

29<sup>th</sup> March, 2007

MINUTES OF CONVOCATION

Thursday, 29<sup>th</sup> March, 2007  
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Alexander, Backhouse, Bobesich, Boyd, Campion, Carpenter-Gunn, Caskey (by telephone), Chahbar, Cherniak, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Fillion, Finlayson, Furlong, Go, Gotlib, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrie, Legge, Manes, Martin, Millar, Minor, Murphy, Murray, O'Donnell, Pawlitza, Porter, Potter, Ross, Ruby, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Wardlaw, Warkentin and Wright.

.....

Secretary: Katherine Corrick

The Reporter was sworn.

.....

IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer reported on his activities since last Convocation.

The amendments to the *Law Society Act* contained in Bill 14, which come into effect on May 1, 2007, require revision to our current by-laws. The Treasurer has asked the following benchers to review the revised by-laws and present them to Convocation: Bonnie Warkentin, Derry Millar, Ross Murray and William Simpson.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of February 22, 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 presents the following candidates for Call to the Bar of Ontario pursuant to By-Law 11, section 7:

(a) Transfer from another Province

The following candidate has filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, March 29th, 2007:

Kristen Kathleen Rudderham

Province of New Brunswick

(b) Licensing Process (Bar Admission Course)

Pursuant to By-Law 11, section 7(2) the following candidates have satisfied the requirements and have been excused from participating in a call day ceremony. The following candidates have successfully completed the Licensing Process (Bar Admission Course), filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, March 29th, 2007:

Monte Demein Taylor-Densley

Bar Admission Course

Nancy Yu

Bar Admission Course

ALL OF WHICH is respectfully submitted

DATED this the 29th day of March, 2007

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

Carried

PROFESSIONAL DEVELOPMENT, COMPETENCE AND ADMISSIONS COMMITTEE  
REPORT

Ms. Dickson presented the Report.

Report to Convocation  
March 29, 2007

---

Professional Development, Competence & Admissions Committee

Committee Members  
Laurie Pawlitzza(Chair)  
Constance Backhouse (Vice-Chair)  
Mary Louise Dickson (Vice-Chair)  
Robert Aaron  
Kim Carpenter-Gunn  
James Caskey  
Carole Curtis  
Paul Henderson  
Vern Krishna  
Laura Legge  
Daniel Murphy  
Judith Potter  
Bonnie Warkentin

Purposes of Report: Decision

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

TABLE OF CONTENTS

For Decision

Proposed Changes to LibraryCo, Including to the Unanimous Shareholder Agreement.....	TAB A
Approval of Task Force on Licensing And Accreditation.....	TAB B
Lakehead University – Law School Proposal .....	TAB C

COMMITTEE PROCESS

1. The Committee met on March 8, 2007. Committee members Mary-Louise Dickson (Vice Chair), Constance Backhouse (Vice Chair), Bob Aaron, Kim Carpenter-Gunn, Carole Curtis, Paul Henderson, Vern Krishna, and Judith Potter attended. Bencher Abraham Feinstein attended part of the meeting. Staff members Diana Miles, Nancy Reason and Sophia Sperdakos also attended. The CEO, Malcolm Heins, attended part of the meeting.

## FOR DECISION

PROPOSED CHANGES TO LIBRARYCO, INCLUDING TO THE  
UNANIMOUS SHAREHOLDER AGREEMENT

## MOTION

2. That Convocation,
  - a. approve the Unanimous Shareholder Agreement for LibraryCo Inc. set out at Appendix 2 and authorize the Treasurer to sign on behalf of the Law Society;
  - b. approve amendments to By-law 30 relating to county law libraries, as set out at Appendix 3, in accordance with the revised Unanimous Shareholder Agreement;
  - c. approve the drafting of necessary amendments required to the Articles of Incorporation of LibraryCo;
  - d. approve the Administrative Services Agreement between the Law Society and LibraryCo set out at Appendix 4 and authorize the CEO, Malcolm Heins, to sign on behalf of the Law Society;
  - e. appoint the following people to be named as the four Law Society Directors of the Board of LibraryCo:
    - i. Abraham Feinstein
    - ii. Paul Henderson
    - iii. Ross W. Murray
    - iv. Gerald A. Swaye

## Summary

3. In the first six years of its operation LibraryCo Inc. ("LibraryCo") has accomplished a number of significant improvements to the delivery of library services.
4. A working group of representatives of the Law Society and the County and District Law Presidents' Association, (LibraryCo shareholders) and the Toronto Lawyers Association have developed proposals to enable LibraryCo to move forward in the coming decades.
5. The County and District Law Presidents' Association has already voted in favour of the proposals that are now before Convocation for its consideration.

## Introduction and Background

6. During the years 1998 to 2000 the Law Society undertook the redesign of the delivery of law library services to the county law libraries. A working group, chaired by E. Susan Elliott, was established that produced three reports on establishing a new structure for delivery of library services that came to be known as the "blended system". The new system was designed to create central management of library services, while allowing for local input and management of libraries to meet particular needs of each law association.

7. Convocation approved the new design. It approved By-law 30 (County Law Libraries) on June 23, 2000. The Law Society and the County and Law Presidents' Law Association ("CDLPA") signed a unanimous shareholder agreement in April 2001 that established the Board structure and the framework for the operation of LibraryCo.
8. In the six years since LibraryCo came into being to implement the blended system many significant improvements have been achieved in the County and District Law Library system in Ontario, including,
  - a. the development of collection standards for county law libraries;
  - b. an increase in the availability and use of electronic resources in the county libraries;
  - c. the establishment of the *Desktop Delivery Initiative* that entitles lawyers whose association library is designated a 'local' library to access electronic resources from their personal desktop;
  - d. the establishment of a document delivery protocol to share resources among all libraries;
  - e. the use of central purchasing contracts that have benefited the entire system;
  - f. the development of the Advocat on-line reference service; and
  - g. the establishment of staffing standards for libraries with salary bands, introducing more consistency in hiring.
9. Despite these accomplishments, however, the shareholders have experienced communication problems over the years with LibraryCo, particularly respecting governance and budgeting issues that have impeded the progress of goals.
10. Efforts have been made to address governance and communication issues, as well as issues related to library user needs and integration of library resources. In April 2003 the Law Society commissioned a qualitative research study about current and future legal information and library service needs. The research was relevant not only to LibraryCo's operations, but to those of the Great Library, which had not been included in LibraryCo. The results were provided to LibraryCo in October 2003. The Law Society requested that LibraryCo examine the potential integration of services being provided by LibraryCo, the Great Library and CanLII.
11. At the same time, CDLPA was expressing some concerns about the efficacy of the model of governance for libraries, as well as concerns that LibraryCo was overlooking the needs of CDLPA and its associations despite the intent of the blended system.

#### The Integration Task Force

12. In response to shareholder requests, the LibraryCo Board approved the establishment of an Integration Task Force in the fall of 2004 to explore options for the most effective delivery of information services to the lawyers of Ontario. Members of the Task Force

included representatives from LibraryCo, the Law Society, CanLII, CDLPA and the Toronto Lawyers' Association ("TLA")<sup>1</sup>.

13. The Integration Task Force articulated the following features or issues that should be provided or addressed in the system for library services and legal information:
  - a. A supportive and robust range of services targeted to the needs of the members.
  - b. Ongoing evaluation and development of library and information resources based on current and future needs, rather than those that existed at the time the new system was introduced. The rapid change in technology and user profiles since LibraryCo's introduction make ongoing and meaningful evaluation of systems critically important.
  - c. Addressing the ongoing concerns that county law associations express about the emotional and operational attachment counties have to the space and personnel dedicated to library services.
  - d. Reduction of duplication in content, resources and delivery models used in the libraries, while still maintaining appropriate services.
  - e. Possible merger of the Great Library's operations with those of LibraryCo and consideration of the integration of the Great Library infrastructure with the TLA library infrastructure.
  - f. Consideration of how the CanLII system of information exchange fits into the model of library services in Ontario and how that resource may be more fully integrated.
  - g. Establishment of centralized strategic planning and direction so that all library-related services and structures are moving forward together to achieve success.
  - h. Establishment of appropriate common financial planning processes and audit controls.
  
14. Superimposed over these issues was the recognition of the need to fulfill the Law Society's mandate to ensure that the public of Ontario is served by lawyers with high standards of learning and competence. Task Force members, and the constituencies they represented, agreed that library and information resources continue to play a vital role in the achievement of this competence mandate.

#### Task Force Work

15. The Task Force undertook a survey of Law Society members to explore their legal information needs, both current and perceived future needs, and how they access legal

---

<sup>1</sup> Task Force members: Michael Adams (LibraryCo), Peter Bourque (CanLII until February 2006), Abe Feinstein (LibraryCo), Suzan Hebditch (LibraryCo), Gavin MacKenzie (LibraryCo/Law Society), Anne Matthewman (TLA), Diana Miles (Law Society), Janine Miller (LibraryCo), David Thompson (CDLPA).

and other information. This research was considered essential to the development of any plan for a comprehensive, efficient and cost effective library and information services model for the future.

16. *Strategic Counsel*, a consulting firm that has done previous work for the Law Society, was retained in April 2005 to survey members. The survey was developed and redrafted with consultation and input provided at all stages of the process by shareholders and stakeholders. The electronic survey was provided to 21,424 lawyers and there was a strong response rate of 15%, or 3165 respondents. The survey provides many insights into the use of library and legal information services by members. The survey analysis was extensive and the Executive Summary of results is attached as Appendix 1.
17. Having commissioned and obtained concrete information and statistics on current and future member needs, the Task Force turned to the structure of the entities currently providing those services and the issue of effective and efficient resource development and delivery.
18. Discussions addressed possible efficiencies to be achieved as a result of the proximity of the Great Library and the TLA library, which are within the same city block in Toronto.
19. As a result of these deliberations, the Law Society and the TLA have now entered into a Memorandum of Understanding that outlines the coordination and cooperation of the two Toronto library locations. The Memorandum focuses on the provision of the best services and support for the members accessing these libraries either in person or through electronic means. Discussions between the Law Society and the TLA considered,
  - a. potential integration of paper collections where appropriate;
  - b. reduction of duplication in the collections;
  - c. potential cross-training and shared assignments of staff to support high activity and low activity periods in either or both of the locations; and
  - d. other matters related to effective delivery of services.
20. As well, from the outset there was consensus in the Task Force that the Great Library should be a part of the LibraryCo system. The exclusion of the Great Library from the "system" has created a critical gap in the effective delivery of legal information and library services, as well as unnecessary duplication.

#### Shareholder Discussions

21. Having agreed on these points the Task Force was of the view that since many of the issues for discussion related to governance, the shareholders needed to articulate their views on the appropriate governance and operational model for LibraryCo as it moved forward to enhance the delivery of services. Having included TLA in the integration process it was agreed that governance and structural discussions should be undertaken by the Law Society, CDLPA and TLA.

22. The appointed representatives were Abraham Feinstein and Malcolm Heins for the Law Society, David Thompson and Rob Zochodne for CDLPA and Bruce Hutchison and Richard Wozenilek for TLA.
23. Discussions and negotiations took place over eleven months. The Law Society, CDLPA and TLA representatives were all strongly of the view that the framework and shareholder agreement for the delivery of library services in Ontario should be revisited. It was their view that a new governance structure and model of operations would best support a revised framework for the effective delivery of library services to benefit all lawyers in Ontario<sup>2</sup>. The CDLPA representatives were strongly of the view that the system must allow for greater local input and management of libraries to meet the particular needs of each Association.

#### Fundamental Principles

24. The participants in the discussions agreed that,
  - a. as information technologies develop and more members adopt the technology solutions available, the Law Society and its partners must continually work to ensure that library and information services are relevant, accessible, flexible and affordable for members of the legal profession;
  - b. a centralized system of library resources is still considered to be the most efficient and cost-effective organizational model for a group of libraries serving a defined client group such as lawyers; and
  - c. a new shareholder agreement should be negotiated to address the principles that are fundamental to the continuing existence and ongoing development of library and legal information services for Ontario lawyers.
25. In the course of the negotiations the participants also agreed that certain fundamental principles should govern the ongoing provision of library and legal information services to lawyers in Ontario. Those principles are as follows:
  - a. To facilitate effective policy-oriented decision-making, the Board overseeing county library development should have fewer members. For enhanced accountability the Board should have representation from the Law Society, CDLPA and TLA. TLA's separate representation on the Board reflects that although it works in conjunction with LibraryCo, it is a distinct entity in the library system.
  - b. The organizations' members on the Board should be prepared to take positions on issues and then be accountable to their organizations for Board decisions. In reporting Board decisions to the organizations that have appointed them Board members must be free to report openly on Board discussions.

---

<sup>2</sup> The Unanimous Shareholder Agreement, 2001, section 4.1, Policy Framework allows the Law Society, in consultation with CDLPA, to amend or replace the Blended System Framework of central management for libraries in Ontario.

- c. The county associations would be the designated employers of staff in their respective local libraries and would oversee the activities within their local libraries, including the payment of staff salaries and the appropriate application of funding to support services.
- d. The importance of maintaining space within the local courthouses and or other current locations for each county association should be recognized.
- e. The budget process for the new system should focus on consultation and participation among the parties, with approval of all parties obtained prior to presentation to Convocation for approval. Convocation would have the right to revise the proposed budget, in appropriate circumstances.

#### Changes in Organization and Structure

- 26. The changes to the Unanimous Shareholder Agreement and to By-law 30 and the proposed adoption of an Administrative Services Agreement put into effect the principles discussed above. The proposed Unanimous Shareholder Agreement, amendment to By-law 30 (with the current By-law included for reference) and the Administrative Services Agreement are set out at Appendices 2, 3 and 4.
- 27. The main revisions to the Unanimous Shareholder Agreement relate to,
  - a. the composition of the Board of Directors;
  - b. the stated governing principles and policy framework of LibraryCo and stated principles relevant to county libraries;
  - c. Law Society provision of administrative services; and
  - d. annual grants and budgeting.

#### Board Composition

- 28. Pursuant to Article 3 of the Unanimous Shareholder Agreement the Board would have a maximum of eight Directors<sup>3</sup> appointed by the shareholders as follows:
  - a. The Law Society may appoint up to four Directors;
  - b. CDLPA may appoint up to three Directors; and
  - c. TLA may appoint one Director.<sup>4</sup>

<sup>3</sup> The current Board of Directors has 15 members with representation from the Law Society, CDLPA, the OBA, the Courthouse Librarians Association, and the Toronto Lawyers Association.

<sup>4</sup> In its report to its members the CDLPA executive discussed the elimination of a member from the Ontario Court House Librarians' Association on the LibraryCo Board. It noted, "With the reduction of the Board from fifteen members to eight, only shareholders will be able to nominate the directors. However, there is nothing preventing shareholders from nominating a librarian to sit on the Board. On the current Board, the Toronto Lawyers Association representative is in fact their Executive Director who is also a librarian. In addition the CDLPA Library Committee is pleased to have two representatives from the Librarians Association as members. The CDLPA Executive believe that if these reforms are adopted and the new Shareholders' Agreement and

29. The TLA would become the owner of 25 special shares; CDLPA would own 75 special shares. These special shares would continue to be restricted to the appointment of directors. The Law Society would continue to own 100 common shares.
30. The Chair of LibraryCo would be appointed for a two-year term and the appointment would rotate among the Law Society, CDLPA and TLA.
31. Directors would be selected for their interest in library and legal information services and their practice circumstances. Directors would represent a variety of counties and appropriate practice diversity, including size of firm and practice area.
32. In addition, each shareholder would advise the other shareholders of appointments prior to the appointments being made and the shareholders would attempt to coordinate the nomination of directors to reflect geography, expertise and experience.
33. It is proposed that the current Law Society appointees to the LibraryCo Board be appointed to continue as the Law Society's appointees. Following the bench election Convocation may revisit this issue. The current appointees are Abraham Feinstein, Paul Henderson, Ross Murray and Gerald Swaye.

#### Governing Principles and Policy Framework of LibraryCo

34. Article IV of the proposed Unanimous Shareholder Agreement sets out the governing principles and policy framework for LibraryCo and its Board. The guiding principles of the Corporation have been revised to reflect the importance of consultation in making decisions and ensuring each county law library receives its annual grant in "a consistent and fair process after appropriate consultation and advice by, and from, the special shareholders."
35. Article IV also reflects the principle that county law libraries,
  - a. remain the employer of their respective employees;
  - b. receive appropriate staff and resources to support member needs as assessed by the Board; and
  - c. maintain space within Ontario courthouses for the purposes of housing a library and legal information facilities, at no cost to LibraryCo, the local law association, the Law Society, CDLPA, TLA or members.
36. These principles allow for change and development of the system as needs evolve. The Law Society, CDLPA and TLA appreciate that the law library system of the future will evolve to reflect electronic and other resources and changes to the availability of print materials. There will still be a need for centralized points of access (the physical law library) to provide affordable and comprehensive access to the full range of resources

---

the new Administrative Services Agreement are signed, the CDLPA Library Committee will play an even more important role in providing consultation and advice from the Associations and librarians to the CDLPA Executive and to the LibraryCo Board members.

available on a commercial basis. CDLPA would monitor how these developments affect the counties and their physical library spaces and would advise the Board, through its representative Board members, when change may be appropriate.

37. The Board would employ and direct a Board General Manager who would perform the duties of corporate secretary to the Board and provide assistance and support to the Board to meet its obligations to the shareholders. The assistance and support would include research and policy development, facilitation of discussion of library and legal information issues, preparation of meeting agendas and minutes, assisting with monitoring of the Administrative Services Agreement and consultation with shareholders and other parties as the Board requires.

#### Administrative Services Agreement

38. Pursuant to Article 4.3 of the Unanimous Shareholder Agreement, LibraryCo and the Law Society would enter into an Administrative Services Agreement, set out at Appendix 4.
39. The Law Society would provide administrative support and services to LibraryCo, including financial, budgeting and central administrative activities including necessary liaison with member libraries, resource development, technical services applications and other matters, some of which are enumerated in the Unanimous Shareholder Agreement.
40. The head office of LibraryCo would be relocated to the Law Society premises in Toronto. The integration of the Great Library operations, the streamlining of the Great Library and TLA library operations and the relocation of the LibraryCo operations would together provide greater resources for centralized services to the library and legal information system because of the reduction in duplication of services.
41. LibraryCo would pay an appropriate service fee to reimburse the Law Society for services performed pursuant to the Administrative Services Agreement. The service fee would be negotiated and allocated on an annual basis as part of the annual budgeting process.

#### Annual Grants and Budgeting

42. LibraryCo would continue to be responsible for overseeing and approving the preparation of all financial books and records previously required under the original shareholder agreement for presentation to Convocation of the Law Society.
43. As is the case now, included in each annual budget would be an annual grant for each local library for the upcoming fiscal year for purposes of funding staff and purchase of updated resources used in the library. The county law library would use the annual grant as it sees fit.
44. In order to receive an annual grant, each local law library would have to adopt and maintain fiscal and other management policies and procedures required by LibraryCo, including budgeting, financial controls and reporting to the Board. Every local law library receiving an annual grant would be subject to audit by the Law Society from time to time in respect of the receipts and expenditures related to the annual grant.

