of $3,000 or more that they receive in the course of a single transaction, unless the amount is received from a financial entity or a public body; and

(b) where the receipt of funds record is in respect of a client that is a corporation, a copy of the part of the official corporate records that contains any provision relating to the power to bind the corporation in respect of transactions with the legal counsel or legal firm.

…

LEGAL COUNSEL AND LEGAL FIRMS

59.4. Subject to subsection 62(2) and section 63, every legal counsel and every legal firm shall, in respect of a transaction for which a record is required to be kept under subsection 33.4,

(a) in accordance with subsection 64(1), ascertain the identity of every person who conducts the transaction;

(b) in accordance with section 65, confirm the existence of and ascertain the name and address of every corporation on whose behalf the transaction is conducted and the names of the corporation's directors; and

(c) in accordance with section 66, confirm the existence of every entity, other than a corporation, on whose behalf the transaction is conducted.

…

EXCEPTIONS TO RECORD-KEEPING AND ASCERTAINING IDENTITY

62.(1) Section 54, 54.1, 54.2, 55, 57, 57.1 and 60 do not apply in respect of

(a) the opening of a business account in respect of which the financial entity, the securities dealer or the casino, as the case may be, has already ascertained the identity of at least three persons who are authorized to give instructions in respect of the account;

(b) the opening of an account for the sale of mutual funds where there are reasonable grounds to believe that identity has been ascertained in accordance with subsection 64(1) by a securities dealer in respect of

i. the sale of the mutual funds for which the account has been opened, or

ii. a transaction that is part of a series of transactions that includes that sale; or

(c) a person who already has an account with the financial entity, the securities dealer or the casino, as the case may be.

(2) Sections 14, 14.1, 19, 23, 33.2 and 33.4, subsection 39.3(1) and sections 54, 54.2, 55, 56, 56.1, 57, 57.1 59.3, 59.4 and 59.5 do not apply in respect of

(a) the purchase of an exempt policy as defined in subsection 306(1) of the *Income Tax Regulations*, as it read on May 1, 1992;

(b) the purchase of a group life insurance policy that does not provide for a cash surrender value or a savings component;

(c) the purchase of an immediate or deferred annuity that is paid for entirely with funds that are directly transferred from a registered pension plan or from a pension plan that is required to be registered under the *Pension Benefits Standards Act*, 1985, or similar provincial legislation;

(d) the purchase of a registered annuity policy or a registered retirement income fund;

(e) the purchase of an immediate or deferred annuity that is paid for entirely with the proceeds of a group life insurance policy;

(f) a transaction that is part of a reverse mortgage or of a structured settlement;

(g) the opening of an account for the deposit and sale of shares from a corporate demutualization or the privatization of a Crown corporation;

(h) the opening of an account in the name of an affiliate of a financial entity, if that affiliate carries out activities that are similar to those of persons and entities referred to in paragraphs 5(a) and (g) of the Act;

(i) the opening of a registered plan account, including a locked in retirement plan account, a registered retirement savings plan account and a group registered retirement savings plan account;

(j) the opening of an account established pursuant to the escrow requirements of a Canadian securities regulator or Canadian stock exchange or any provincial legislation;

(k) the opening of an account where the account holder or settlor is a pension fund that is regulated by or under an Act of Parliament or of the legislature of a province;

(l) the opening of an account in the name of, or in respect of which instructions are authorized to be given by, a financial entity, a securities dealer or a life insurance company or by an investment fund that is regulated under provincial securities legislation;

(m) instances where the entity in respect of which a client information record is required to be kept is a public body, or a corporation that has minimum net assets of $75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange that is prescribed by section 3201 of the Income Tax Regulations, and operates in a country that is a member of the Financial Action Task force;

(n) instances where the entity in respect of which a client information record is required to be kept is a subsidiary of a public body or a corporation referred to in paragraph (m) and its financial statements of the entity are consolidated with the financial statements of that public body or corporation; or

(o) The opening of an account that is opened solely in the course of providing customer accounting services to a securities dealer.

(3) In respect of a group plan account, other than a group plan account referred to in subsection (2), a financial entity, securities dealer, life insurance company or life insurance broker or agent is not required to ascertain the identity of, or keep a signature card in respect of, any individual member of the group plan or determine whether they are a politically exposed foreign person if

(a) the member's contributions are made by the sponsor of the plan or by means of payroll deductions; and

(b) the existence of the plan sponsor has been confirmed in accordance with section 65 or 66.