45. Pursuant to article 5.3 of the Unanimous Shareholder Agreement the LibraryCo Board would oversee the preparation of and approve a detailed operating plan and budget for the upcoming fiscal year. The budget would include LibraryCo's request in respect of the library levy for the coming year. Once the Board approves the budget it would be presented to the Law Society. If the Law Society does not agree with the budget the Board and the Law Society would cooperate to resolve any disputes with a view to developing a budget that is mutually acceptable. If agreement cannot be reached Convocation would have the authority to determine the level of funding for LibraryCo.

#### Moving Forward

46. On February 8, 2007 the CDLPA Board of Directors unanimously approved the form and substance of the proposed Unanimous Shareholder Agreement and the Administrative Services Agreement. The motion is set out at Appendix 5. The Chair of the CDLPA Library Committee provided a memorandum to Presidents and their Executive explaining the process and the reasons for which the CDLPA Executive recommends the Unanimous Shareholder Agreement and the Administrative Services Agreement. An excerpt from the CDLPA library committee report from November 2006 was also provided to trace the history of the process and discussions. The memorandum and excerpt are set out, with the permission of CDLPA, at Appendix 6.
47. On February 28, 2007 the CDLPA Presidents voted overwhelmingly in favour of moving forward with the execution of the Unanimous Shareholder Agreement and the Administrative Services Agreement.
48. In its first six years of operation, LibraryCo accomplished a number of significant improvements to the delivery of library services. Representatives of the shareholders and TLA recognized the importance of refining the LibraryCo structure to learn from the experience over the early years of operation and enable the Corporation to move forward for the coming decades.
49. The proposed new Board of LibraryCo will be charged with the task of producing policies that support the ongoing development of efficient, cost effective and valued services on behalf of all members of the profession in Ontario, regardless of geographic location.
50. The ease with which lawyers are able to find and use legal information is directly related to the ongoing competence of the legal profession.
51. In a constantly and rapidly changing landscape of information technology, development of the most effective library and legal information services system for Ontario's lawyers will require continued efforts to monitor, streamline and integrate the wealth of services currently available.
52. The proposed new LibraryCo structure will continue to support the original goal that members receive the best quality library and legal information services possible in accordance with the funding they are prepared to support.

## UNANIMOUS SHAREHOLDER AGREEMENT

FOR

LIBRARYCO INC.  
[Date]

FINAL CIRCULATION DRAFT 02.14.2007.

## UNANIMOUS SHAREHOLDER AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

BETWEEN:

THE LAW SOCIETY OF UPPER CANADA, a non-share corporation governed by the laws of the Province of Ontario, ("LSUC")

- and -

COUNTY &amp; DISTRICT LAW PRESIDENTS' ASSOCIATION, a non-share capital corporation governed by the laws of the Province of Ontario, ("CDLPA")

- and -

TORONTO LAW ASSOCIATION, a non-share capital corporation governed by the laws of the Province of Ontario, ("TLA")

- and -

LIBRARYCO INC., a non-share capital corporation governed by the laws of the Province of Ontario, (the "Corporation").

WHEREAS the Corporation has been incorporated and organized to undertake the central management of the Ontario county courthouse law library system in accordance with the objectives, policies and principles established and approved by LSUC from time to time, in consultation with CDLPA and TLA;

AND WHEREAS the authorized capital of the Corporation consists of an unlimited number of common shares and an unlimited number of special shares;

AND WHEREAS the issue and outstanding shares in the capital of the Corporation consist of 100 common shares and 100 special shares;

AND WHEREAS the parties to this agreement are the holders of the following number of issued and outstanding shares in the capital of the Corporation:

<u>Holder</u>	<u>Number and Class of Shares</u>
LSUC	100 common
CDLPA	75 special
TLA	25 special

AND WHEREAS the parties to this agreement wish to make arrangements regarding certain aspects of the organization of the affairs of the Corporation and their respective rights and obligations to the Corporation and each other;

NOW THEREFORE this agreement witnesseth that, in consideration of the mutual covenants and agreements contained in it, the parties agree with each other as follows:

#### ARTICLE I PRELIMINARY MATTERS

##### 1.1 Recitals.

Each party acknowledges and declares that the foregoing recitals, insofar as they relate to it, are true and correct.

##### 1.2 Prior Agreements.

Any other agreements regarding the matters contained in this agreement, whether written or oral, are terminated.

##### 1.3 Corporation's Confirmation of Knowledge.

The Corporation confirms its knowledge of this agreement and agrees to be subject to and abide by the provisions hereof, to the full extent of its capacity and ability at law to do so.

##### 1.4 Unanimous Shareholder Agreement and Inconsistencies.

The provisions of this agreement shall govern the operation and affairs of the Corporation to the maximum extent permitted by law, notwithstanding any conflicting provision in the articles or by-laws of the Corporation. In the event of a conflict between this agreement and any provision in the articles or by-laws of the Corporation, the parties hereto shall take or cause to be taken all such steps and proceedings as may be permitted under the Act to amend the articles or by-laws of the Corporation, as the case may be, to resolve such conflict so that the provisions of this agreement shall prevail to the maximum extent permitted by law. To the extent that this agreement specifies that any matter is to be approved by any of the shareholders of the Corporation, such shareholders shall have all of the rights, powers, duties and liabilities of the directors of the Corporation, and the discretion and power of the directors of the Corporation to manage and supervise the management of the Corporation is hereby

restricted and the directors of the Corporation are hereby relieved of their duties and liabilities in respect thereof.

1.5 Endorsement and Share Certificates.

The share certificates representing shares in the capital of the Corporation shall bear the following legend:

“The shares represented by this certificate are subject to all the terms and conditions of a unanimous shareholder agreement made as of the \_\_\_\_\_ day of \_\_\_\_\_, and are transferable only in accordance with the provisions of such agreement.”

ARTICLE II  
DEFINITIONS AND INTERPRETATION

2.1 Definitions.

As used in this agreement, the following terms shall have the following meanings:

- (a) “Act” means the *Business Corporations Act* (Ontario), as the same may be amended, restated or replaced from time to time;
- (b) “Board” means the board of directors of the Corporation;
- (c) “Business day” means a day on which banks are open for business in the City of Toronto, but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;
- (d) “County Law Library” means each county and district law library established by a county or district law association in pursuance of LSUC By-law # 30 and Regulation 708, R.R.O. 1990.;
- (e) “Extraordinary Resolution” shall mean a resolution of the Board of Directors requiring no fewer than five (5) directors of the directors present at any duly called and constituted meeting of directors.
- (f) “Fiscal Year” means the fiscal year of the Corporation, which shall end on December 31st in each year;
- (g) “Head Office” means the offices of the Law Society of Upper Canada, 130 Queen Street West, Toronto, Ontario, M5H 2N6;
- (h) “Material Decision” means any decision involving:
  - (i) the sale or disposition, directly or indirectly, of any material assets or property by the Corporation during any Fiscal Year, unless such sale or disposition has been expressly provided for in the Budget for that Fiscal Year;

- (ii) the Corporation making or committing to make during the Fiscal Year any material capital expenditure from its assets, unless such expenditure has been expressly provided for in the Budget for that Fiscal Year;
- (iii) the Corporation establishing, acquiring or otherwise becoming involved in any corporate entity or any partnership, joint venture or similar arrangement;
- (iv) the allotment or issuance, directly or indirectly, of any shares (or other securities) in the capital of the Corporation;
- (v) the Corporation taking any steps to wind-up, dissolve, reorganize or terminate its existence or taking any steps under any bankruptcy, insolvency, corporation or other applicable law in any jurisdiction in respect of its bankruptcy, liquidation, winding-up or dissolution or suspension of its general operations;
- (vi) the Corporation entering into any material contract, agreement, commitment or gift out of the ordinary course during any Fiscal Year, unless such contract, agreement or commitment has been expressly provided for in the Budget for that Fiscal Year;
- (vii) the Corporation borrowing any money or incurring any material other than in the ordinary course, unless such borrowing or incurrence has been expressly provided for in the Budget for that Fiscal Year;
- (viii) the creation of any mortgage, lien, charge or other form of encumbrance with respect to any of the assets of the Corporation or the granting of any guarantee by the Corporation; and,
- (ix) the Corporation altering the nature of its undertaking;
- (i) "Person" means an individual, partnership, unincorporated association, organization, syndicate, corporation, trustee, executor, administrator or other legal or personal representative;
- (j) "this agreement" means this agreement and all amendments and supplements hereto and all restatements and replacements hereof.

## 2.2 Construction.

In this agreement, except as otherwise expressly provided:

- (a) all words and personal pronouns relating to those words shall be read and construed as the number and gender of the party or parties require, and the verb shall be read and construed as agreeing with the required word and pronoun;
- (b) the division of this agreement into Articles and sections and the use of headings is for convenience of reference only and shall not modify or affect the interpretation or construction of this agreement or any its provisions;

- (c) references in this agreement to Articles and sections are references to Articles and sections of this agreement; and
- (d) when calculating the period of time within which or following which any act is to be done or step is to be taken pursuant to this agreement, the date which is the reference day in calculating such period shall be excluded. If the last day of such period is not a business day, the period in question shall end on the next business day.

ARTICLE III  
BOARD OF DIRECTORS AND MANAGEMENT OF THE CORPORATION

3.1 Composition of the Board of Directors.

The board of directors of the Corporation shall consist of a maximum of eight (8) directors appointed by the Shareholders as follows:

- (a) LSUC may appoint up to four (4) directors;
- (b) CDLPA may appoint up to three (3) directors; and
- (c) TLA may appoint one (1) director.

3.2 Election or Appointment of Directors.

The shareholders and directors of the Corporation shall take all actions that may be required to ensure the election, appointment or replacement of the nominees contemplated by this Article. Notice of appointments to the board shall be given to the President of CDLPA, the President of TLA and the Treasurer of LSUC prior to such appointment being made. Although there is no legal requirement to do so, the parties shall in good faith attempt to coordinate the nomination of directors in order to reflect geography, expertise and experience.

3.3 Board of Directors.

Immediately upon execution of this Agreement, the board of directors of the Corporation shall be constituted as follows:

<u>Director</u>	<u>Nominator</u>	<u>Expiry of Term</u>
	LSUC	
	CDLPA	

CDLPA

CDLPA

TLA

#### 3.4 Term of Directors.

The directors named in Section 3.3 shall hold office for a term expiring on the date set forth opposite such director's name in the chart set out in section 3.3. Each subsequently elected or appointed director shall hold office for a term expiring at the end of the first complete fiscal year of the Corporation following their appointment. Nothing in this Agreement shall prevent or inhibit an outgoing director from being re-appointed for a subsequent term by the Shareholder that she or he represents.

#### 3.5 Replacement of Directors.

Each of LSUC, CDLPA and TLA shall be entitled to replace its nominee, prior to the expiration of his or her term, upon delivery of a written notice to that effect to the board of directors of the Corporation and LSUC subject to the consultative requirements of section 3.2.

Upon resignation of any director or the expiration of his or her term in office, the relevant appointing Shareholder may, subject to the provisions of Section 3.2 hereof:

- (a) Replace the resigning director with a new director of their choosing; or
- (b) In the case of a director whose term has expired, re-appoint that director to a new term or replace them with a new director of their choosing.

#### 3.6 Audit and Other Committees of the Board.

The board of directors of the Corporation shall appoint from their numbers an audit committee and delegate to such committee such powers of the directors as it deems advisable from time to time.

Subject to section 3.8, the board of directors may appoint from their number such other committees of the board as it deems necessary or advisable from time to time and delegate to such committees any of the powers of the directors.

#### 3.7 Meetings of the Board.

Meetings of the Board of the Corporation may be called at any time by the Chair of the Board and will be held at the Head Office. If, in the event that no meeting has been held within the last three months, any director may call for a meeting of the Board, and such meeting shall be held at the Head Office. LSUC agrees to make a suitable meeting room available at the Head Office as and when required for meetings of the board of the Corporation. At least 15 business days before each meeting of the Board, each director shall receive a written notice from the individual calling the meeting indicating the time and place of the meeting, and providing a summary of the matters to be considered. A director may waive notice of a meeting by an instrument in writing delivered to the Corporation at or prior to the meeting and the attendance of a director at a meeting shall constitute a waiver of notice of the meeting (except

where a director attends a meeting for the express purpose of objecting to the transaction of business on the grounds that the meeting is not properly called). Notwithstanding the foregoing, the Chair of the Board shall ensure that the Board meets no less than once each fiscal quarter. The quorum for meetings of the Board of the Corporation shall be a majority of the directors then in office. Board meetings may be held by conference call, teleconference or other communication tool where all directors can be present, can hear each other, and can participate in the discussion by speaking.

3.8 Decisions of the Board.

All decisions of the board of directors of the Corporation shall be by a majority vote, other than Material Decisions which shall be by Extraordinary Resolution and thereafter require the consent of LSUC.

3.9 Officers of the Corporation.

The initial officers of the Corporation shall be:

<u>Name</u>	<u>Office</u>
	Chair of the Board
	Vice Chair

The Board may replace these officers at any time and may appoint such additional officers as it thinks fit from time to time, provided that, the Chair of the Board shall be an appointed director under section 3.1. The Chair shall alternate every two years among appointees of LSUC, CDLPA and TLA. The roles and responsibilities of each of the officers of the Corporation shall be determined by the Board from time to time.

ARTICLE IV  
PURPOSE OF THE CORPORATION AND MANDATE OF THE BOARD

4.1 Governing Principles and Policy Framework.

The shareholders recognize and agree that lawyers require access to current and historical legal information in order to properly practise law and that local libraries play a fundamental role in this regard. Lawyers are entitled to receive the best quality library and information services possible in accordance with the funding which lawyers are willing to provide. The shareholders will encourage the Board to deliver quality local library services and to provide access to information in a cost effective and efficient manner for the lawyers of Ontario. Notwithstanding the foregoing, the shareholders recognize the changing nature of legal information services and that this dynamic will undoubtedly impact on its decision making.

*Purpose of the Corporation*

The Corporation has been created for the purpose of carrying on the central management of the Ontario county law library system on a not-for-profit basis and in accordance with guiding principles that may be amended or replaced from time to time by Extraordinary Resolution.

### *Guiding Principles*

The Guiding Principles for the Corporation shall be as follows:

- (a) The Corporation shall:
  - i) establish policies and strategies for the delivery of library and legal information services for the law library system in Ontario;
  - ii) fund its activities in accordance with its budget as formulated under section 5.4 and funded through levies set and collected from LSUC members;
  - iii) ensure each county law library receives a portion of its budget through the section 5.4 grant in a consistent and fair process after appropriate consultation and advice by, and from, the special shareholders; and
  - iv) without obligation, consider funding, and receiving the input of, the CDLPA Library committee which committee is comprised of lawyers, library professional and association staff from across Ontario.
  
- (b) The shareholders acknowledge the principle that the County Law Libraries, a current list of which is attached hereto as Schedule "A":
  - i) be and remain the employer of their respective employees;
  - ii) receive appropriate staff and resources to support member needs as assessed by the Board from time to time; and,
  - iii) maintain space within Ontario court houses, at no cost to the Corporation, local law association, LSUC, CDLPA, TLA or its members, for the purposes of housing a library and other legal information facilities.

#### 4.2 Board General Manager

The Corporation shall employ and direct a Board General Manager ("Board Manager") who shall perform the duties of corporate secretary and to the Board and provide assistance and support to the Board for its obligations under this shareholders agreement and the respective obligations and rights under the Administrative Services Agreement. The Board Manager's assistance and support for the Board shall include: research and policy development; facilitation of discussion of library and legal information issues; the preparation of meeting agendas and minutes; assisting the Board in the monitoring of the Administrative Services Agreement; and consultation with shareholders and other parties as may be required by the Board.

#### 4.3 Administrative Services Provided by LSUC.

The Corporation and LSUC will enter into and maintain an Administrative Services Agreement between them so as to enable the Corporation to carry out its responsibilities and

obligations. The current approved form of the Administrative Services Agreement is attached as Schedule "B" ("Administrative Services Agreement").

The Corporation will pay LSUC appropriate service fees to reimburse LSUC for the services it performs pursuant to the Administrative Services Agreement ("Service Fee"). The Service Fee will be negotiated and allocated on an annual basis as part of the annual budgeting process.

During the currency of the Administrative Services Agreement, all administrative support and services will be provided to the Corporation by LSUC, including financial, budgeting, and central administrative activities such as necessary liaison with the member libraries, resource development, technical services applications, and other matters, and including but not necessarily limited to ("Administrative Services"):

- Development and implementation of technical services.
- Acquisitions, cataloguing, information technology infrastructure decisions and implementation.
- Provision of a roving librarian(s) to visit Ontario county law libraries and provide assistance and support in the on-going services for members.
- Contract and other negotiations with information services/products providers to all of the Ontario county law libraries (for instance, LexisNexis, Carswell, etc.).
- Assisting the Corporation and the Board in day-to-day interactions and activities with the Ontario county law libraries necessary to facilitate the timely and efficient application of information resources for the benefit of the members.
- Implementation of strategic plans and activities as directed and approved by the Board.
- Administering the annual budgeting preparation and processes.
- Maintain such accounts as necessary and in support of quarterly and annual reporting to the Board and Convocation of LSUC.
- Monitoring of the finances allocated to LibraryCo, payment of transfers of funds to counties, payments to vendors and suppliers.
- Administer banking, funds investment, grant payments and allocations.
- Reporting to the Board on the status of the administration and other activities.
- Assisting the Board to develop and bring plans for library and information services forward to the membership (development, implementation, communications, marketing, etc.).

#### 4.4 Incorporation of By-law 30.

By-law 30 (County Law Libraries) of LSUC, as amended from time to time, is hereby incorporated into this agreement by reference and shall govern the business and affairs of the Corporation.

#### 4.5 Performance Criteria.

The Board of the Corporation in formulating policies and strategy shall establish business objectives and performance criteria for the delivery of legal information and library services by the local libraries and LSUC under the Administrative Services Agreement.

A summary of these policies, strategies, objectives and performance criteria together with a report as to performance as against the aforementioned shall be included by the Corporation in its Annual Report, provided for in Section 5.2 hereof, as: (i) a requirement of annual funding for the Corporation and shall be delivered on an annual basis to shareholders; and, (ii) a continuation of the Administrative Services Agreement with LSUC.

### ARTICLE V RECORDS AND REPORTING

#### 5.1 Books and Records.

Proper books of account and records shall be kept by the Corporation at its registered office and entries shall be made therein in accordance with generally accepted accounting principles. Each of the shareholders and the directors of the Corporation and their respective representatives shall have access at all reasonable times to examine and copy such book of account and records. In addition, the Chief Financial Officer of LSUC may, at any time and from time to time, request access to any financial and corporate information relating to the Corporation's operations. The Corporation may request access, from time to time, to LSUC books and records related to the Administrative Services Agreement, the process of the setting and collection of library levies and the provision of central management services.