63.(1) Where a person has ascertained the identity of another person in accordance with section 64, the person is not required to subsequently ascertain that same identity again if they recognize that other person.

(1.1) Subsection (1) does not apply where the person has doubts about the information collected.

(2) Where a person has confirmed the existence of a corporation and ascertained its name and address and the names of its directors in accordance with section 65, the person is not required to subsequently confirm or ascertain that same information.

(3) Where a person has confirmed the existence of an entity other than a corporation in accordance with section 66, the person is not required to subsequently confirm that same information.

(4) Despite paragraphs 54(1)(d) and 54.1(1)(b), subsections 56(3), 57(3) and 59(2) and paragraphs 59.1(b), 59.2(1)(b), 60(e) and 61(c), the names of a corporation's directors need not be ascertained if the corporation is a securities dealer.

(5) A person or entity that has determined that a person is a politically exposed foreign person in accordance with section 54.2, 56.1 or 57.1 or subsection 59(5) is not required to subsequently determine if that same person is a politically exposed foreign person.

MEASURES FOR ASCERTAINING IDENTITY

64.(1) In the cases referred to in sections 53, 53.1, 54, 55, 56, 57, 59, 59.1, 59.2, 59.3, 59. 4, 59.5, 60 and 61, the identity of a person shall be ascertained, at the time referred to in subsection (2) and in accordance with subsection (3),

(a) by referring to the person's birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or other similar document; or

(b) if the person is not physically present when the account is opened, the credit card application is submitted, the trust is established, the client information record is created or the transaction is conducted,

(i) by obtaining the person's name, address and date of birth and

(A) confirming that one of the following entities has identified the person in accordance with paragraph (a), namely,

(I) an entity, referred to in any of paragraphs 5(a) to (g) of the Act, that is affiliated with the entity ascertaining the identity of the person,

(II) an entity that carries on activities outside Canada similar to the activities of a person or entity referred to in any of paragraphs 5(a) to (g) of the Act and that is affiliated with the entity ascertaining the identity of the person, or

(III) an entity that is a member of the same association — being a central cooperative credit society within the meaning of section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, and

(B) verifying that the name, address and date of birth in the record kept by that affiliated entity or that entity that is a member of the same association corresponds to the information provided in accordance with these Regulations by the person, or

(ii) subject to subsection (1.3), by using one of the following combinations of the identification methods set out in Part A of Schedule 7, namely,

(A) methods 1 and 3,

(B) methods 1 and 4,

(C) methods 1 and 5,

(D) methods 2 and 3,

(E) methods 2 and 4,

(F) methods 2 and 5,

(G) methods 3 and 4, or

(H) methods 3 and 5.

…

(1.2) For the purposes of paragraphs (1)(b)(i) and (1.1)(b)(i), an entity is affiliated with another entity if one of them is wholly-owned by the other or both are wholly-owned by the same entity.

(1.3) A combination of methods referred to in subparagraph (1)(b)(ii) or (1.1)(b)(ii) or (iii) shall not be relied on by a person or entity to ascertain the identity of a person unless

(a) the information obtained in respect of that person from each of the two applicable identification methods is determined by the person or entity to be consistent; and
(b) the information referred to in paragraph (a) is determined by the person or entity to be consistent with the information in respect of that person, if any, that is contained in a record kept by the person or entity under these Regulations.

(2) The identity shall be ascertained

(a) in the cases referred to in paragraphs 54(1)(a), subsection 57(1) and 60(a), before any transaction other than an initial deposit is carried out on an account;

(b) in the cases referred to in section 53, paragraph 54(1)(b), subsection 59(1) and paragraphs 59.3(a), 59.4(a), 59.5, 60(b) and 61(b), at the time of the transaction;

(b.1) in the cases referred to in paragraph 53.1, before the transaction is reported as required under section 7 of the Act;

(b.2) in the cases referred to in paragraphs 54.1(a), before any credit card is activated;

(c) in the cases referred to in paragraphs 55(a), (d) and (e), within 15 days after the trust company becomes the trustee;

(d) in the cases referred to in subsection 56(1) and paragraph 61(a), within 30 days after the client information record is created;

(e) in the case referred to in section 59.1(a) and 59.2(1)(a), at the time of the transaction; and

(f) in the cases referred to in subsection 62(3), at the time a contribution in respect of an individual member of the group plan is made to the plan, if
(i) the member's contribution is not made as described in paragraph 63(3)(a), or
(ii) the existence of the plan sponsor has not been confirmed in accordance with section 65 or 66.paragraphs 59.1(a) and 59.2(1)(a), at the time of the transaction.