#### 5.2 Annual Report.

Within 90 days after the end of each fiscal year of, the Corporation shall prepare, and the Board shall approve, an annual report that sets out the following information:

- (a) audited financial statements for the Corporation as well as details of all expenditures and investments of the Corporation's monies during the Fiscal Year;
- (b) a report setting out the major activities of the Corporation during the Fiscal Year and any analysis of the extent to which the Corporation is achieving its policy and strategic objectives;
- (c) a summary of the major activities that the Corporation proposes to undertake during the current Fiscal Year and the status of the long-range planning activities of the Corporation.

The annual report of the Corporation must be delivered first to the Board and thereafter to the Finance and Audit Committee of the LSUC.

### 5.3 Periodic Reports.

The Corporation shall be responsible to prepare quarterly financial reports during the fiscal year on the operations and affairs of the Corporation. These periodic reports first must be presented to the Board, and thereafter to the Finance and Audit Committee of the LSUC, CDLPA and TLA.

At least ninety (90) days prior to the commencement of each Fiscal Year of the Corporation, the Board shall oversee the preparation of and approve a detailed operating plan and budget for the operation of the Corporation for the upcoming Fiscal Year (the "Budget"). The Budget shall include the request from the Corporation in respect of the library levy for the next ensuing Fiscal Year. Once approved, the Budget shall be forthwith presented to LSUC for its approval. If LSUC does not approve the Budget as presented, the Board and LSUC shall cooperate in good faith to resolve any disputes with a view to developing a Budget that is mutually acceptable, prior to the commencement of the Fiscal Year. In the event a mutually acceptable Budget is not developed within a reasonable period of time, nothing herein shall fetter the budgetary discretion of LSUC to determine the level of funding for the Corporation.

### 5.4 Annual Grants to County Law Libraries.

Included in each annual Budget will be an annual grant for each local library for the budgeted fiscal year for the purposes of funding staff and purchase or update of resources used in the library, to be used by a County Law Library as it sees fit ("Annual Grant"). The list of Annual Grants will be appended to the Budget as an appendix or schedule. The Annual Grants shall require the approval of the Board.

Annual Grants paid to any County Law Library which are not used in the budgeted fiscal year will be (i) returned to the Corporation, or (ii) carried forward and taken into account by the Corporation in setting the next ensuing Annual Grant.

In order to receive an Annual Grant, each County Law Library shall have to adopt and maintain such fiscal and other management policies and procedures as the Corporation may require from time to time, including budgeting, financial controls, and reporting to the Corporation. Every County Law Library receiving an Annual Grant shall be subject to audit by LSUC from time to time in respect of those receipts and expenditures related to the Annual Grant.

### 5.5 Auditor.

An auditor for the Corporation shall be appointed by LSUC.

ARTICLE VI  
DISTRIBUTIONS BY THE CORPORATION

6.1 Dividends and other Distributions.

The Board may not declare, and the Corporation may not pay, any dividends of any kind whatsoever on its shares or otherwise distribute any cash, property or assets to any of its shareholders (whether in their capacity as shareholder or otherwise).

6.2 Repurchase or Redemption of Shares.

The Board may not authorize the Corporation to repurchase or redeem, and the Corporation may not repurchase or redeem, any of its outstanding shares at any time or from time to time, except for a nominal amount with the prior written approval of LSUC and the shareholder whose shares are being repurchased or redeemed.

6.3 Dissolution.

In the event that the Corporation is liquidated or dissolved (whether voluntarily or involuntarily), immediately prior to such liquidation or dissolution, the Corporation shall transfer (and be deemed to have transferred) all of its remaining cash, property and assets, if any, to any non-profit corporation operating in Ontario (other than any shareholder of the Corporation) as determined by LSUC.

6.4 Income.

Without limiting the other provisions of this Article, the Corporation shall not make any income payable to, or otherwise available for the benefit of, or distribute any property to any shareholder of the Corporation.

ARTICLE VII  
TRANSFER OF SHARES

7.1 Warranty as to Ownership.

Each shareholder of the Corporation represents and warrants that it is the registered and beneficial owner of that number of shares set forth beside its name in the recitals to this agreement, free and clear of all liens, claims, charges, security interests, encumbrances or rights in favour of other Persons.

7.2 Prohibition on Unauthorized Transfers.

Except with the unanimous written consent of each of the shareholders of the Corporation and the unanimous approval of the directors on the Board, no shareholder shall transfer any shares in the capital of the Corporation. In the event that any shareholder of the Corporation proposes to transfer, directly or indirectly, any shares in accordance with this section, it shall be a condition of such transfer that this agreement be amended to recognize the new shareholder and to reflect any other amendments that the parties deem necessary or advisable in the context of such transfer.

ARTICLE VIII  
GENERAL CONTRACT PROVISIONS

8.1 Term of Agreement.

This agreement shall take effect on the date hereof and shall remain in full force and effect until such dates as may be designated by LSUC.

8.2 Implementation of this Agreement.

The parties hereto shall sign such further and other documents, cause such meetings to be held, cause such resolutions to be passed and such by-laws to be enacted, exercise their votes and influence and do and perform (and cause to be done and performed) such further and other acts or things as may be necessary or desirable in order to give full effect to this agreement and every part of it.

8.3 Notices.

Except as expressly provided in section 3.7, all notices, requests, demands or other communications required or permitted to be given by one party to another under this agreement shall be given in writing by personal delivery, facsimile or by registered mail, postage prepaid, addressed to such other party or delivered to such other party as follows:

- |     |                        |   |
|-----|------------------------|---|
| (a) | if to LSUC:            | The Law Society of Upper Canada<br>130 Queen Street West<br>Toronto, Ontario<br>M5H 2N6<br><br>Attention: Chief Executive Officer |
| (b) | if to CDLPA:           | County & District Law Presidents' Association<br>100 Cavell Avenue<br>Hamilton, Ontario<br>L8L 7E5<br><br>Attention: Chair        |
| (c) | if to TLA:             | Toronto Lawyers Association<br>Court House Library<br>361 University Avenue<br>Toronto, Ontario<br>M5G 1T3                        |
| (d) | if to the Corporation: | LibraryCo Inc.<br>130 Queen Street West<br>Toronto, Ontario<br>M5H 2N6<br><br>Attention: Chair                                    |

or at such other address of which written notice is given and such notices, requests, demands or other communications shall be deemed to have been received when personally delivered, on the next business day after sending if sent by facsimile, or, if mailed, on the fourth business day after the mailing thereof; provided that if any such notice, request, demand or other communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities on or before the fourth business day after the mailing thereof, such notice, request, demand or other communication shall be deemed to have been received only upon personal or facsimile delivery.

#### 8.4 Counterparts.

This agreement may be executed in counterparts and each of which so executed shall be deemed to be an original and such counterparts together shall be one and the same instrument.

#### 8.5 Time of the Essence.

Time shall be of the essence of this agreement and of every part hereof.

#### 8.6 Governing Law.

This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. All of the parties to this agreement hereby irrevocably attorn to the non-exclusive jurisdiction of the courts of the Province of Ontario.

#### 8.7 Entire agreement.

This agreement constitutes the entire agreement between the parties with respect to the matter herein. The execution of this agreement has not been induced by, nor do any of the parties rely upon or regard as material, any representations, promises, agreements or statements whatsoever not incorporated herein and made a part hereof. This agreement shall not be amended, altered or qualified except by a memorandum in writing signed by all the parties.

#### 8.8 Waiver.

Except as expressly provided in section 3.7, no party to this agreement shall be deemed or taken to have waived any provision of this agreement unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver.

#### 8.9 Severability.

If any Article, section or portion of any section of this agreement is determined to be unenforceable or invalid, that unenforceability or invalidity shall not affect the remaining portions of this agreement and such unenforceable or invalid Article, section or portion thereof shall be deemed to be severed from the remainder of this agreement.

8.10 Equitable Remedies.

The parties acknowledge that the provisions contained in this agreement are reasonable, and if any party breaches the terms of this agreement the remaining parties, in addition to any other rights and remedies, shall be entitled to equitable remedies that may include an injunction to stop the contravention of this agreement or an order for specific performance to compel compliance with this agreement.

8.11 Assignment and Binding Effect.

This agreement shall not be assignable by any of the parties hereto. This agreement shall enure to the benefit of the parties hereto and their respective successors and administrators.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first above stated.

THE LAW SOCIETY OF UPPER CANADA

Per: \_\_\_\_\_  
Gavin MacKenzie, Treasurer

COUNTY & DISTRICT LAW  
PRESIDENTS' ASSOCIATION

Per: \_\_\_\_\_  
Paul Kowalyshyn, Chair

Per: \_\_\_\_\_  
Randall S. Bocock, Vice Chair & Secretary

TORONTO LAW ASSOCIATION

Per: \_\_\_\_\_  
Bruce Hutchison, President

Per: \_\_\_\_\_  
Richard R. Wozenilek, Vice President

LIBRARYCO INC.

Per: \_\_\_\_\_  
Chair of the Board

Schedule "A" – County Law Libraries  
as of February, 2007

Schedule "B" – Administrative Services Agreement  
[See Appendix 4]

Appendix 3

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 30  
[COUNTY LAW LIBRARIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 29, 2007

MOVED BY

SECONDED BY

THAT By-Law 30 [County Law Libraries], made on June 23, 2000 and amended on March 22, 2001 and May 24, 2001, be further amended as follows:

1. Subsections 3 (2) and (3) of the By-Law are deleted and the following substituted:

Classes of shares

(2) The Corporation shall have two classes of shares as follows:

1. A class of shares, to be issued to the Society.
2. A class of shares, giving the County and District Law Presidents' Association the exclusive right to elect three directors and the Toronto Law Association the exclusive right to elect one director, to be issued to the County and District Law Presidents' Association and the Toronto Law Association as follows:
  - i. 75 percent of the shares to be issued to the County and District Law Presidents' Association.
  - ii. 25 percent of the shares to be issued to the Toronto Law Association.

Catégories d'actions

(2) La Société a les deux catégories d'actions suivantes :

1. Une catégorie d'actions qui doivent être émises en faveur du Barreau.

2. Une catégorie d'actions qui doivent être émises en faveur de l'Association des bâtonniers de district et de comté lui donnant le droit exclusif d'élire trois administrateurs et à la Toronto Law Association, lui donnant le droit exclusif d'élire un administrateur, de la façon suivante :
- (i) 75 pour cent des actions émises à l'Association des bâtonniers de district et de comté.
  - (ii) 25 pour cent des actions émises à la Toronto Law Association.

#### Directors

- (3) The Corporation shall consist of eight directors.

#### Administrateurs

- (3) La Société est composée de huit administrateurs.

### BY-LAW 30

Made: June 23, 2000

Amended:

March 22, 2001

May 24, 2001

### COUNTY LAW LIBRARIES

#### INTERPRETATION

#### Definitions

1. In this By-Law

“association” means a county or district law association formed under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it;

“Corporation” means the corporation established as required under section 3;

“county law library” means a law library established by an association;

“trustees”, where an association is incorporated, means the directors of the corporation.

Interpretation: “county law library funded by the Corporation”

2. In this By-Law, “county law library funded by the Corporation” means a county law library established under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it and in existence on the day on which this By-Law comes into force or a county law library established with the approval of the Corporation after the day on which this By-Law comes into force.

## LIBRARY CORPORATION

Corporation to be established

3. (1) The Society shall cause a corporation to be established in accordance with this section for the purposes of,

- (a) establishing and administering a system for the provision of law library services and programs by county law libraries funded by the Corporation;
- (b) establishing policies and priorities for the provision of law library services and programs by county law libraries funded by the Corporation based on the financial resources available to the Corporation;
- (c) providing to associations funding to pay for the operation of county law libraries funded by the Corporation;
- (d) monitoring and supervising the provision of law library services and programs by county law libraries funded by the Corporation, including establishing guidelines and standards for the organization and operation of county law libraries funded by the Corporation and for the provision of law library services and programs by county law libraries funded by the Corporation; and
- (e) advising Convocation on all aspects of the provision of law library services and programs by county law libraries funded by the Corporation, including anything that affects or may affect the demand for or quality of law library services and programs.

Classes of shares

(2) The Corporation shall have two classes of shares as follows:

- 1. A class of shares, to be issued to the Society.
- 2. A class of shares to be issued to the County and District Law Presidents' Association giving the Association the exclusive right to elect one director.

Directors

(3) The Corporation shall consist of eight directors.

## COUNTY LAW LIBRARIES

Application to establish county law library

4. (1) An association that wishes to establish a county law library to be operated by the association and funded by the Corporation shall apply to the Corporation for its approval to establish the county law library.

Same

(2) An application under subsection (1) shall contain the information required by the Corporation.

Operation of county law library

5. (1) A county law library funded by the Corporation shall be operated by the association in accordance with any guidelines and standards established by the Corporation.

#### Provision of law library services and programs

(2) A county law library funded by the Corporation shall provide library services and programs in accordance with any guidelines, standards, policies and priorities established by the Corporation.

#### Library materials

6. (1) The trustees of an association shall continue to hold in trust for the Society all library materials of its county law library that the trustees held in trust for the Society before the day on which this By-Law comes into force.

#### Same

(2) Subject to subsection (3), the trustees of an association shall hold the library materials of its county law library in trust for the Society.

#### Same

(3) Library materials acquired by an association for its county law library after the day on which the Corporation is established shall be held by the trustees of the association in trust for the Corporation.

#### Return of library materials to Society

(4) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Society to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Society to the Society, subject to any other directions from the Society.

#### Return of library materials to Corporation

(5) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Corporation to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Corporation to the Corporation, subject to any other directions from the Corporation.

#### Failure to return library materials

(6) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (4), or to the Corporation, as required under subsection (5), the Society or the Corporation, as the case may be, may take such steps as it considers advisable to obtain the library materials that were required to be returned to it, and the association shall reimburse the Society or the Corporation for any expense incurred by it in so doing.

#### Access to law library services and programs

7. A county law library funded by the Corporation shall give access to its law library services and programs to,

- (a) every member of the Society, regardless of whether a member is also a member of an Association;

- (b) judges of Ontario courts;
- (c) Ontario justices of the peace; and
- (d) members of boards, commissions or other tribunals established or provided for under Acts of Parliament or the Legislature in Ontario.

## FINANCING

### Provision of funds by Society

8. The money paid to the Corporation for its purposes shall be paid out of such money as is appropriated therefor by Convocation

### Suspension, reduction of funding

9. (1) Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of the Corporation.

### Notice to Corporation

(2) Before taking action under subsection (1), Convocation shall give the board of directors of the Corporation notice of its intent and a reasonable opportunity to comply with the relevant provisions of this By-Law or to provide the required information.

### Budget

10. (1) The Corporation shall submit its annual budget for the next fiscal year to the Finance and Audit Committee by such date as may be specified by the Chair of the Finance and Audit Committee.

### Same

(2) The Corporation's annual budget shall be in such form as may be specified by the Chair of the Finance and Audit Committee.

### Financial statements

11. (1) For the purposes of clause 12 (2) (a), the Corporation shall prepare annual financial statements for each fiscal year in accordance with generally accepted accounting principles.

### Audit

(2) For the purposes of clause 12 (2) (a), the financial statements of the Corporation shall be audited by a public accountant.

### Annual report

12. (1) The Corporation shall submit an annual report to Convocation within four months after the end of its fiscal year.

### Contents

- (2) The annual report shall contain,
  - (a) the audited financial statements of the Corporation;
  - (b) a report on the affairs of the Corporation; and

(c) such other information as Convocation may request.

Other reports

13. Convocation may at any time require the Corporation to report to it on any aspect of its affairs or to provide information on its activities, operations and financial affairs as Convocation may request.

Appendix 4

FINAL CIRCULATION DRAFT 02.14.2007.

ADMINISTRATIVE SERVICES AGREEMENT

Dated \_\_\_\_\_, 2007

BETWEEN:

THE LAW SOCIETY OF UPPER CANADA, a non-share corporation governed by the laws of the Province of Ontario, ("LSUC")

AND:

LIBRARYCO INC., a corporation governed by the laws of the Province of Ontario (the "Corporation").

WHEREAS LSUC is a shareholder of the Corporation;

AND WHEREAS Article 4.2 in the Unanimous Shareholder Agreement for the Corporation dated [insert date] ("USA") provides that LSUC shall provide administrative support and services to the Corporation ("Administrative Services") in return for payment of service fees ("Service Fees"), as therein set out.

AND WHEREAS the LSUC represents that it has the resources, expertise and infrastructure necessary to efficiently and effectively deliver administrative and technical support and services to the Corporation and its lawyer users across Ontario.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, LSUC and the Corporation hereby agree as follows:

1 INTERPRETATION

1.1 The recitals set out above are true and correct. In the event of any conflict between the terms of the Agreement and the terms of the USA, the terms of the USA will prevail. Any capitalized terms not defined in this Agreement but defined in the USA will have the meaning attributed to them in the USA.

2 TERM

2.1 Term. This Agreement shall become effective as of the date of this Agreement as set out above, and shall continue in full force and effect continually thereafter until the earlier of:

- 2.1.1 Termination in accordance with the provisions of this Agreement; and
  - 2.1.2 Such date as may be designated by either the common shareholder or both of the special shareholders of the Corporation, but not earlier than the then current fiscal year of LSUC.
- 2.2 Termination by Mutual Consent. This Agreement may be terminated at any time on the mutual written agreement of both parties.
- 2.3 Termination for Cause. Either party may terminate this Agreement by virtue of a default by the other party hereunder, provided the party not in default gives at least one month's prior written notice including particulars of the default complained of, a demand for rectification of same, and notice that this Agreement may be terminated if the default in question is not rectified by the end of the notice period.
- 3 SERVICES
- 3.1 Administrative Services. LSUC shall perform the Administrative Services provided for in the USA, and such other services as may be agreed to by LSUC and the Corporation from time to time.
- 3.2 Reports. LSUC shall prepare and deliver such reports as are provided for in the USA, and as may be agreed to by LSUC and the Corporation from time to time.
- 4 SERVICE FEES, PAYMENT AND TAXES
- 4.1 Service Fees. The Corporation shall pay LSUC the Service Fees provided for in the USA, namely appropriate service fees to reimburse LSUC for the Administrative Services. Service Fees will be negotiated and allocated on an annual basis as part of the annual budgeting process for the Corporation. The agreed Service Fees for the first twelve months of this Agreement are set out in Schedule "A" attached.
- 4.2 Expenses. The Corporation shall reimburse LSUC for any reasonable, out-of-pocket, third party expenses (the "Expenses") incurred by LSUC's employees in connection with the performance of the Services.
- 4.3 Payment. Service Fees and Expenses shall be invoiced and due and payable monthly in arrears, plus GST or any other applicable sales or VAT taxes (if any), or on such other timetable as the parties may agree on from time to time.
- 5 WARRANTY
- 5.1 LSUC hereby warrants to the Corporation that:



Toronto, Ontario  
M5H 2N6

Attention: LibraryCo. Board Manager

With copies to all Shareholders of the Corporation at the addresses for service set out in the USA;

Or at such other address of which written notice is given and such notices, requests, demands or other communications shall be deemed to have been received when personally delivered, on the next business day after sending if sent by facsimile, or, if mailed, on the fourth business day after the mailing thereof; provided that if any such notice, request, demand or other communication shall have been mailed and if regular mail service shall be interrupted by strikes or other irregularities on or before the fourth business day after the mailing thereof, such notice, request, demand or other communication shall be deemed to have been received only upon personal or facsimile delivery.