(3) Unless otherwise specified in these Regulations, only original documents that are valid and have not expired may be referred to for the purpose of ascertaining identity in accordance with paragraph (1)(a) or (1.1)(a).

64.1.(1) A person or entity required to take measures to ascertain identity under paragraph 64(1) or (1.1) may rely on an agent or mandatary to take the measures described in paragraph 64(1)(a) or (1.1)(a), respectively, only if that person or entity has entered into an agreement or arrangement, in writing,
with that agent or mandatary for the purposes of ascertaining identity.

(2) A person or entity that enters into an agreement or arrangement referred to in subsection (1) must obtain from the agent the customer information obtained by the agent or mandatary under that agreement or arrangement.

…

65.(1) The existence of a corporation shall be confirmed and its name and address and the names of its directors shall be ascertained as of the time referred to in subsection (2), by referring to its certificate of corporate status, a record that it is required to file annually under the applicable provincial securities legislation or any other record that ascertains its existence as a corporation. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

(2) The information referred to in subsection (1) shall be ascertained,

(a) in the case referred to in paragraphs 54(1)(d) and 60(e), before any transaction other than the initial deposit is carried out on the account;

(a.1)in the case referred to in paragraph 54.1(b), before any credit card is issued on the account;

(b) in the cases referred to in paragraphs 55(b) and (d), within 15 days after the trust company becomes the trustee;

(c) in the cases referred to in subsections 56(3) and 59(2) and paragraph 61(c), within 30 days after the client information record is created;

(d) in the case referred to in subsection 57(3), within 30 days after the opening of the account; and

(e) in the cases referred to in paragraphs 59.1(b), 59.2(1)(b), 59.3(b), 59.4(b) and 59.5(b), within 30 days after the transaction.

(3) Where the information has been ascertained by referring to an electronic version of a record, the person or entity required to ascertain the information shall keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record.

(4) Where the information has been ascertained by referring to a paper copy of a record, the person or entity required to ascertain the information shall retain the record or a copy of it.

66.(1) The existence of an entity, other than a corporation, shall be confirmed as of the time referred to in subsection (2), by referring to a partnership agreement, articles of association or other similar record that ascertains its existence. The record may be in paper form or in an electronic version that is obtained from a source that is accessible to the public.

(2) The existence of the entity shall be confirmed

(a) in the case referred to in paragraphs 54(1)(e) and 60(f), before any transaction other than the initial deposit is carried out on the account;

(a.1)in the case referred to in paragraph 54.1(c), before any credit card is issued on the account;

(b) in the cases referred to in paragraphs 55(c) and (d), within 15 days after the trust company becomes the trustee;

(c)in the cases referred to in subsections 56(4) and 59(3) and paragraph 61(d), within 30 days after the client information record is created;

(d) in the case referred to in subsection 57(4), within 30 days after the account is opened; and

(e) in the case referred to in paragraph 59.1(c), 59.2(1)(c), 59.3(c), 59.4(c) and 59.5(c), within 30 days after the transaction.

(3) Where the existence of the entity has been confirmed by referring to an electronic version of a record, the person or entity required to confirm that information shall keep a record that sets out the registration number of the entity whose existence is being confirmed, the type of record referred to and the source of the electronic version of the record.

(4) Where the existence of the entity has been confirmed by referring to a paper copy of a record, the person or entity required to confirm that information shall retain the record or a copy of it.

…

67. Every person or entity that is required by these Regulations to ascertain the identity of a person in connection with a record that the person or entity has created and is required to keep under these Regulations, or a transaction that they have carried out and in respect of which they are required to keep a record under these Regulations or under section 12.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Suspicious Transactions Reporting Regulations*, shall set out on or in or include with that record the name of that person and

(a) if a birth certificate, driver's licence, provincial health insurance card (if such use of the card is not prohibited by the applicable provincial law), passport or any other similar record is relied on to ascertain the person's identity, the type and reference number of the record and the place where it was issued;

(b) if a confirmation of a cleared cheque from a financial entity is relied on to ascertain the person's identity, the name of the financial entity and the account number of the deposit account on which the cheque was drawn;