## 11 ENTIRE AGREEMENT

- 11.1 This Agreement and the USA set forth the entire agreement between the parties pertaining to the services to be provided by LSUC to the Corporation, and no modification, variation or amendment of it shall be binding upon the parties unless it is in writing and signed by both parties. The parties acknowledge that there are no collateral agreements, representations, warranties, arrangements, understandings or otherwise, written or oral, pertaining to the subject matter of this Agreement.

## 12 COUNTERPARTS

- 12.1 This Agreement, and any amendment, addendum or other agreement between the parties related in any way to the subject matter of this Agreement, (i) may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument; and (ii) counterparts may be executed either in original or faxed form and the parties adopt any signatures received by a receiving fax machine as original signatures of the parties.

## 13 GOVERNING LAW

- 13.1 This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract. All of the parties to this Agreement hereby irrevocably attorn to the exclusive jurisdiction of the courts of competent jurisdiction in the City of Toronto, Province of Ontario.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date first above stated.

## THE LAW SOCIETY OF UPPER CANADA

Per: \_\_\_\_\_  
Malcolm Heins, Chief Executive Officer

## LIBRARYCO INC.

Per: \_\_\_\_\_  
Chair of the Board

## Schedule "A" – Service Fees for First 12 Months of Agreement

LAW SOCIETY OF UPPER CANADA  
ADMINISTRATIVE FEE FOR LIBRARYCO INC.

	<u>ANNUAL COST</u>
Administration of LFO grant applications and reporting	\$7,500
Separate company for accounting	\$5,000
Purchasing, excluding negotiation of electronic contracts	\$4,000
Receiving function	\$4,000
Accounts payable	\$10,000
Banking arrangements/cash management	\$6,000
Account maintenance and reconciliation	\$5,000
Monthly and other reporting	\$15,000
Audit expenses – not annual but rotating associations – 4 per year	\$25,000
Payroll and HR and benefits administration	\$10,000
Accommodation expenses	\$8,000
Information Services expenses	\$10,000
Budgeting – this includes allocations for each local association library	\$25,000
Financial Management/Supervisory function	\$2,000
General Management – Director PD&C, Manager Legal Information and administrative support: negotiation of all contracts, planning, support to Board, Committees and Convocation, local library visits, coordination of annual education events for librarians, etc.	\$35,000
Assumption of acquisitions activities on behalf of local libraries	\$10,000
Cataloguing for system (contract already in place and being performed)	\$35,000
Website convergence and administration (annually)	\$15,000
Assumption of salary and benefits for Roving Librarian and Project Manager for AdvoChat	\$125,000
Administration of travel (Roving Librarian), CDLPA and COLAL committee meetings	\$10,000
Marketing and communication costs	\$20,000
Governance costs such as support of committees, development plans, etc.	\$15,000
	<u>\$5,000</u>
Other	<u>\$406,500</u>

## LIBRARY COMMITTEE REPORT PLENARY

### LIBRARY CO. REFORM

At the May Plenary we reported on the reform discussions taking place regarding the governance of Library Co. A resolution was passed allowing us to continue those discussions. A copy of that resolution is included with these materials.

Those discussions have continued since Plenary through the working group six comprised of me, David Thompson as Chair of the CDLPA Library Committee, Rob Zochodne, CDLPA Executive Member, Malcolm Heins and Abe Feinstein of the Law Society and Bruce Hutchison and Richard Wozenilek of the Toronto Lawyers Association.

#### Background

In the late 1990's a wide ranging consultative process was undertaken for the purpose of improving the provision of library services to our members. As a result of that consultative process, it was determined that our County and District Law Libraries should be administered pursuant to what came to be known as the "blended system". This was to allow for the central management of library services while allowing for local input and management of libraries to meet the particular needs of each Association.

The Elliott Report laid out the basis of the blended system and provided a five year plan for its implementation.

It was decided that there should be a universal funding by means of the library levy for every member of the Law Society. This universal funding was expected to greatly reduce or eliminate the subsidies provided by the local Associations for their library collections. It was also hoped that by means of universal funding, disparities between libraries across the system might be reduced.

Library Co. was formed and a unanimous Shareholders Agreement was entered into between CDLPA and the Law Society of Upper Canada. The Shareholders Agreement did not reflect all that CDLPA had hoped for. Most important, it did not formally recognize each Association's place in the library system nor the importance of County and District law libraries in the system.

The Board of Directors of Library Co. was established in the Shareholders Agreement. It consists of 15 members representing CDLPA, the Law Society, the OBA, the Courthouse Librarians Association, and the Toronto Lawyers Association.

Library Co. undertook the implementation of the blended system. Over the last five years significant improvements have been made across the province.

Under the direction of Library Co. Executive Director Suzan Hebditch, collections have been updated and improved. A core collection has been developed. The roving librarian, Wendy Hearder-Moan has assisted many of our Associations with organizing their collections and maximizing their buying power. Librarians across the system have been working more closely together to assist each other in meeting the needs of our members across the province. Central supply contracts have been negotiated to the advantage of our entire system. Electronic resources of been made available to all of our members through our libraries and through the Desktop Delivery Initiative.

The Advokat on-line reference service has been started and is available to lawyers province wide from their own computers. Please take the time to visit the Advokat demonstration booth at Plenary.

In spite of the many benefits of these electronic resources, the transition to those resources has not been particularly smooth or comfortable. While we all recognize that major changes are underway with shifts away from traditional paper resources, there is wide spread concern about a rush to electronics and the premature abandonment of other resources where there is no electronic alternative. In addition, electronic resources have their own limitations that cannot be ignored as we continue to integrate those resources into our library system.

On the personnel side, staffing standards for libraries have been implemented and salary bands established. Many Associations have had Suzan's assistance when hiring new staff.

There is no doubt that in the last five years, our library system has been significantly improved.

From an administrative perspective, CDLPA and the Law Society and Library Co. have had some serious communication problems. It was the view of CDLPA and many of our Associations that we were being overlooked by Library Co. The blend in the "blended system" was not there.

More recently, under the leadership of Gavin McKenzie as Chair of Library Co., and now as Treasurer of the Law Society, communications between the shareholders and with Library Co. have been greatly improved. Under the chairmanship of Abe Feinstein and with the support of the Law Society, the improvements in communication have continued. Wide ranging consultation is taking place on budget and governance issues. The 2007 budget consultation referred to above is a good example.

In February of 2006, the Integration Task Force of Library Co. reported to the Library Co. Board. As part of its job of examining ways in which the Great Library could be integrated into the library system, the Integration Task Force re-examined the governance and structure of Library Co. We reported on the Integration Task Force at the May Plenary. As a result of that report, the group of six representatives from the Law Society, CDLPA, and the Toronto Lawyers Association have been discussing reforms to the govern and structure which recognize the following principals:

1. CDLPA and the Law Society should have equal representation on the library governing body. The Toronto Lawyers Association should also be represented;
2. The Associations should be the employers of the library staff and should manage the County and District law libraries;
3. There should be a guaranteed level of funding for each library in relation to both staff and collections;
4. There should be a physical library for each Association located in the court house;
5. The budget and process needs to be more consultative, both before and after the decisions are made;
6. The Great Library and the Toronto Lawyers' Association Library should be integrated;

7. The representatives on the governing board must be free to report openly and candidly to their organizations.

It is fair to say that there is a general feeling that the current model of the Library Co. Board is obsolete and that is partly a function of the accelerated pace towards electronic resources, and partly a reflection of what we have learned as Library Co. has developed.

#### WHERE ARE WE NOW?

Following the May Plenary we exchanged detailed drafts of a new unanimous Shareholders Agreement incorporating the principals referred to above.

Most recently, we have been discussing a new Board of eight members, consisting of three CDLPA representatives, one TLA representative, and four Law Society representatives. The Association of Courthouse Librarians has requested a seat on the Board as well. That is still under discussion.

As referred to in the context of our 2007 budget discussions, funding continues to be a problem. Many Associations continue to subsidize the collections budgets significantly. During the budget consultations this past summer, it became apparent that the subsidies cannot continue indefinitely. The Universal Funding Objective is in serious jeopardy. Over the summer, our group of six held teleconferences to discuss the fine points of the reform initiative.

The Law Society has maintained that there is considerable duplication of services as between the Law Society/Great Library and Library Co. The Law Society has proposed that the administrative infrastructure of Library Co. be provided pursuant to an "Administrative Services Agreement". In the preliminary discussions of that idea at the May Plenary, and in detailed discussions with the CDLPA Library Committee this October, serious objections have been raised to the proposal. Chief among the concerns is the loss of any employees accountable to the Board of Library Co. Not only would the Board lose its administrative support and control, the librarians at our Associations would lose their "point person" and would have no one they could rely on when they needed help. The fear is that the Law Society "take over" our libraries and we would be unable to direct or even influence the future of our libraries and the provision of all of our information services. Those concerns have been expressed to the Law Society.

On October 11, 2006, a face to face meeting took place between Abe Feinstein, Malcolm Heins and Diana Miles of the Law Society, Orm Murphy, Rob Zochodne and Randall Bocock of CDLPA, and the Toronto Lawyers Association (David Thompson was unable to attend on account of trial commitments). The issue surrounding the implementation of an Administrative Services Agreement were discussed in great detail.

We believe that as a result of those discussions, considerable progress has been made. The draft unanimous Shareholders Agreement recognizes the seven main points listed above. Most important, it recognizes the importance of each Association and its library.

We believe there is now a consensus that the Board of Library Co. requires its own independent administrative support. That resource person would be available to the Board and to the Librarians across our system. The services provided by that person would be recognized in any Administrative Services Agreement.

As part of this continuing reform initiative, the TLA and the Great Library have been streamlining their collections and procedures and continue to pursue the integration of the two libraries.

The timetable for achieving these changes may not be quite as aggressive as we anticipated in May. However, it remains the case that if these significant reforms are to be undertaken, then we probably need to have them resolved before the next Bencher Election.

David S. Thompson, Chair  
CDLPA Library Committee

FOR DECISION  
APPROVAL OF TASK FORCE ON LICENSING AND  
ACCREDITATION

MOTION

53. That Convocation approve the appointment of a Task Force with the Terms of Reference set out at Appendix 1.

Introduction and Background

54. In recent months, a number of issues relevant to the licensing and accreditation of lawyers have come to the attention of the Committee. The Committee established a licensing and accreditation working group to begin considering the issues. The members of the working group are Vern Krishna (Chair), Constance Backhouse, Carole Curtis and Laurie Pawlitzka. The Treasurer has also attended the working group's meetings. Staff members to the working group are Diana Miles and Sophia Sperdakos.
55. Each of the issues the working group has begun examining raises significant questions about the legal education landscape. In the Committee's view they overlap one another in a number of ways and reflect the need for a comprehensive consideration of the licensing and accreditation process. Although Convocation has previously determined that a comprehensive study of the continuum of legal education should be undertaken, previous studies have in fact tended to focus on individual educational components.<sup>5</sup>

---

<sup>5</sup> In January 2001 Convocation approved the following Motion, but the study envisioned did not in fact take place:

That a Task Force be struck to design, and in consultation with all stakeholders, propose a method of developing a co-ordinated continuum of education, including pre-call education, to enable practicing lawyers to acquire and maintain competence. The Task Force shall defer consideration of continuing legal education until after Convocation has considered the forthcoming Professional Development and Competence Committee's Report concerning the Competence Mandate.

56. The issues that have come to the Committee's and the working group's attention include,
- a. The need to determine the most effective way for the Law Society's established competency requirements for call to the bar to be achieved within the pre-and-post-call legal education continuum. The consideration of this question necessitates an analysis of each level of the legal education continuum - law school, aspects of the licensing process (specifically the skills program and articling) and post-call learning – not as individual units, but as components of a whole that together should produce candidates with the required competencies for call to the bar;
  - b. the outdated criteria for approving law degrees. No review of these requirements has been undertaken in more than 35 years. They reflect a reality of legal education that is outdated and does little to assist universities interested in opening law faculties to understand what is necessary to establish a faculty that will produce an approved law degree. Convocation has already determined that a review of these criteria should be undertaken;
  - c. the projected increase in the number of candidates entering the licensing process, from both domestic and international sources, that will have a serious effect on the viability of the current licensing process. This issue has an urgency to it that cannot be ignored<sup>6</sup> ; and
  - d. the passage of the *Fair Access to Regulated Professions Act* that articulates the need for admission processes to be transparent, objective, impartial and fair. This requires the Law Society to be sure its processes meet these criteria.
57. These issues will require significant time and intensive study. Given the scope of the project the Committee is of the view that the most appropriate structure for the study is a Task Force.

---

<sup>6</sup> A number of factors are currently in play that will likely result in the number of candidates in the licensing program rising even more significantly. In addition there will continue to be pressures to facilitate quicker access to the licensing process. The factors in play include the following:

- a. The University of Ottawa has increased the size of its student body.
- b. Bond University in Australia has a significant number of Canadian students who it is anticipated will return to Canada for admission. Although not all of them will come to Ontario, a significant number may.
- c. Lakehead University has applied for a law school with an annual entry of 25-30 students.
- d. There is likely to continue to be the standard 4% increase in registration levels, many from international jurisdictions.
- e. Efforts are increasing by those seeking to have international law degrees apply on par with Canadian LLB degrees.
- f. The Law Foundation of Ontario is studying the desirability of part-time LLB studies.

58. The Committee is also of the view that the study must be done in a collaborative way, with consultation and joint discussion with a wide variety of interested parties such as,
- a. law schools and Law Deans, both within and outside of Ontario;
  - b. the Ontario Bar Association;
  - c. the County and District Law Presidents' Association;
  - d. other legal organizations such as the Advocates' Society and the Criminal Lawyers' Association, and those representing Aboriginal and equity-seeking groups;
  - e. large law firms that hire articling students;
  - f. government lawyers;
  - g. the National Committee on Accreditation working group on NCA standards;
  - h. the Federation of Law Societies of Canada;
  - i. the Government of Ontario;
  - j. Legal Aid Ontario;
  - k. The Law Foundation of Ontario; and
  - l. the judiciary.
59. Only with such broad consultation and exchange of ideas can the study result in meaningful recommendations that address the issues raised. The Committee anticipates that a study of this nature will take approximately 18 months to complete.
60. The Committee is also of the view that to properly undertake the inquiry it may be necessary to engage in focused research or surveys on particular issues.
61. The Committee estimates that the Task Force will require a budget in 2007 and will require additional funds in 2008. For the 2007 fiscal year it anticipates the need for a minimum of \$30,000 for consultation expenses. This would include the cost of meetings, travel and accommodation for those consulted. It also anticipates the need for an additional \$20,000 for any research to be undertaken, for a total of \$50,000 in 2007. The Task Force would return to Convocation before the end of 2007 with any request for funding for 2008.
62. For 2007 funding would have to come from the Law Society's contingency fund, which has just under \$600,000 in it. The Committee believes that this project goes to the heart of the Law Society's core mandate, addressing as it does critical issues respecting admission and competence. Moreover, given the urgency of some of the issues that will come before it, particularly as they relate to articling, it cannot wait until 2008 to begin its work.
63. On March 15, 2007, the Finance and Audit Committee considered the Committee's request for funding and voted in favour of it.
64. The current members of the working group have begun considering the issues that will occupy the Task Force and are in a good position to develop the approach to consultation in the next few months. The Committee believes that the current members of the working group should continue as the first members of the Task Force. Following the bench election, Convocation would be free to adjust the membership. The Committee is of the view that, at a minimum, the Task Force would benefit from the addition of more members following the election. It proposes that the Task Force should

be populated now with the understanding that it would seek Convocation's approval for Task Force membership no later than June 2007 Convocation.

65. The Committee has prepared proposed terms of reference for Convocation's consideration, set out at Appendix 1.

Appendix 1

### PROPOSED TERMS OF REFERENCE

Convocation authorizes the establishment of a Task Force on Licensing and Accreditation.

The current membership of the Task Force will consist of Vern Krishna (Chair), Constance Backhouse, Carole Curtis, and Laurie Pawlitza. The Task Force will return to Convocation no later than June 2007 respecting Task Force membership.

The Task Force will,

- undertake an analysis of and make recommendations on the most effective means by which the Law Society's established competency requirements for call to the bar of Ontario can be achieved within the pre-and-post-call continuum of legal education;
- review the criteria for approving law degrees, and make recommendations on more appropriate criteria; and
- analyze the impact of increased numbers of applicants for admission to the bar of Ontario, from domestic and international sources, on the viability of the current licensing process, and make appropriate recommendations.

To facilitate its analysis and review, the Task Force will engage in comprehensive consultation with interested parties such as,

- law schools and Law Deans, both within and outside of Ontario;
- the Ontario Bar Association;
- the County and District Law Presidents' Association;
- other legal organizations such as the Advocates' Society and the Criminal Lawyers' Association, and those representing Aboriginal and equity-seeking groups;
- large law firms that hire articling students;
- government lawyers;
- the National Committee on Accreditation working group on NCA standards;
- the Federation of Law Societies of Canada;
- the Government of Ontario;
- Legal Aid Ontario;
- the Law Foundation of Ontario; and
- the judiciary.

The Task Force will have a budget of \$50,000 from the contingency fund for the fiscal year 2007, to be used for consultation and research expenses. The Task Force will make any requests for funding for the fiscal year of 2008 during the course of the annual budget cycle.

The Task Force will report to Convocation at least as follows:

September 2007:	Progress Report on Consultation Process Budgetary requests for 2008
January 2008:	Interim Report
March 2008:	Further Interim Report
June 2008:	Tentative Date for Final Report

#### FOR DECISION

#### LAKEHEAD UNIVERSITY – LAW SCHOOL PROPOSAL

#### MOTION

66. That in response to Lakehead University's letter dated February 12, 2007 the Law Society,
- a. advise Lakehead of its continued concerns about the law school proposal; and
  - b. advise Lakehead that Lakehead's proposal will be forwarded to the Federation of Law Societies of Canada for the National Committee on Accreditation to assess and make recommendations to provincial and territorial law societies on recognition of the program.
67. That a copy of the Law Society's correspondence be sent to the Ministry of Training, Colleges and Universities.

#### Introduction and Background

68. In January 2007 the Committee provided a report to Convocation requesting that Convocation defer a decision respecting Lakehead University's law school proposal. Convocation approved the Committee's recommendation that the concerns the Committee had expressed about the proposal be communicated to Lakehead for response and that the Committee's report be provided to the Ministry of Training, Colleges and Universities. The Committee was to return to Convocation once a reply from Lakehead was received, with further recommendations to Convocation.
69. The Committee's report was sent to Lakehead University following Convocation's approval. The Committee's concerns as expressed in its Report that Convocation approved, were as follows:
- a. It would not appear that Lakehead has engaged in any meaningful discussions with the other law schools or the Council of Law Deans to gain insight into how to ensure the viability of a northern law school. The proposal is very general and basic. In the letter from Neil Gold, Vice-President, Academic, University of Windsor, he discusses the significant changes that have occurred in legal

education and the importance of a law school structure that affords students the greatest opportunities for development. He notes:

We would be very pleased to convene a group with which you might wish to discuss your proposal. Such a group would be comprised of individuals who have experience in modern legal education and have thought about these profound changes that have occurred in the legal academy. I believe that the Council of Law Deans' members would be a good choice, among others. Such discussions would no doubt assist your planning and the filling out of your proposal.

The Committee considers this to be a very helpful and important suggestion for Lakehead to consider.

- b. One of the central features of the proposal is the idea that graduates will obtain cooperative placements and articling positions in the north. Yet the Committee has serious concerns about whether the research into northern articling placements and law firm commitment to taking cooperative students has been thorough enough. The proposal states that Lakehead sent surveys to 123 firms in Northwestern Ontario. Approximately one-third of the questionnaires were returned and the proposal says that the results demonstrated significant support. However this conclusion is based on support for 10-15 placements from those who responded to the survey and another 20-30 positions if "a similar ratio is assumed for the approximately two-thirds not returning the surveys."

The Committee questions whether any interest can be imputed to those who did not respond to the survey. Moreover, given the focus on a cooperative program, each student would be seeking two placements, one for the co-op placement and one for articling, thereby doubling the number of positions that must be found.

- c. Given that Lakehead does not appear to have had detailed consultations with law schools it is not clear how it can state that unmet faculty needs "will be fulfilled by teaching arrangements with other Ontario law schools."

70. A letter from Lakehead has now been received, which is set out at Appendix 1.

#### Committee's Ongoing Concerns

71. The letter from Lakehead University does not, in the Committee's view, address Convocation's concerns. The letter dismisses some of the concerns as unfounded, but provides no additional material to support that view. In response to Convocation's concerns about the lack of detail on how the program would unfold, the letter dismisses these by stating that such details will be worked out after the law school is created.
72. While the creation of a law school program is a fluid undertaking that evolves over time, the plans creating it must be sufficiently fleshed out to allow for a determination that the LL.B. degree of graduates of such a program would be recognized in Ontario and Canada for the purposes of admission into the licensing programs of those jurisdictions.

73. The Lakehead proposal continues to be vague on a number of important points and in the Committee's view the reply does nothing to alleviate the concerns already expressed.

#### Role of the Federation of Law Societies of Canada

74. Subsequent to Convocation's consideration of the Lakehead issue in February 2007 the Committee was advised of additional information about the approval process for law school curriculum.
75. The ultimate recommendation process for approving law programs was in fact extended to the Federation of Law Societies of Canada. The Federation website states the following:

With the dissolution of the Joint National Committee on Legal Education in February 1994, the Federation has decided to transfer the responsibilities of the Portability Subcommittee to the National Committee on Accreditation. The Portability Subcommittee was formed by the Federation to assess and recommend to the Law Societies the recognition of new full-time, part-time or joint degree programs from all Canadian law schools.

76. What this means is that the NCA must be provided with the Lakehead proposal for assessment and recommendations to the Federation regarding recognition of the program. The NCA recommendation would be provided to all the law societies so that each can determine whether graduates of a Lakehead program would be recognized for purposes of admission to the bar of each province and territory. The Committee is of the view that the NCA review is the next appropriate step in the process.

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

- (1) Copy of LibraryCo/Integration Task Force Survey, February 2006.  
(Tab A, Appendix 1, pages 18 - 45)
- (2) Copy of "Schedule "A" County Law Libraries as of February 2007.  
(Tab A, pages 64 - 66)
- (3) Extract of Minutes from County and District Law Presidents' Association Board of Directors Meeting, February 8, 2007.  
(Tab A, Appendix 5, page 81)
- (4) Copy of a Memorandum from David Thompson, Chair of The CDLPA Library Committee dated February 12, 2007 re: Proposed reforms to LibraryCo and the Unanimous Shareholders' Agreement.  
(Tab A, Appendix 6, pages 82 – 86)
- (6) Copy of a letter from Frederick F. Gilbert, President and Vice-Chancellor, Lakehead University to Sophia Sperdakos, Policy Counsel dated February 12, 2007 re: Law Society of Upper Canada consideration of Lakehead University's Law School Proposal.  
(Tab C, Appendix 1, 101 – 102)

Re: Proposed Changes to LibraryCo, including the Unanimous Shareholder Agreement

It was moved by Ms. Dickson, seconded by Mr. Feinstein, that Convocation,

- a. approve the Unanimous Shareholder Agreement for LibraryCo Inc. set out at Appendix 2 and authorize the Treasurer to sign on behalf of the Law Society;
- b. approve amendments to By-law 30 relating to county law libraries, as set out at Appendix 3, in accordance with the revised Unanimous Shareholder Agreement;
- c. approve the drafting of necessary amendments required to the Articles of Incorporation of LibraryCo;
- d. approve the Administrative Services Agreement between the Law Society and LibraryCo set out at Appendix 4 and authorize the CEO, Malcolm Heins, to sign on behalf of the Law Society;
- e. appoint the following people to be named as the four Law Society Directors of the Board of LibraryCo:
  - i. Abraham Feinstein
  - ii. Paul Henderson
  - iii. Ross W. Murray
  - iv. Gerald A. Swaye

Carried

Re: Approval of Task Force on Licensing and Accreditation

It was moved by Ms. Dickson, seconded by Ms. Warkentin, that Convocation approve the appointment of a Task Force with the Terms of Reference set out at Appendix 1 of the Report.

The following were accepted as friendly amendments to the terms of reference:

- (1) That sole practitioner and small firm lawyers be added to the list of groups to be consulted.
- (2) That the words “of lawyers” be added to the name of the Task Force, so it would read,

“Task Force on Licensing and Accreditation of Lawyers”.

The motion as amended was approved.

The item for decision in the Report regarding Lakehead University – Law School Proposal was withdrawn.

Mr. Swaye raised concerns about the process followed in the development of the report recommending the elimination of the Specialist Certification Program.

## REPORT OF THE GOVERNANCE TASK FORCE

Mr. Heintzman presented the Report.

Governance Task Force  
March 29, 2007\*

---

Second Report to Convocation

Task Force Members  
Thomas Heintzman (Chair)  
Vern Krishna (Vice-Chair)  
Sy Eber  
Abraham Feinstein  
Janet Minor  
William Simpson

Purposes of Report: Decision

Prepared by the Policy Secretariat  
(Julia Bass - 416-947-5228 and Jim Varro – 416-947-3434)

\* Deferred from February 22, 2007 Convocation.

## GOVERNANCE TASK FORCE RECOMMENDATIONS

### 1. Motion

#### RECOMMENDATION 1

That Convocation approve the following with respect to planning and prioritizing matters for Convocation's policy agenda:

- a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
- b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,

- i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
- ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
- iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
- iv. The mandate of the Committee is to
  - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
  - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
  - C. report annually to Convocation on the status of Convocation's priorities.

#### RECOMMENDATION 2

That Convocation establish a standing committee called the Audit Committee which shall replace and include the mandate of the existing Audit Subcommittee of the Finance and Audit Committee and such other matters as Convocation may direct.

#### RECOMMENDATION 3

That Convocation replace the existing Finance and Audit Committee with a Finance Committee whose mandate will be to continue the functions of the present Finance and Audit Committee that are not assigned to the Audit Subcommittee, including the following:

- a. to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;
- b. to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation; and
- c. to undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation.

#### RECOMMENDATION 4

That Convocation implement the following measures for benchers whose rights and privileges as a member of the Law Society are suspended:

- a. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, following a finding of professional misconduct or conduct unbecoming a barrister and solicitor or

- paralegal ceases to be a bencher as of the date of the order suspending the rights and privileges or license, or as of the date of the unsuccessful appeal order with respect to the suspension;
- b. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of an interlocutory suspension order is not permitted to act as a bencher as of the date of the order and for the duration of the suspension;
  - c. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of a summary order under sections 46 to 49 inclusive of the Law Society Act is not permitted to act as a bencher as of the date of the order. If the bencher fails within three months of the date the suspension begins to take the action that will end the suspension, he or she ceases to be a bencher.

## GOVERNANCE TASK FORCE

### SECOND REPORT TO CONVOCATION

#### A. INTRODUCTION, OVERVIEW OF GOVERNANCE PRINCIPLES AND SUMMARY OF RECOMMENDATIONS

##### The Task Force's Mandate

2. In accordance with its terms of reference<sup>1</sup>, the Governance Task Force has been meeting since May 2006 to review a number of issues relating to the Society's governance structure and processes, including:
  - a. the effectiveness of Convocation as a board;
  - b. the methods of priority-setting for Convocation; and
  - c. efficient and effective co-ordination of corporate governance with the operational management of the Law Society under the leadership of the Chief Executive Officer.
3. As requested by Convocation, the Task Force has also been considering specific issues related to
  - a. the Treasurer's election process, including certain provisions of By-Law 6, and
  - b. procedural issues relating to Committee recommendations and motions before Convocation.
4. The Task Force has met on fourteen occasions to date. It has provided one report to Convocation in the fall of 2006, dealing with
  - a. certain procedures for the Treasurer's election in By-Law 6, and
  - b. matters relating to the setting of Convocation's agenda.

These issues related to paragraph 2 of the terms of reference at Appendix 1.

---

<sup>1</sup> See Appendix 1 for the terms of reference.

5. This report includes recommendations that relate to paragraph 1 of the terms of reference.

#### The Relationship Between The Law Society, Corporate Governance and the Public Interest

6. Good governance results from institutionalizing best practices. Institutionalizing best practices makes those who govern accountable for observing and applying them. Consistent application of these practices will demonstrate to the public, in whose interests the Society governs, that its governance is sound.
7. The Law Society's public interest governance mandate, previously in the Society's Role Statement, is now reflected in the *Law Society Act*, which was recently amended by Bill 14, the *Access to Justice Act, 2005*<sup>2</sup>. Section 4.1 and 4.2 of the Act state:

4.1 It is a function of the Society to ensure that,

(a) all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and

(b) the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

Principles to be applied by the Society

4.2 In carrying out its functions, duties and powers under this Act, the Society shall have regard to the following principles:

1. The Society has a duty to maintain and advance the cause of justice and the rule of law.
2. The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
3. The Society has a duty to protect the public interest.
4. *The Society has a duty to act in a timely, open and efficient manner.*
5. Standards of learning, professional competence and professional conduct for licensees and restrictions on who may provide particular legal services should be proportionate to the significance of the regulatory objectives sought to be realized.

(Emphasis added)

---

<sup>2</sup> This legislation received Royal Assent on October 19, 2006.

8. In the Task Force's View, the duty expressed in paragraph 4 above means that the Law Society as an organization must implement and adhere to an internal structure that ensures timely, open and efficient governance by Convocation.
9. The Task Force sought an articulation of general principles of good corporate governance to inform its review. The Task Force drew on research already completed on governance at the Society and found some of the objectives of good governance identified in the May 15, 1996 Report of the Committee on Governance Restructuring ("A New Architecture for Law Society Governance") to be instructive. They are as follows:
  - a. Vision. Convocation should be focused on outward vision rather than internal administrative detail, and on the results it wishes to achieve for clearly defined groups or constituencies rather than on the minutiae of operations and program details.
  - b. Direction. Convocation should focus on setting policies and long-term strategic goals for the Law Society. Benchers should turn their attention regularly to setting the overall purpose and agenda for the Society--why it exists and who it should serve.
  - c. Definition of roles and responsibilities. Bencher and staff roles must be clearly distinguished and appropriate accountability defined.
  - d. Sound management. Convocation must ensure that the Society and all programs for which it is responsible are managed efficiently and effectively.
  - e. Effective self-management (of Convocation). Convocation must ensure that the structures and procedures it adopts will allow it to function effectively, e.g. committee structure, bencher conduct guidelines, meeting rules, role of benchers, Treasurer, etc.
10. These objectives helped the Task Force to focus on the issues that its mandate directed for review. For example, the second objective directly addresses the need for priority planning, which receives extensive treatment in this report.
11. With the above standards and principles in mind, the Task Force examined ways to improve the Law Society's corporate governance.
12. The examination is necessary because increased scrutiny by the public of the way in which Convocation governs its affairs is inevitable. As a result of media attention to the affairs of governments, corporations and regulating bodies, the public at large has a heightened expectation that directors of corporations and other persons occupying fiduciary and regulatory positions will effectively and diligently discharge their responsibilities.
13. This expectation is even greater in the context of a self-governing profession. In the Task Force's view, good corporate governance is a key factor in successful self-regulation of the legal profession. Weaknesses in corporate governance can ultimately affect the integrity of regulation and could jeopardize the privilege of self-regulation. Moreover, as the Law Society assumes the role as the regulator of paralegals, its capacity to fulfil its full regulatory responsibilities will be under additional stresses. For all these reasons, the credibility and effectiveness of Convocation as a governing body is of utmost importance.

## The Task Force's Review and Recommendations

14. The Task Force's broadly-stated terms of reference allowed it to focus on governance issues that it considered of present importance. The Task Force's work was informed by the results of previous governance studies at the Society, concerns about the Society's governance identified by benchers and others and the Task Force's own views on the current issues facing Convocation as a board.
15. The Task Force reviewed a number of issues, including:
  - a. Priority planning as a function of strategic planning;
  - b. The structure for financial oversight and budget preparation.
  - c. Convocation's relationship with the Chief Executive Officer as it relates to co-ordination of governance and operations;
  - d. The size of Convocation as a board and how Convocation is constituted;
  - e. The frequency of Convocation; and
  - f. How a change in the licensed status of a lawyer or paralegal who serves as a bencher affects his or her governance role.
16. In this second report, the Task Force focuses on three ways in which Convocation can maintain and enhance its credibility and effectiveness. These include:
  - a. A structure for planning Convocation's priorities (Recommendation 1 and section B of the report beginning on page 10) through the establishment of a priority planning process whereby Convocation identifies and decides on the issues which are of highest priority to the Law Society. A Priority Planning Committee will assist Convocation both at the front end, in helping benchers to identify priorities and to assist Convocation in enunciating those priorities, and at the back end by reviewing Convocation's success in meeting its priorities;
  - b. A standing committee, reporting directly to Convocation, that will have responsibility for the Finance and Audit Committee's Audit Subcommittee functions (Recommendations 2 and 3 and section C of the report beginning on page 26). In this way, Convocation will give importance and visibility to maintaining the highest standards of financial reporting and financial practices;
  - c. A means to deal with benchers whose license with the Society is suspended for disciplinary or other reasons (Recommendation 4 and the last part of section D of the report beginning on page 34). Benchers who are suspended will be disqualified from being benchers, emphasizing the importance of the bencher's role as a fiduciary.

### B. SETTING CONVOCATION'S PRIORITIES

17. Priority-setting for Convocation has been discussed on a number of occasions within the past few years by committees, task forces and Convocation. These discussions are usually linked to the goal, at the highest level, of ensuring that the Law Society's self-governance of the legal profession is sound and continues to focus on the public interest. At a practical level, benchers realize that the Law Society's effectiveness as a regulator is linked to its effectiveness at the board (Convocation) level, and from time to

time this prompts a review of how Convocation assesses and deals with priorities for its policy agenda.

18. While this subject appears at regular intervals on Convocation's agenda, the need exists within organizations like the Law Society, especially in times of change, to assess their structure and determine if improvements can be made for more efficient and effective governance. Organizations are not static, and change, whether prompted from within and from external sources, can be seen as an opportunity for renewal at the board level.
19. The Law Society is entering a period of significant change. It is now preparing to regulate paralegals, which will have an effect – perhaps a profound effect – on the Society's operations and on Convocation's role in setting policy that directs the operational initiatives.
20. In terms of the public constituency, paralegal regulation may be one of the most significant challenges for the Society. This new role for the Society will place greater scrutiny on the way in which the Society operates. That scrutiny is likely to extend to the manner in which it governs itself. In terms of governance, the Society's new role will also impose new and substantial costs on the Society, including financial costs and the time of its operational staff.
21. Generally, as the Society's Chief Executive Officer has recently noted, unless the Law Society can better manage its priorities, it may be required to increase its budget to fulfill Convocation's directives. This would mean a corresponding increase in the fees required to be paid by its licensees. As one observer who reviewed the Society's governance indicated, Convocation from time to time approves more initiatives than staff has the resources to work on.<sup>3</sup> In the Task Force's view, good governance promotes economic efficiency, and ineffective governance has a cost.
22. For these reasons, an assessment of the manner in which Convocation establishes and carries out its policy agenda is timely. In addition, no crises exist that might cause the Society to address a governance issue with a focused but perhaps narrow solution. This permits the Society to engage in some broader thinking about its governance policies and the specific issue of priority-setting.
23. As noted in the introductory section of this report, the Task Force reflected on a number of principles of good governance. The second principle is especially important when discussing priority setting: "Direction: Convocation should focus on setting policies and long-term strategic goals for the Law Society. Benchers should turn their attention regularly to setting the overall purpose and agenda for the Society--why it exists and who it should serve."

#### Priority-Setting and Current Governance Policies

24. Past consideration of processes for planning priorities for Convocation date from the early 1990s, and focused on using an executive or advisory committee as a way to

---

<sup>3</sup> See the reference to Tim Plumptre's report at paragraph 28.

assist Convocation in effectively and efficiently sorting out priorities and planning a policy agenda.<sup>4</sup>

25. A concerted effort to address Law Society governance in the mid-1990's resulted in Convocation's adoption of written Governance Policies, including processes to establish the priorities for the Law Society's policy objectives.<sup>5</sup> In Part II of the Governance Policies, entitled 'Governance Process', the following is stated:

- A. Governance Commitment
  - 1. Convocation will govern as a self-regulating body so as to ensure that the Law Society of Upper Canada is *accountable to the Ontario public and the legal profession by establishing and delivering appropriate goals* and avoiding unacceptable outcomes.
- B. Governing Approach
  - 1. In governing, the benchers will emphasize strategic leadership, policy making, and the creation of *effective accountability mechanisms*. They will *define values, and plans*, looking outward and forward.
- C. The Role of Convocation
  - ...
  - 3. Convocation shall
    - a) Govern the affairs of the Society effectively and *efficiently, guided by long term objectives*.
    - ...
    - d) Focus on long term goals rather than the methods of achieving them.

(emphasis added)

26. In fact, the Governance Policies specifically require Convocation, and the benchers, to establish its and their priorities annually, and to do so in advance of, and not as part of, the budget process. Part II. H. Governance Process of the Governance Policies states as follows:

- H. Annual Bencher Planning Cycle
  - 1. *To accomplish its job to govern with a long term strategic perspective*, Convocation shall on an annual basis,

---

<sup>4</sup> Research and Planning Committee reports in 1991 and 1992 referenced a subcommittee report's findings on the idea of an executive committee responsible for determining the political and financial priorities of the Law Society. This initiative was not pursued, but the issue was picked up again, following the adoption of Governance Policies as discussed in this report, in 2000, with the 2000 Strategic Plan, noted later in this report.

<sup>5</sup> These Policies arose from adoption of the Carver Model of Corporate Governance, in which Convocation sets its missions and "ends" as the benefits to be achieved or results the Law Society wishes to accomplish, and "means" as the processes and procedures (programs) that will fulfill or implement the ends.