(c) if the person's identity is ascertained by confirming that they hold a deposit account with a financial entity, the name of the financial entity where the account is held and the number of the account and the date of the confirmation;

(d) if the person's identity is ascertained by relying on a previous confirmation of their identity by an entity that is affiliated with the entity ascertaining the identity of the person or an entity that is a member of the same association — being a central cooperative credit society as defined in section 2 of the *Cooperative Credit Associations Act* — as the entity ascertaining the identity of the person, the name of that entity and the type and

reference number of the record that entity previously relied on to ascertain the person's identity;

(e) if an identification product is used to ascertain the person's identity, the name of the identification product, the name of the entity offering the product, the search reference number and the date the product was used to ascertain their identity;

(f) if the person's identity is ascertained by consulting a credit file kept by an entity in respect of the person, the name of the company and the date of the consultation;

(g) if the person's identity is ascertained from an attestation signed by a commissioner of oaths in Canada or a guarantor in Canada, the attestation;

(h) if the person's identity is ascertained by consulting an independent data source, the name of the data source, the date of the consultation and the information provided by the data source;

(i) if the person's identity is ascertained by relying on a utility invoice issued in the person's name, the invoice or a legible photocopy or electronic image of the invoice;

(j) if the person's identity is ascertained by relying on a photocopy or electronic image of a document provided by the person, that photocopy or electronic image; and

(k) if the person's identity is ascertained by relying on a deposit account statement issued in the person's name by a financial entity, a legible photocopy or electronic image of the statement.

RETENTION OF RECORDS

68. Where any record is required to be kept under these Regulations, a copy of it may be kept

(a) in a machine-readable form, if a paper copy can be readily produced from it; or

(b) in an electronic form, if a paper copy can be readily produced from it and an electronic signature of the person who must sign the record in accordance with these Regulations is retained.

69.(1) Subject to subsection (2), every person or entity that is required to obtain, keep or create records under these Regulations shall retain those records for a period of at least five years following

(a) in respect of signature cards, account operating agreements, client credit files and account application forms, the day of the closing of the account to which they relate;

(b) in respect of client information records, certificates of corporate status, records that are required to be filed annually under the applicable provincial securities legislation or other similar records that ascertain the existence of a corporation, and records that ascertain the existence of an entity, other than a corporation, including partnership agreements and articles of association, the day on which the last business transaction is conducted; and

(c) in respect of all other records, the day on which they were created.

(2) Where records that an individual keeps under these Regulations are the property of the individual's employer or a person or entity with which the individual is in a contractual relationship, the individual is not required to retain the records after the end of the individual's employment or contractual relationship.

70. Every record that is required to be kept under these Regulations shall be retained in such a way that it can be provided to an authorized person within 30 days after a request is made to examine it under section 62[6] of the Act.

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[6] Section 62 of the Act, reproduced below, refers to an "authorized person" who is defined in the Act in reference to the Director of FINTRAC, as follows:

> "authorized person" means a person who is authorized under subsection 45(2).
>
> 45. (1) The Director is the chief executive officer of the Centre, has supervision over and direction of its work and employees and may exercise any power and perform any duty or function of the Centre. The Director has the rank and all the powers of a deputy head of a department.
>
> Directions to authorized persons
>
> (2) The Director may authorize any person to act, under the Director's direction, for the purposes of sections 62 to 64.

62. (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(*a*) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(*b*) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(*c*) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(*d*) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

COMPLIANCE

71.(1) For the purpose of subsection 9.6(1)[7] of the Act, a person or entity shall, as applicable, implement the compliance program referred to in that subsection by

(a) appointing a person – who, where the compliance program is being implemented by a person, may be that person - who is to be responsible for the implementation of the program;

(b) developing and applying written compliance policies and procedures that are that are kept up to date and, in the case of an entity, approved by a senior officer approved by a senior officer;

(c) assessing and documenting, in a manner that is appropriate for the person or entity, the risk referred to in subsection 9.6(2) of the Act, taking into consideration

(i) the clients and business relationships of the person or entity;

(ii) the products and the delivery channels of the person or entity,

(iii) the geographic location of the activities of the person or entity, and

(iv) any other relevant factor;

(d) if the person or entity has employees, agents or other persons authorized to act on their behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons; and

(e) instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external

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(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

[7] 9.6 (1) Every person or entity referred to in section 5 shall establish and implement, in accordance with the regulations, a program intended to ensure their compliance with this Part.

(2) The program shall include the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering offence or a terrorist activity financing offence.