- a) *re-examine its Ends policies*; and
  - b) set a *twelve month* agenda for its deliberations and policy development;
2. *These activities shall precede the creation of the budget for the following year.*

(emphasis added)

27. Accordingly, while Convocation adopted the above policies as a method for considering and determining priorities, it has not taken the next logical step, which would be to institute a strategic planning cycle. It is the Task Force's view that the time has come to recommend ways to carry this into effect, as Convocation has already mandated that it will establish its priorities, in accordance with the Policies, on a yearly basis.

#### Views on Law Society Governance That Informed the Task Force

##### The Plumptre Report

28. The Task Force reviewed a report prepared in September 2003 for the Chief Executive Officer by Tim Plumptre of the Institute on Governance<sup>6</sup>. Mr. Plumptre's report offered a critique of the Society's current governance structure, based on his research, including interviews with benchers. After noting the historical studies on governance at the Society, Mr. Plumptre had this to say about priority planning:

Among the issues most commonly raised are the lack of any manner of setting priorities, and the need for some kind of mechanism to help guide the work of Convocation. A salient development, now more than two decades old (1981), was a decision by Convocation to adopt an Executive Committee with the apparently anodyne role to help set priorities, direct work to the right place and ensure implementation of Convocation decisions. This arrangement remained in place until 1983 when the then Treasurer decided to disband it because she believed it was causing too much divisiveness.

...

Interviewees stressed the lack of a process to set priorities systematically. "We start the year with ten ideas and we wind up with sixty. We can't possibly cover all this material. So the result is that *de facto*, staff wind up setting the priorities, which is not the way it should be." A related problem is that Convocation approves more initiatives than staff has the resources to work on.

The timing of a motion tends to determine its precedence or priority rather than its substance: "earlier motions get more attention even if they are not very important. If everyone wants to speak for one minute we'll spend an hour on it. There's no discipline or party process."

Similarly, "once an issue is studied, there is no process for determining its ripeness for debate" other than the Treasurer's personal judgement.

---

<sup>6</sup> *Governance At The Law Society Of Upper Canada: Report*, Tim Plumptre, Institute On Governance, September 25, 2003. This report was included with the May 2006 Convocation Material.

The process of agenda-setting was criticized as undemocratic as well as inefficient: "under the present system if a Treasurer does not want to put an issue on the agenda of Convocation he can just stop it." One interviewee's impression was that many Benchers resented this kind of autocratic behaviour. The ability of the Treasurer, if so inclined, to manipulate the system to his or her own ends sometimes leads to "a very unhappy group of Benchers."

...

When it comes to reform, the Society is a victim of its own governance system: reform runs into the sand due to considerations such as the size and unwieldy nature of Convocation and the lack of an effective priority-setting process, (coupled with the apparent disinterest of many lawyers in the procedures and policies that support what is actually the central role of the Society - governance).

29. The Task Force, while acknowledging that Mr. Plumptre's critique was based in part on anecdotal evidence, felt that the concerns he raised have merit.

### Other Law Societies

30. As a matter of interest, the Task Force reviewed the governance structures in other law societies in Canada and noted a number of differences between many of the law societies and the Law Society of Upper Canada. Most other law societies have an executive committee and some have a "ladder" to the equivalent position of Treasurer. For example, at the Law Society of British Columbia, the second vice-president is elected by the membership at the annual general meeting and eventually moves to the position of president, who serves for a one-year term.<sup>7</sup> Unlike the presidential terms of most other law societies, the Law Society of Upper Canada's Treasurer effectively serves a two-year term. The Treasurer by tradition is re-elected by acclamation, following his or her year in office, for a second year. Some Treasurers have been elected for more than two consecutive years.
31. The Task Force also learned through communications with the other law societies that they have from time to time been required to address the question of priority setting and how best to organize a policy agenda. The following are some of the comments offered by the other law societies:
- a. There is no simple way to set priorities, and this is a systemic problem for all regulatory bodies. The reality is that organizations like the Law Society cannot avoid having to react to both long term policy objectives and issues that arise unexpectedly. The key is to try to manage the process.
  - b. Managing the process starts with the highest level of governance. A manageable board and committee structure is important in this respect. The committees, not the board, should focus on the details. The board should focus on policy.
  - c. Priority-setting by benchers is at a high level, arising from planning retreats every few years on longer term objectives

---

<sup>7</sup> A chart at Appendix 2 includes information on the other law societies.

### Sy Eber's Contributions

32. The Task Force was also assisted in its consideration of priority planning by one of its members, Sy Eber. As a member of the Emerging Issues Committee during its review of governance issues two years ago, he focused on the influences on priority setting, the principles that should guide the setting of priorities and ideas for a structure to support priority setting.
33. Of particular interest to the Task Force were Mr. Eber's comments on the process for setting priorities. His view was that, first, longer-term vision was required of Convocation. Second, as a matter of process, he believes that the current priority-setting typically occurring within the "silos" of individual committees should be replaced by a matrix approach that would permit benchers to see what is occurring across these silos, as one aspect of determining priorities.
34. Mr. Eber recommended that Convocation apply some evaluative criteria by which to set priorities as well as measure and evaluate current policies and programs. This would, for example, utilize such tools as gap and risk analyses. He recognized that some of this work is already being done, but could be more structured and universally applied throughout Convocation and its committees.
35. In addition, his view is that an organizational structure for priority planning should be formalized to reflect much of what is already happening with the Law Society, and would involve institutionalizing current practices. For example, the chairs of committees are consulted individually, and, in some instances, collectively, to review priorities in isolation or in comparison. Rather than meetings and discussions being held on an *ad hoc* basis, he suggested that the committee chairs could be gathered on a more regular and formal basis together with the Treasurer and the Chief Executive Officer to consider the determination of priorities to be engaged by the Society. This group would be charged with providing thoughtful insight and suggestions to Convocation from an agreed-upon analytical framework, which would involve all benchers at an initial stage. This would support his view is that priority setting must be relevant to the body and people involved in it.
36. The Task Force found Mr. Eber's contribution of great value in determining how to address the question of improving priority planning.

### Previous Efforts Relating to Priority Planning

37. As noted earlier, the Society has in the past explored establishing a committee for the purpose of planning and setting priorities for Convocation. The most recent comprehensive treatment given to the issue was in the 2000 Strategic Plan, which recommended that an executive committee be formed "for managing and streamlining Convocation's agenda and advising the Treasurer".
38. By the time of the Strategic Planning Committee's January 2001 report to Convocation, the proposal had evolved into a recommendation for a Treasurer's Advisory Committee. The recommendation aimed at addressing what the Strategic Planning Committee saw as gaps in priority planning, including a lack of co-ordination of policy issues between committees, overlap of issues among committees, little or no financial assessment of the

issues and a lack of planning for implementation. The Treasurer's Advisory Committee would essentially oversee and co-ordinate the work of committees, task forces and working groups for the purpose of ensuring the Treasurer and ultimately Convocation could deal with policy matters in a more structured way. Convocation did not approve this recommendation.

39. While significant improvements have been made since 2001 to remedy the gaps noted by the Strategic Planning Committee, what remains lacking is a formal mechanism to plan and prioritize Convocation's agenda.

#### Consultation with the Chief Executive Officer

40. The Task Force discussed with the CEO Malcolm Heins the policy-making responsibility of Convocation on the one hand, and the operational responsibility of the CEO on the other.
41. Mr. Heins noted that within their regular reports to Convocation, the Society's various standing committees often provide reports that relate to programs that have been implemented as a result of Convocation's policy direction. Through his quarterly reports to Convocation, the CEO provides updates on how the policy objectives of Convocation are met and implemented, and the relative merits and progress of the various initiatives and programs undertaken during the course of the year. In this way, Convocation is kept apprised of how its policy decisions are realized operationally.
42. A comprehensive system of program review linked to the budget is also in place. This allows for a focused cost analysis, increased discipline in budget development, increased bencher understanding of a number of specific activities each year and increased accountability of management for the programs underlying the financial information contained in the annual budget. As part of the 2007 budget process, for example, the Finance and Audit Committee requested a survey of the resources allocated to each major program over the last ten years.
43. Mr. Heins expressed the view that in terms of dealing with policy issues that are reported to Convocation, for the most part Convocation has been consistent in following the model whereby it determines policy and operational staff implements the policy. The reports referred to above provide Convocation with information on policy initiatives on a fairly regular basis.
44. Planning Convocation's policy agenda is a different issue, according to Mr. Heins. In this respect, he offered three observations.
45. First, in the absence of some group or committee of Convocation designated to do an annual review of Convocation's policy agenda and assess priorities for Convocation, it is difficult to determine how satisfactorily this aspect of governance is working. Part of the CEO's role is to assist in the strategic planning for the Society and implementation of the plan, but the challenge is to do so in the absence of a structure for priority planning. The fact that there is no sub-delegation from Convocation or the Treasurer to deal with governance issues creates a gap.
46. Second, priority setting of a type occurs but it is neither structured nor transparent. It occurs a result of the dynamic within the Treasurer's election process. As a campaign

issue, Treasurer candidates typically propose some priorities for Convocation's consideration. The candidates build support among members of Convocation – including agreement on the priorities – and this helps to establish the policy issues that will be pursued in the coming term. In this way, the benchers' choice for Treasurer effectively results in a decision by Convocation – or a majority of it - to address those priorities. This constitutes a de facto priority-setting process and establishes a strategic platform from which a strategic plan may flow. Following the election, based on the Treasurer's discussion of issues with his or her supporters, the Treasurer will choose chairs and certain members of committees. On this basis, the Treasurer fulfills commitments made to benchers and support for the policy agenda will be reflected at the committee level.

47. Third, information on operational issues flows from the CEO and senior managers to the committee chairs (and to the Treasurer). This results in a prioritization within the committees of issues that are of concern to policy and operational staff and that require policy decisions by Convocation.
48. As the above illustrates, the issues for Convocation come both from benchers and operations. What is missing is a forum to identify all these issues in a timely way, including after a bencher election, so that decisions about the policy agenda and priorities can be made. Mr. Heins' view was that the Task Force's Priority Planning Committee proposal, referred to below, would address this missing element. In particular, a bencher meeting following each bencher election, for the purpose of priority planning, would fill the gap that has existed to date, namely, the lack of a formalized, more transparent strategic planning function for Convocation.
49. After reviewing this background information and the opinions expressed above, the Task Force considered the merits of institutionalizing priority planning, and the best vehicle through which to accomplish it.

#### Reasons for a Priority Planning Committee

50. The Task Force concluded that a more structured approach to planning and prioritizing the Society's policy agenda is required if Convocation is to become more efficient and effective in fulfilling its mandate. The Task Force believes that this type of structure would help to address problems in the Society's governance, including the following:
  - a. It is difficult, if not impossible, to determine at a given point in time Convocation's top priorities. This situation is exacerbated by the fact that the work of Convocation and its Committees generates many projects that may be underway at any one time. Historically, there has been no defined way of assessing these activities against appropriate criteria;
  - b. In these circumstances, it is difficult to determine whether Convocation is effectively and efficiently managing its priorities, which would include establishing attainable goals and creating effective accountability mechanisms. While benchers may be able to identify the major issues which concern the Society as an organization, it is more difficult to identify where each issue lies in terms of priority or how that issue should be assessed against other issues as a matter of priority;
  - c. Further, it is difficult to rationalize what Convocation does at the policy level against financial expenditures. In the Task Force's view, this situation approaches a paradox when the Finance Committee, which prepares the draft

annual budget for Convocation's approval and must authorize all expenditures outside of those allocated in the budget, is often seen as the body that really determines priorities. This situation is contrary to Convocation's Governance Policies which, as above-noted, contemplate an Annual Benchers Planning Cycle and mandate that Convocation set a long term strategic perspective and then create a budget for the following year.

- d. As noted earlier, there is an informal process by which Convocation's agenda is set: consultations occur among the chairs of committees, and among senior staff, who bring issues forward as required to the Treasurer and the CEO. The Task Force believes this informal process should be enhanced and institutionalized with a more formal structure in the form of a priority planning committee.
51. In the Task Force's view, a formalized priority planning process will allow Convocation to refocus and integrate priority planning with the budget process, which would then be linked to and co-ordinated with pre-established policy planning. At a practical level, this means that Convocation must "get ahead" of budget planning and determine its priorities in advance of the budget. Once this happens, any new initiatives that arise can be assessed against the priorities. The creation of a Priority Planning Committee will address this gap in the Society's strategic planning function and determination of its priorities.
52. The result of the Priority Planning Committee's work, which would be reported to Convocation for approval, is in effect a strategic plan for the Society. The Committee's ongoing responsibility to review the progress of the policy agenda and determine the place of new matters as a matter of priority when they arise means that financial planning and budgeting must be linked to the priority planning process. In this way, budget planning would be wedded to the policy agenda for the benchers term.

#### Features of the Proposed Priority Planning Committee

53. The following are the Task Force's proposals for the Committee:
- a. As a standing committee, the members of the Committee would be approved by Convocation based on the Treasurer's recommendation.<sup>8</sup> The committee should

---

<sup>8</sup> The following excerpt from By-Law 9 (Committees) describes the membership of standing committees of Convocation:

#### Composition

3. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

#### Benchers

(2) Each standing committee must include at least five benchers.

#### Appointment of persons to standing committees

(3) Convocation may appoint persons to a standing committee at any time.

#### Treasurer's recommendations for appointment

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

be composed of those members of Convocation whom the Treasurer believes have the necessary experience and knowledge for the work to be carried out by the Committee. The Committee's focus will be on priorities related to the core functions of the Society. It is likely that the membership would reflect significant knowledge of these functions and the policy considerations related to them.

- b. As with other standing Committees, Convocation should appoint the chair and any vice-chair(s) of the committee.<sup>9</sup>
- c. The Chief Executive Officer should be a non-voting member of the Committee. The Task Force's view is that the operations of the society must be realistically considered in planning priorities, and the CEO's perspective in this respect would be valuable.
- d. Other benchers would be invited to attend committee meetings for specific issues.
- e. The Committee should have no decision-making authority, but can only recommend matters to Convocation.
- f. The Committee would review its work on a yearly basis and assess the status of the policy agenda Convocation has adopted. This review would also inform the work of the Law Society's Audit Committee, discussed later in this report, in its oversight responsibility regarding finances, accounting and operational controls.

#### Key Features of the Priority Planning Process

54. As noted above, the Committee proposed by the Task Force, in supporting and assisting Convocation in fulfilling its responsibility for priority planning, may only make recommendations to Convocation. The Committee would not be an executive committee with decision-making power.
55. The Task Force believes that all benchers should participate in determining Convocation's priorities. To that end, the Task Force proposes the following process, which defines the responsibilities of Convocation and also the mandate of the Priority Planning Committee:
  - a. Near the beginning of each bench (that is, following the Bencher Election), a full bencher meeting should be devoted to considering Convocation's priorities. This meeting should be institutionalized as part of Convocation's priority planning function. The meeting could be held at a regular Convocation, arranged for a special Convocation, or held at a bencher retreat.

---

#### Treasurer

4. The Treasurer is a member of every standing committee.

<sup>9</sup> By-Law 9 reads:

#### Chairs and vice-chairs

7. (1) For each standing committee, Convocation shall appoint,
  - (a) one bencher, who is a member of the standing committee, as chair of the standing committee; and
  - (b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

- b. At this meeting, which would likely be held in the fall of each bench election year, benchers would be given the opportunity to bring forward matters for consideration as strategic objectives to be addressed within the next three and a half years at the Law Society. This meeting would also be an occasion to review the existing priorities identified by the prior bench, and to assemble and review all of the projects and proposed projects on the agenda of the committees.
  - c. The strategic objectives would be informed by the role statement and the benchers' vision for the society, and thus, would be at a high level. In subsequent bench terms, the statements of priorities by the previous bench would be available as a foundation for discussion.
  - d. The job of the Priority Planning Committee would be to assemble all of the relevant information, to assess all of these objectives and recommend for Convocation's approval a smaller number of the priorities for that period. Thus, the Committee would help organize the initial priority planning meeting of Convocation, and once that meeting is held, help organize the results of that meeting for final consideration by Convocation. The objective would be to recommend appropriate priorities for Convocation's approval.
  - e. For continuity purposes, budget planning relating to the policy agenda would be wedded to the three and a half year period. The regular annual budget planning cycle would continue and would include any issues that arise annually from the prioritized objectives. As noted above, this is consistent with Governance Policy II H. which contemplates an Annual Bencher Planning Cycle in which the budget is based on a priority planning process.
  - f. The Priority Planning Committee would identify the recommended priorities no later than December of the bench election year, for Convocation's consideration and approval. It would be Convocation that would set the priorities assisted, but not governed, by the Priorities Planning Committee. Convocation would ensure that the issues arising from the strategic objectives are already being undertaken by the appropriate committee or administrative group within the Law Society, or that they would be assigned by Convocation to the appropriate committee, task force or working group. This process would also involve determination of operational strategies for implementation of the priorities.
  - g. As priorities may change over time, the Priority Planning Committee would address additional issues to be brought to Convocation to be assessed against Convocation's priorities. In this way, Convocation will be able to identify those issues that, at any particular time, are the most pressing ones on its agenda.
56. The end result of this process is a "rolling" priority statement by benchers on their primary policy objectives. That statement can also stand as both a stated "legacy" of policy objectives and accomplishments over the term of a particular bench, and an updated priority statement to be passed on to a new bench. Moreover, upon referral by Convocation of the issues to the appropriate committee, task force or working group, a second level of priorities to achieve the policy outcomes would be determined. Thus, priority setting would be accomplished by the following hierarchy:
- a. An objective informed by the functions of the Society in the *Law Society Act*;
  - b. A vision on how the policy objective should be realized;
  - c. Operational strategy to determine the route to implementation; and
  - d. Operational tactics to implement the decision based on the policy objective.

### The Priority Planning Committee's Additional Responsibilities

57. It is proposed that the Priority Planning Committee have the following additional responsibilities:
- a. when new issues are raised by benchers or presented to Convocation, to assist Convocation in determining whether those issues relate to identified priorities, so that Convocation may channel them to the appropriate committee or task force;
  - b. when new issues are raised which do not relate to identified priorities, to consider whether some urgency from a regulatory/governance perspective warrants immediate action on them, and to assist Convocation in determining what appropriate action should be taken to have the matter dealt with, or otherwise determine a response to the issue; and
  - c. to act as the body to which new policy issues may be referred in the context of their consideration by Convocation, so that Convocation may be assisted with respect to the import of those issues in relation to Convocation's existing priorities.
58. It is anticipated that the Priority Planning Committee would, as required, provide the new proposed Audit Committee, discussed later in this report, with information to assist the latter Committee in its responsibilities. This entails a review of the Society's controls regarding finances, accounting and use of assets, including in respect of activities and expenditures authorized by Convocation as a result of priority planning. As priority setting would become a formalized function of Convocation, the results of which are implemented by management, it would appear appropriate for the Audit Committee to engage in this activity as part of its oversight responsibility respecting finances and the integrity of management's controls.