(3) If the person or entity considers that the risk referred to in subsection (2) is high, the person or entity shall take prescribed special measures for identifying clients, keeping records and monitoring financial transactions in respect of the activities that pose the high risk.

auditor of the person or entity, or by the person or entity itself if it does not have such an auditor.

(2) For the purposes of the compliance program referred to in subsection 9.6(1) of the Act, every person or entity shall report the following in written form to a senior officer within 30 days after the assessment:

(a) the findings of the review referred to in paragraph (1)(e);

(b) any updates to the policies and procedures made within the reporting period; and

(c) the status of the implementation of those policies and procedures and their updates.

71.1 The prescribed special measures that are required to be taken by a person or entity referred to in subsection 9.6(1) of the Act for the purpose of subsection 9.6(3) of the Act are the development and application of written policies and procedures for

(a) taking reasonable measures to keep client identification information and the information referred to in section 11.1 up to date;

(b) taking reasonable measures to conduct ongoing monitoring for the purpose of detecting transactions that are required to be reported to the Centre under s. 7 of the Act; and

(c) mitigating the risks identified in accordance with subsection 9.6(3) of the Act.

SCHEDULE 7
*(Subparagraphs 64(1)(b)(ii) and (1.1)(b)(ii) and (iii))*

NON-FACE-TO-FACE IDENTIFICATION METHODS

PART A

IDENTIFICATION METHODS FOR ALL REPORTING ENTITIES

IDENTIFICATION PRODUCT METHOD

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

ATTESTATION METHOD

3. (1) This method of ascertaining a person's identity consists of obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that they have seen one of the documents referred to in paragraph 64(1)(a) of these Regulations. The attestation must be produced on a legible photocopy of the document (if such use of the document is not prohibited by the applicable provincial law) and must include
(a) the name, profession and address of the person providing the attestation;
(b) the signature of the person providing the attestation; and
(c) the type and number of the identifying document provided by the person.

(2) For the purpose of subsection (1), a guarantor is a person employed in one of the following professions in Canada:

(a) dentist;
(b) medical doctor;
(c) chiropractor;
(d) judge;
(e) magistrate;
(f) lawyer;
(g) notary (in Quebec);
(h) notary public;
(i) optometrist;
(j) pharmacist;
(k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
(l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
(m) veterinarian.

CLEARED CHEQUE METHOD

4. This method of ascertaining a person's identity consists of confirming that a cheque drawn by the person on a deposit account of a financial entity, other than an account referred to in section 62 of these Regulations, has been cleared.

CONFIRMATION OF DEPOSIT ACCOUNT METHOD

5. This method of ascertaining a person's identity consists of confirming that the person has a deposit account with a financial entity, other than an account referred to in section 62 of these Regulations.

PART B

IDENTIFICATION METHODS FOR
CREDIT CARD ACCOUNTS

1. This method of ascertaining a person's identity consists of referring to an independent and reliable identification product based on personal information in respect of the person and a Canadian credit history of the person of at least six month's duration.

CREDIT FILE METHOD

2. This method of ascertaining a person's identity consists of confirming, after obtaining authorization from the person, their name, address and date of birth by referring to a credit file in respect of that person in Canada that has been in existence for at least six months.

INDEPENDENT DATA SOURCE METHOD

3. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a director of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

PART C

IDENTIFICATION METHODS FOR FIRST-TIME
APPLICANTS FOR CREDIT CARD APPLICANTS WITHNO CREDIT HISTORY IN CANADA

INDEPENDENT DATA SOURCE METHOD

1. This method of ascertaining a person's identity consists of consulting a reputable and independent database that is compiled from a director of a telecommunications entity or a federal, provincial or municipal voter's registry and that contains the names, addresses and telephone numbers of individuals in order to confirm the person's name, address and telephone number.

UTILITY INVOICE METHOD

2. This method of ascertaining a person's identity consists of obtaining a utility service invoice that is issued by a Canadian utility provider in the name of the person and that includes their address.

PHOTOCOPY OF AN IDENTIFICATION DOCUMENT

3. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a document referred to in paragraph 64(1)(a) of these Regulations in respect of the person.

DEPOSIT ACCOUNT STATEMENT METHOD

4. This method of ascertaining a person's identity consists of obtaining a legible photocopy or electronic image of a deposit account statement issued by a financial entity in the name of the person.

CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 22 day of November, 2007.

Treasurer