### C. HIGHLIGHTING THE FINANCIAL REPORTING SYSTEMS AND INTEGRITY OF THE LAW SOCIETY

#### The Role of the Audit Subcommittee

59. The Audit Subcommittee of the Finance and Audit Committee generally performs three of the five functions presently found in the mandate of the Finance and Audit Committee pursuant to By-Law 9 (Committees). The mandate of the Committee in the By-Law is as follows:
12. The mandate of the Finance and Audit Committee is,
    - (a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;
    - (b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;
    - (c) to recommend the appointment of the external auditor and to review the proposed audit scope, audit fees and the annual auditor's management letter;
    - (d) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide

comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and

(e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

60. The Audit Subcommittee, in reference to paragraphs (a) through (c) above, reviews the published year-end financial statements and discusses these statements with the Law Society's management and the auditors. These statements include the Law Society's General Fund, Lawyers Fund for Client Compensation and LibraryCo. Statements.<sup>10</sup> The Subcommittee discusses and reviews specific issues with the Society's auditor and reviews the auditor's management letter and any other communications from the auditor which comment on the Society's systems and internal controls.

61. The Subcommittee's Charter, at Appendix 3, starts with its Mission Statement:

To enhance effectiveness in the oversight of financial reporting by optimising the quality, not just the acceptability of financial reports. To oversee the process of identifying, measuring and prioritizing business and financial reporting risks.

62. The Task Force understands that the Finance and Audit Committee has delegated these three functions to the Audit Subcommittee, which then reports these matters to the full Committee. The full Committee then reports relevant matters to Convocation.<sup>11</sup>

63. As the Subcommittee's terms of reference reflect, it plays an important oversight role with respect to the Society's finances. At one point, a proposal for an independent audit committee of non-bencher experts was required for the Society became the subject of a motion by benchers Richmond Wilson and George Hunter at the November 2002 Convocation:

**WILSON/HUNTER MOTION - ESTABLISHMENT OF AN INDEPENDENT AUDIT COMMITTEE**

Whereas the Law Society of Upper Canada is a corporation which collects and administers an annual budget in excess of \$50,000,000,

And Whereas it has been brought to the attention of the Benchers that 'for profit' corporations of this size are at least encouraged to provide outside oversight on their Board of Directors in the area of financial management,

---

<sup>10</sup> LawPRO (Lawyers' Professional Indemnity Company) financial statements continue to be reviewed by the Finance and Audit Committee.

<sup>11</sup> Information on some other law societies' finance and audit committee structures appears at Appendix 4.

Be it resolved that an independent audit committee consisting of non-bencher experts be established to advise Convocation as required and to report to Convocation annually.

64. At the January 2003 Convocation, the Finance and Audit Committee presented an information report on this issue. The report concluded that a separate Audit Committee should not be established, and that the existing structure with an Audit Committee as a working group of the Finance and Audit Committee should continue. In a memorandum referenced in report, questions about the structure of the Audit committee were raised. These included whether the Audit Committee should be made a standing committee of Convocation with a separate mandate, and if so, whether the remaining mandate of the Finance and Audit Committee will be sufficient to fulfill the function of a committee of Convocation. The following are relevant excerpts from the January 2003 report.

#### AUDIT COMMITTEE

...

15. The Committee was of the view that the scope of the Audit Committee's responsibility is appropriate and fulfills that obligation effectively at present. When we compare our functioning to that of other organizations, it is apparent that we meet the 'best practices' standard in every significant aspect. We are far ahead of most organizations with any similarity at all to us.

16. ...Each Bencher has a right to be here independent of any other Bencher; their tenure cannot be threatened. The opportunities for financial impropriety by the governing body and its members is low. Thus, the alternative of appointing external members of the Audit Committee is unnecessary. If retained, as mere officials, or mere appointees, the necessary independence would not approach that of a Bencher. And there are problems associated with having non-Benchers appropriately represented in Convocation.

17. In short, we do not think that the present system is broken and we do not think any general review is required.

...

21. The Committee noted that all Benchers were independent of management as defined by all regulatory definitions, and that there was sufficient financial expertise amongst the pool of benchers. Under the mandate of the current Audit Committee external experts beyond the auditors could be retained when required.

65. The Finance and Audit Committee agreed with the Audit Committee's conclusion on bencher independence.
66. The Task Force acknowledges the necessary role that the Audit Subcommittee performs and is not suggesting any changes to its mandate. It is, however, proposing a change to its structure.

### Rationalizing the Structure of the Finance and Audit Committee and the Audit Subcommittee

67. Structurally, the Task Force strongly believes that the Audit Subcommittee should be made a standing committee of Convocation, called the Audit Committee, and report directly to Convocation.
68. Members of the Audit Committee should have the skills required to provide independent and objective oversight of the Society's accounting and financial reporting processes and audits of its financial statements, and have some financial competence in the area of not-for-profit organizations and fund accounting. These skills would be found among benchers through their professional qualifications, experience in practice or education. Ongoing education and information would be provided to Audit Committee members to supplement their knowledge about the appropriate financial standards for non-profit organizations such as the Law Society.
69. There are many reasons why the Audit Committee should be a separate standing committee reporting directly to Convocation.
70. While a finance committee reviews investment policies and monitors the funds of an organization on a regular basis, an audit committee provides independent oversight into the organization's accounting and financial reporting and oversees the organization's annual audits. This includes oversight responsibilities for the integrity of the relevant financial statements, proper authorization for activities and expenditures relating to the organization's operations, accuracy of records and reports presented to the board and the performance of the organization's internal financial controls and independent auditor.
71. In the Task Force's view, it is simply not acceptable in today's corporate governance environment to have the Law Society's Audit Committee situated as a subcommittee of the Finance Committee. The Finance and Audit Committee, as presently constituted, has duties with respect to the budget approval process, which are at the "front end" of the expenditure of monies by the Law Society. It does not give the Audit Committee the sufficient appearance of independence for it to be a subcommittee of another committee which is involved in the budgetary process.
72. The Audit Subcommittee's role is of vital importance to the financial integrity of the Law Society. In today's world of closer scrutiny of corporate governance, the Task Force believes that it is absolutely essential that the Audit Committee has a separate status and separately undertakes its important scrutiny of the Law Society's financial policies and financial statements. That separate status and scrutiny is required to demonstrate to the public and the profession that Convocation takes the role and functions of this Committee seriously.
73. Moreover, the scrutiny the Audit Committee must apply to the financial policy and financial reporting practices requires that its members have undistracted time to engage in that activity. In this way, the Audit Committee will be seen by the public and the profession to be focusing on that activity, without regard to the budget process.
74. Finally, the Audit Committee needs standing committee status to give it the necessary visibility and accountability, consistent with the high priority Convocation places on the correctness of the Law Society's financial statements and the strength of the Society's financial systems.

75. For all of these reasons, it is the Task Force's view that the Audit Committee must be established as a separate committee reporting directly to Convocation. Its mandate should include that of the existing Audit Subcommittee. The Task Force anticipates that Convocation would ask the new Audit Committee to come forward with a new mandate. In drafting the mandate, the Task Force recommends that Convocation consider the following:
- a. The requirement that members of the Audit Committee should be financially literate;
  - b. A schedule for periodic reports to Convocation from the Audit Committee, perhaps quarterly, with the proviso that such reports be presented in camera if necessary;
  - c. A facility for the Audit Committee to liaise with the external auditors and address any issues that they raise. These issues, as required, may form part of the report from the Audit Committee to Convocation; and
  - d. The merits of giving the Audit Committee responsibility to review all Law Society operations and executive compensation.

#### The Other Functions of the Finance and Audit Committee

76. The Task Force understands that if the Audit Committee is made a standing committee, the remaining mandate of the renamed Finance Committee, based on By-Law 9, would be the budget review functions and assessing the resources available for programs. These functions are set out in the By-law as follows:

12. The mandate of the Finance and Audit Committee is,

...

(d) to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and

(e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

77. The Task Force noted the apparent overlap in the mandates of the Finance and Audit Committee and its Subcommittee, although as noted earlier the audit functions have effectively been delegated to the Subcommittee.
78. This means that the only responsibilities exclusive to the existing Finance and Audit Committee, according to its mandate, are the review, approval and presentation of the budget and review and approval of additional expenditures that arise between budgets.<sup>12</sup> The Task Force understands that the Finance and Audit Committee also attends to

---

<sup>12</sup> As noted earlier, the Committee continues to review the LawPRO financial statements.

certain responsibilities that have been assigned to it by Convocation. Two examples are recommendations for grants from the J. Shirley Denison Fund and preparing for Convocation's approval the Society's investment policy statements for the General Fund and the Errors & Omissions Insurance Fund.

79. In the new model envisaged by the Task Force, Convocation sets its priorities prior to budget planning with the assistance of the Priority Planning Committee. The new Audit Committee would examine and report to Convocation on the Law Society's financial statements and financial systems at the "back" end. There is, however, a role for a Finance Committee in the middle. This role includes the following:
- a. Continuing to act as the committee which initially reviews the operational budget prepared by the CEO and provide the CEO with feedback before the Committee presents the budget to Convocation;
  - b. Reviewing plans for new expenditures during the financial year, not from a priority setting standpoint, but from a financial standpoint;
  - c. Undertaking some of the present work of the Finance and Audit Committee which is not linked to its legislative mandate. Two examples are noted above.
80. The Task Force considered alternative structures. One would involve the elimination of the Finance Committee and the presentation of the budget to Convocation by the CEO. However, the Task Force determined that maintaining the Finance Committee has the advantage of preserving the expertise that is presently on the Finance and Audit Committee, to assist Convocation when the budget is presented and review new expenditures from a costs standpoint alone.
81. Another alternative structure would involve "grafting" the remaining Finance and Audit Committee functions on to the Priority Planning Committee's responsibilities, so that budget planning would occur within the ambit of that Committee's work. However, the Task Force determined that at this stage, it is preferable to maintain discrete committees for budget planning and for determining Convocation's priorities for its policy agenda. While budget considerations and impact are a component of planning priorities, the focus of the Priority Planning Committee is to develop priorities strategically for a policy agenda over a specific term. Moving the budget planning function currently performed by the Finance and Audit Committee to the Priority Planning Committee may dilute its focus and function. With experience, it may be that this idea can be revisited.
82. As a final matter, given that the proposed Priority Planning/Audit Committees structure may take some time to implement, there is a need to retain a committee that fulfills the responsibilities noted above.

#### D. EFFICIENT AND EFFECTIVE CORPORATE GOVERNANCE

##### Frequency of Convocation Meetings

##### Convocation's Meeting Schedule

83. Regular Convocation is scheduled every month, two weeks after standing committee meetings, except in the summer months and December. This schedule is reflected in By-Law 8 (Convocation). The meetings require careful organization and involve

consultations on the agenda between the Treasurer, committee or task force chairs and senior staff. The meetings also involve costs to the Society, largely attributed to bencher travel and related expenses. Added to this expense is bencher remuneration for those who choose to claim it. These expenditures form part of the Society's budget.<sup>13</sup>

84. The standing committee meeting schedule has evolved to the point where committees no longer meet every month, but on an as-needed basis depending on what business must be addressed. Task Forces meet when required and do not typically follow a regular schedule. This is already having an impact by making Convocation's agendas in some months lighter.
85. In addition, the procedures in the new licensing process have eliminated the frequent monthly calls to the bar at Convocation, which necessitate a monthly Convocation.
86. The question for the Task Force was whether it is necessary for Convocation to meet every month, having regard to both the expense of those meetings and need for Convocation to properly deal with all matters on its agenda. In addressing this matter, the Task Force noted that there may be a link between the size of the board and the frequency of its meetings. A smaller board, because it should be more efficient in moving through its agenda, may not be required to meet as often as a larger board. Other factors, such as setting priorities and adopting rules of procedure may also reduce either the length of, or the number of, meetings.
87. If the business of Convocation could be dealt with in fewer meetings, the Task Force considered that it would be worth examining in more detail how this might be achieved. The Task Force contemplated, for instance, a revised schedule for Convocation, such meetings held in September, November, January, March, May and June.
88. Ultimately, the Task Force decided that reducing the frequency of Convocation should not be the subject of a specific recommendation at this time. If the recommendations in the Report are adopted, they will, it is hoped, result in improvements in the way in which Convocation operates. If this occurs, then fewer meetings of Convocation may be necessary.
89. In addition, the rules of procedure for Convocation in By-Law 8 should help to improve the manner in which business is dealt with. By-Law 8 leaves ultimate discretion with the Treasurer to vary the schedule of meetings.<sup>14</sup>

---

<sup>13</sup> The Society's Finance Department estimates that a regular Convocation can cost anywhere from \$50,000 to \$75,000, depending on how many out of town benchers attend. This includes travel fares, hotels, meals, the Court Reporter and an allowance for bencher remuneration. For the bencher year 2005 –2006 (September to June), the total paid for bencher remuneration was \$76,200. For 10 regular Convocations in the period December 2005 to December 2006, the total expenses were approximately \$300,000, excluding bencher remuneration.

<sup>14</sup> By-Law 8 includes the following:

Convocation conducted in accordance with By-Law

2. (1) Convocation shall be conducted in accordance with this By-Law.

90. The Task Force concluded that the control of Convocation's schedule should continue to rest with the Treasurer. He or she is well-informed in the pre-Convocation consultations on what is required to be addressed in a given month. The Task Force sees this management of Convocation's agenda as an important part of the Treasurer's responsibility.
91. In summary, the Task Force does not make any recommendation at this time that Convocation adopt a schedule that reduces the number of meetings in a year. The Task Force anticipates that as experience is gained with the formalized priority planning it is recommending, Convocation will find it can meet less frequently with greater efficiency, and with a sharper focus on its policy agenda.

#### Suspension of a Bencher

92. Sections 15 and 16 of the *Law Society Act* say that benchers are elected in accordance with the by-laws.<sup>15</sup>
93. By-Law 5 (Election of Benchers), provides as follows:
9. Every member, other than a temporary member, is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate, the member resides in Ontario and the member's rights and privileges are not suspended.<sup>16</sup>

---

#### Waiving compliance, *etc.*

(2) Despite subsection (1), the Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this By-Law in respect of Convocation.

...

#### Convocation: when held

4. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

#### Convocation: special meetings

5. (1) The Treasurer may convene Convocation at any time by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each bencher.

<sup>15</sup> Bill 14, the *Access to Justice Act, 2005*, amended the *Law Society Act* to provide that two paralegals are to be elected as benchers in accordance with the by-laws. The Bill also amends the Act to make lawyers and paralegals licensees. Subsection 15(4) of the amended Act provides that an elected bencher who ceases to be licensed to practice law ceases to be a bencher. A similar provision applies to paralegal benchers.

<sup>16</sup> This language will be amended to refer to licensees.

There are no other qualifications for bencher candidates.<sup>17</sup>

94. Convocation turned its attention to what is expected of a bencher by adopting certain provisions in the Governance Policies, as follows:

- E. Bencher Job Description
  - ...
  - 8. Benchers must be familiar with,
    - 1) Law Society structure, mission and governance policies; and
    - 2) relevant legislation and jurisprudence.
- F. Bencher Code of Conduct
  - 1. The benchers commit themselves to ethical conduct.
  - 2. Benchers must declare conflicts of interest and act in accordance with Convocation's policy on conflicts of interest.

---

<sup>17</sup> Some other Canadian law societies have more detailed qualifications. The following example is from the Alberta's *Legal Profession Act*:

#### Eligibility for election

13(1) Only an active member resident in Alberta is eligible for nomination and election as a Bencher.

(2) A member is eligible for nomination, election and re-election as a Bencher in accordance with the rules.

(3) A member is ineligible for nomination or election as a Bencher if at any time before the date of the election the member was disbarred.

(4) A member is ineligible for nomination or election as a Bencher if, within the 5-year period immediately before the date of the election,

(a) the member was found guilty of conduct deserving of sanction without an order being made for the member's disbarment as a result of the finding, unless the Hearing Committee, the Benchers or the Court of Appeal, as the case may be, made an order directing that the member is not ineligible by reason of the finding,

(b) an order of the Benchers was made under section 83(4) for the suspension of the membership of the member for a fixed period,

(c) an order of the Benchers was made under section 84(3) for the suspension of the membership of the member for a fixed period, unless the Benchers made an order directing that the member is not ineligible by reason of the suspension order, or

(d) the membership of the member was under suspension at any time during that 5-year period by virtue of section 83(7).

(5) A member is not ineligible because of subsection (3) or (4)(a) if the disbarment order or finding of guilt was successfully appealed.

3. Benchers must not use their positions to obtain employment or preferential treatment for themselves, family members, friends or associates.
  4. No bencher shall purport to speak for Convocation or the Law Society unless designated by the Treasurer.
  5. When exercising adjudicative powers, benchers shall behave in a judicial manner.
  6. Benchers shall observe Convocation's policy regarding confidentiality.
  7. Benchers sitting as members of the hearing panel must adhere to the provisions set out in the guidelines for applications to proceed in camera and must strictly maintain the confidentiality of all matters subsequently heard in camera.
95. The Task Force is not proposing that additional criteria be adopted for qualifications for bencher candidates. However, the Task Force believes there is a need to address the circumstances in which, currently, the rights and privileges of a lawyer who serves as a bencher are suspended, or in future, the license of a lawyer or paralegal who serves as bencher is suspended (formerly, it was the rights and privileges as a member that were suspended). If a bencher candidate whose rights and privileges are suspended is ineligible to run for bencher, there should be some response from the Society if a suspension occurs after the candidate is elected a bencher.
96. The fact that a bencher may be suspended as a result of discipline or for non-payment of a fee or levy is the reason this issue, from the public interest perspective, must be addressed. The Task Force believes that the Society should have the authority to act should this event occur.
97. The Task Force views this issue from two interrelated perspectives. First, the integrity of the board is compromised if a board member, who is a fiduciary of the organization, is involved in policy decisions for the profession's governance and adjudicates matters of professional conduct, continues to sit as a board member while suspended as a member of the Society. Second, on a broader basis, the reputation of the Law Society among its constituencies, including the public, is affected if no consequences flow to the bencher who continues to enjoy the rights and privileges of being a bencher while his or her rights and privileges as a member are suspended.
98. The Task Force differentiated between suspensions arising from disciplinary proceedings and "administrative" suspensions, such as those arising from failure to pay fees or levies or to file the Member's Annual Report.
99. For disciplinary suspensions, given the seriousness of the issue that led to the suspension, the Task Force's view is that the bencher should no longer remain as a bencher. A finding of professional misconduct or conduct unbecoming against a bencher that results in a suspension requires a response from the Society that will protect the integrity of the organization and Convocation. If the bencher appeals the order of suspension, the termination of his or her bencher status should occur on the date of the order of an unsuccessful appeal.
100. The Task Force does not believe that bencher status should be restored following the end of the suspension of the lawyer or paralegal who served as a bencher. In the normal course, a new bencher would be elected by Convocation to fill the position left

vacant by the lawyer or paralegal who loses bencher status as a result of the suspension. Further, the suspended bencher who is no longer a bencher is free to run as a bencher in the next bencher election.

101. It is also possible that a bencher may be subject to an interlocutory suspension order. In such cases, the Task Force's view is that the bencher should be ineligible to act as a bencher as of the date of the order and for the duration of the suspension.
102. For administrative suspensions as a result of summary orders under the *Law Society Act*, the Task Force's view is that the bencher should be ineligible to act as a bencher during the suspension. The ineligibility to act as a bencher should end when the bencher takes the appropriate action to pay the fee or file the form, for example. However, if the bencher fails to take this action within three months of the start of the suspension, he or she should cease to be a bencher. The Task Force believes this result is fair, given the lengthy process that follows notice of default prior to a suspension order.<sup>18</sup>
103. To summarize, the Task Force is proposing the following:
  - a. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, following a finding of professional misconduct or conduct unbecoming should cease to be a bencher as of the date of the suspension, or an unsuccessful appeal. Status as a bencher should not be restored when the member's rights and privileges are restored.
  - b. A bencher rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of an interlocutory suspension order should not be permitted to act as a bencher during the suspension;
  - c. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of a summary order under sections 46 through 49 of the *Law Society Act* should not be permitted to act as a bencher as of the date of and for the duration of the suspension. If the bencher fails within three months of the date of the suspension to take the action that will end the suspension, he or she should cease to be a bencher.

These proposals would require amendments to the *Law Society Act*.

---

<sup>18</sup> The process includes the following:

- notice of the deadline for payment or filing with the invoice or filing package
- following the deadline, allowing typically a 120 day (four month) default period
- during this default period, mailing a first default notice one month after the deadline
- mailing a second default notice two months after the deadline
- during the final 30 to 60 days of the default period, telephone calls (two if necessary) to the member
- mailing the notice of summary order for suspension after the default period, with notice to the member that the suspension will take place five business days from the date of the order.

## E. SUMMARY

104. The Law Society's effectiveness as a regulator is linked to its effectiveness at the board level. The Task Force has focused on whether changes to improve the Society's corporate governance to make it more effective are needed, and if so, what the changes should be.
105. In the Task Force's view, as the Law Society's governance structure is a functional response to its legislative mandate, any changes to the structure must be informed by and consistent with this mandate. In this respect, the *Law Society Act* requires the Society to act in a timely, open and efficient manner. For Convocation as a board, this means taking steps to
- a. establish a strategic planning process that enables Convocation to identify priorities for a policy agenda and link the budget process to priorities that Convocation has identified;
  - b. ensure the integrity of the Law Society's financial management; and
  - c. ensure that the credibility of Convocation by excluding suspended members from participating as benchers.
106. Good governance does not happen by accident. It results from institutionalizing best practices. Moreover, institutionalizing best practices makes those who govern accountable for observing and applying them. This will demonstrate to the public, in whose interests the Society governs, that its governance is sound. The Task Force believes that its proposals support and will help the Law Society to better achieve this objective.

Appendix 1

GOVERNANCE TASK FORCE TERMS OF REFERENCE  
(Approved May 25, 2006)

1. The Task Force will consider and recommend to Convocation improvements to the corporate governance of the Law Society to fulfill its mandate through:
  - a. efficient and effective corporate governance;
  - b. co-ordination of corporate governance with the operational management of the Law Society, and
  - c. effective priority setting, including budgetary considerations.
2. In addition, The Task Force will study the following two specific issues referred to it by Convocation:
  - a. the Treasurer's election process, including certain provisions of By-Law 6, based on the Secretary's report to Convocation of March 23, 2006;
  - b. procedural issues relating to Committee recommendations and motions before Convocation, arising from adoption of Rules of Procedure for Convocation (amendments to By-Law 8) on March 23, 2006;
3. The Task Force expects to report to Convocation from time to time with specific recommendations throughout 2006 and 2007, completing its work by April 2007.

## Appendix 3

LAW SOCIETY OF UPPER CANADA  
AUDIT SUB-COMMITTEE  
CHARTER

Mission Statement

To enhance effectiveness in the oversight of financial reporting by optimising the quality, not just the acceptability of financial reports. To oversee the process of identifying, measuring and prioritizing business and financial reporting risks.

Membership Requirements

Under the Law Society's Governance Policies, the Audit Sub-Committee has been set up as a Working Group of the Finance and Audit Committee.

Members of the Audit Sub-Committee should be able to maintain an independent mind, and be financially literate, particularly in the area of not-for-profits and fund accounting.

Committee Structure

- The Audit Sub-Committee should comprise at least three members.
- A majority of members being physically or electronically present, constitutes a quorum for the purposes of the transaction of business.
- Committee members can be elected, non-elected or lay benchers or independents at the discretion of the Treasurer.
- The Committee Chair is to be a Bencher, and is appointed by the Treasurer
- Membership of the Audit Sub-Committee should turnover once every three years so that a balance of institutional knowledge and new ideas is maintained.
- Members of the Audit Sub-Committee should educate themselves through bencher orientation and with the assistance of management, auditors and third party sources, concerning the knowledge and skills required to fulfill the committee's mandate.

Committee Process

- The continuous disclosure procedures of the Law Society do not mandate quarterly or other periodic meetings unless required. Any Audit Sub-Committee member, member of senior management, or the auditor can request a meeting of the Audit Sub-Committee.
- The Committee should meet at least once to review the published year end financial statements, and to discuss these statements with management and the auditors. This meeting should precede the relevant Finance and Audit Committee meeting, Convocation and Annual General Meeting by sufficient time to allow processing of any actions requested by the Audit Sub-Committee.

## Scope of Audit Sub-Committee's Responsibilities

The Audit Sub-Committee is not a decision-making body, but a fact-finding one. It reports findings to the Finance and Audit Committee, and onwards to Convocation and the members.

The Audit Sub-Committee's duties concerning the Law Society's General Fund, Compensation Fund and LibraryCo Inc. are not limited to year-end financial reports, but are facilitated by continuous disclosure resources. At the Law Society, continuous disclosure resources primarily take the form of unaudited, quarterly financial reports and management's related discussion and analysis.

The Audit Sub-Committee is responsible for the oversight, but not the management of:

- The preparation, integrity consistency and fair presentation of financial statements in accordance with generally accepted accounting principles
- The design and implementation of an effective system of internal control
- Other matters of financial consequence such as insurance coverage, significant non-recurring items, actuarial calculations, related party transactions or equivalents, subjective items such as accruals, provisions, estimates etc.

The Audit Sub-Committee should understand the nature and the extent of the work performed by the independent auditor and actuary, and make additional requests if desired. The Audit Sub-Committee should discuss and review specific issues with the auditor, such as ensuring their audit approach maximised opportunities to add value, and recommendations for improving the Law Society's performance.

The Audit Sub-Committee should review the Management Letter from the auditor, and any other communications from the auditor which comments on the Law Society's systems and internal controls, and obtain management's representations and intended course of action to address any concerns of the auditor.

The Audit Sub-Committee should consider any other matter that in its judgment should be taken into account in reaching its recommendations to the Finance and Audit Committee concerning the approval of the financial statements.

The Audit Sub-Committee should review the auditor's engagement letter. The Audit Sub-Committee is responsible for the evaluation of the auditor, and is responsible for recommending a change in auditor, or the retention of the existing auditor to Convocation, and ultimately the members at the Annual General Meeting

The Audit Sub-Committee should ensure that the auditor submits a formal written statement regarding relationships and services which may effect objectivity and independence.

The Audit Sub-Committee should communicate Committee expectations and the nature, timing, and extent of committee information needs to management, auditors, and others.

The Audit Sub-Committee does not have primary responsibility for the implementation and policing of the Law Society's Business Conduct Policy, as the CEO reports directly to Convocation on this matter.

### Scope of Independent Auditor's Responsibilities

The auditor is ultimately accountable to Convocation and the Audit Sub-Committee.

The auditor's basic responsibility is to express an independent opinion on the Law Society's annual financial statements.

In addition to the auditor's responsibility under generally accepted auditing standards the auditor will:

- Discuss with the Audit Sub-Committee, the auditor's judgments about the quality (relevance, reliability, comparability, understandability), not just the acceptability of the Law Society's accounting principles, and lead discussion on the subjective issues reflected in the financial reports.
- Discuss such matters as:
  - illegal acts;
  - significant transactions that are inconsistent with the ordinary course of business;
  - unusual actions which significantly increase the risk of loss to the Law Society;
  - actions which might cause serious embarrassment to the Law Society.

### Scope of Management's Responsibilities

Management has primary responsibility for:

- The preparation, integrity consistency and fair presentation of financial statements in accordance with generally accepted accounting principles;
- The design and implementation of an effective system of internal control;
- The management of the Law Society's affairs in compliance with applicable laws, regulations and standards of conduct;
- Acting as a resource for the Audit Sub-Committee. The Chief Financial Officer will provide the primary support to the Audit Sub-Committee.

Appendix 4

## OTHER LAW SOCIETIES' FINANCE AND AUDIT COMMITTEE STRUCTURES

The following is information on Audit or Finance Committees in the Law Societies of British Columbia, Alberta, Saskatchewan and Nova Scotia.

### 1. Law Society of British Columbia

British Columbia's Audit Committee does not appear to be a committee required by the governing statute or authorized under the Rules (equivalent to our By-Laws). The Act contains authority for the benchers to create committees for the purposes under the Act. The Audit Committee's description on the Society's website is as follows:

The Audit Committee assists the Benchers in determining that the financial affairs of the Society are properly managed by Law Society staff. This includes reviewing quarterly financial statements of the General, Liability Insurance and Special Compensation Funds prior to submission to the Benchers, providing an annual Audit Committee report to the Benchers and reviewing with the Law Society auditors their approach, the scope of their audit and the audit issue results.

## 2. Law Society of Alberta

Alberta has an Audit Committee and a Finance Committee. The following is from the Law Society's Rules (equivalent to LSUC By-Laws) on the mandates of these Committees.

### AUDIT COMMITTEE

...

#### Responsibilities

35.2(1) The Audit Committee will assist the Benchers in fulfilling their financial oversight responsibilities for the Society and for the Alberta Lawyers Insurance Association, including:

(a) overseeing and reviewing;

- (i) the financial reporting process,
- (ii) the system of internal control and management of financial risks,
- (iii) the audit process, and
- (iv) the process for monitoring compliance with rules and policies of the Law Society of Alberta and applicable laws and regulations;

(b) regularly reporting to the Benchers about Committee activities and making appropriate recommendations;

(c) ensuring that the Benchers and the Finance Committee are aware of matters which may significantly impact the financial condition or affairs of the Society.

(2) In addition to the matters set out under subrule (1), the Audit Committee will review the draft financial statements of the Society and of ALIA for each fiscal year and, on completion of the review:

(a) will submit the financial statements of the Society to the Benchers for their approval with any changes recommended by the Committee; and

(b) will submit the financial statements of ALIA to the Benchers for their recommendation for approval to the Board of Directors of ALIA, with any changes recommended by the Committee.

#### Authority

35.3 Within the scope of its responsibilities, the Audit Committee is authorized to:

(a) seek any information it requires from:

- (i) any employee (all employees being obligated to cooperate with any request made by the Audit Committee);
- (ii) external parties;

(b) obtain outside legal or other professional advice; and

(c) ensure the attendance of Society officers, management and employees at meetings as appropriate.

### Composition

35.4 The composition of the Audit Committee must meet the following requirements:

- (a) at least five members;
- (b) the majority of the members must be neither members of the Finance Committee, nor Benchers;
- (c) exactly one or two members (no more or less) must be members of the Finance Committee;
- (d) the Chair of the Finance Committee must not be a member of the Audit Committee;
- (e) all members of the Committee must be independent of the management of the Society; and
- (f) the Executive Director of the Society is an ex-officio member of the Committee.

### Privacy

35.5 The information acquired by the Audit Committee, the proceedings of the Committee, and any reports issued by the Committee are private, except where the Committee determines otherwise.

...

### FINANCE COMMITTEE

...

### Responsibilities

36.1 In addition to adjudicating Assurance Fund claims, fulfilling other functions noted in these Rules, and performing other functions as requested by the Benchers, the Finance Committee will assist the Benchers in fulfilling their financial oversight responsibilities by:

- (a) overseeing and reviewing;
  - (i) the financial affairs and operations of the Society,
  - (ii) the budget process, and
  - (iii) the administration of the investments of all funds of the Society and of ALIA in accordance with policies determined by the Benchers.
- (b) recommending to the Benchers,
  - (i) an annual budget,
  - (ii) financial policy respecting the Society, and
  - (iii) financial administration policy respecting the Alberta Lawyers Insurance Association,
- (c) regularly reporting to the Benchers about Committee activities and making appropriate recommendations; and
- (d) ensuring that the Benchers are aware of matters which may significantly impact the financial condition or affairs of the Society.

### Authority

36.2 Within the scope of its responsibilities, the Finance Committee is authorized to:

- (a) seek any information it requires from;

- (i) any employee (all employees being obligated to cooperate with any request made by the Finance Committee),
- (ii) external parties

(b) obtain outside legal or other professional, management advice; and

(c) ensure the attendance of Society officers, management and employees at meetings as appropriate.

#### Annual Budgets

37(1) Prior to the fiscal year end, the Treasurer shall prepare and present to the Finance Committee a budget for the Society for the next fiscal year.

(2) Prior to the fiscal year end, the Director of Insurance shall prepare and present to the Insurance Committee a budget for the Alberta Lawyers Insurance Association for the next fiscal year.

(3) The Finance Committee will review the Society's budget as presented by the Treasurer and make a recommendation or recommendations to the Benchers in Convocation with respect to the adoption of the budget.

(4) The Insurance Committee will review ALIA's budget as presented by the Director of Insurance and make a recommendation or recommendations to the Benchers in Convocation with respect to the adoption of the budget.

(5) The Benchers in Convocation shall:

(a) prior to the commencement of each fiscal year consider the budgets for the Society and ALIA for the next fiscal year as recommended respectively by the Finance Committee and the Insurance Committee;

(b) approve the budget of the Society before or as soon as possible after the commencement of the fiscal year; and

(c) make a recommendation or recommendations to the Board of Directors of ALIA with respect to the adoption of the budget.

### 3. Law Society of Saskatchewan

Saskatchewan's Finance Committee's mandate is set out in the following Rule:

#### Finance Committee

131. The Finance Committee:

(a) shall supervise management of the finances of the Society;

(b) shall supervise management of all matters referred to it by the Benchers relating to the resources and expenditures of the Society;

(c) shall supervise administration of the Unclaimed Trust Funds program in accordance with section 14 of the Act and Part 16 of these Rules;

(d) shall supervise administration of the Special Fund in accordance with sections 12 and 13 of the Act and Part 11 of these Rules; and

(e) may cancel, reduce, refund or extend the time for payment for any fee, penalty or costs payable to the Society, which does not come within the jurisdiction of another Committee.

#### 4. Nova Scotia Barristers' Society

The Regulations under the governing act in Nova Scotia provide for a number of committees, including the Finance Committee, whose mandate is as follows:

FINANCE COMMITTEE, to oversee the finances of the Society, to make recommendations thereon to the Council, to submit to Council in each year an estimate of the receipts and expenditures of the Society for the year, and to oversee the annual audit;

### OTHER ONTARIO REGULATORS

#### 1. Architects and Engineers

Under the by-laws made pursuant to the *Architects Act*, the Vice-President and Treasurer, an elected official, appears to have the responsibility that would otherwise be that of a finance committee. Section 5 of the By-Law reads:

It shall be the duty of the Vice-President and Treasurer to supervise and report to the Council on the financial affairs of the Association at such times and in such manner as the Council may require.

No finance committee is authorized under the Act or the by-laws, although the Act permits the Council to create committees "as the Council from time to time considers necessary."

Under By-Law 1 made pursuant to the *Professionals Engineers Act*, the Council is authorized to create a Finance Committee. The Committee includes members and non-members, with the president and the president-elect as ex-officio members. The by-law does not include a description of the duties of the Finance Committee.

#### 2. Chartered Accountants

Under By-Law 268 of the By-Laws under *The Chartered Accountants Act, 1956* the Audit Committee is authorized in the following language:

The audit committee shall carry out such responsibilities as are prescribed in the terms of reference adopted from time to time by the Council, including reviewing financial statements of the Institute and reporting there on to the Council.

#### 3. Physicians and Surgeons

The College of Physicians and Surgeons has a Finance Committee constituted pursuant the College's General By-law. The Council appoints the committee members, who are members of the College. The relevant excerpt from the By-Law is as follows:

##### Finance Committee

43.(1) The finance committee shall review and report to the council regarding the financial affairs and position of the College.

(2) In order to fulfill its duty under subsection (1), the finance committee shall,  
(a) meet with the auditor each year,

- (i) before the audit to review the timing and extent of the audit and to bring to the attention of the auditor any matters to which it considers the auditor should pay attention; and
  - (ii) as shortly before the annual financial meeting as practical in order to review and discuss with the auditor the financial statements, the auditor's report and the management letter;
- (b) review the draft budget before it is presented to the executive committee, and report to the executive committee and the council arising from its review of,
- (i) the assumptions in the draft budget;
  - (ii) the steps taken to maximize efficiency and minimize cost in relation to the quality of goods and level of service; and
  - (iii) any other issue which the committee considers may affect the financial affairs and position of the College; and
- (c) review from time to time,
- (i) the expenditures of the College in relation to the budget;
  - (ii) the performance and administration of the College's pension plans;
  - (iii) the investment strategies and performance of the College's non-pension investments; and
  - (iv) the security of the College's assets generally.
- (3) Except where the council or the executive committee directs otherwise by resolution, no significant expenditure shall be made that is not authorized by the budget without an opportunity for the finance committee to consider the implications of the unbudgeted expenditure and provide to the executive committee a revised budget.

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

A chart of "Other Law Societies Governance".

(Appendix 2, pages 43 – 49)

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Convocation approve the following:

#### RECOMMENDATION 1

That Convocation approve the following with respect to planning and prioritizing matters for Convocation's policy agenda:

- a. Convocation shall institute a full review of Convocation's priorities for achieving strategic objectives for the Law Society, to be held at a meeting of benchers soon after each bencher election and as appropriate during the bencher term; and
- b. Convocation shall establish a standing committee called the Priority Planning Committee to assist Convocation in planning its priorities. In particular,

- i. The Treasurer shall recommend members of the Committee for Convocation's approval, in accordance with the By-Laws;
- ii. Convocation shall appoint the chair and any vice-chairs of the Committee, in accordance with the By-Laws;
- iii. In addition to the bencher members of the Committee, the Chief Executive Officer shall be a non-voting member of the Committee;
- iv. The mandate of the Committee is to
  - A. recommend for Convocation's consideration and approval the priorities for policy objectives and submit those recommendations to Convocation in the process described in a. above,
  - B. periodically review the priorities previously established by Convocation, and new policy issues that may arise, and recommend to Convocation on an ongoing basis the priorities to be considered and approved by Convocation in the future, and
  - C. report annually to Convocation on the status of Convocation's priorities.

#### RECOMMENDATION 2

That Convocation establish a standing committee called the Audit Committee which shall replace and include the mandate of the existing Audit Subcommittee of the Finance and Audit Committee and such other matters as Convocation may direct.

#### RECOMMENDATION 3

That Convocation replace the existing Finance and Audit Committee with a Finance Committee whose mandate will be to continue the functions of the present Finance and Audit Committee that are not assigned to the Audit Subcommittee, including the following:

- a. to review the plans and projections of the annual budget of the Society, including the Lawyers Fund for Client Compensation, or any special or extraordinary budget required for the purpose of the Society, including the Lawyers Fund for Client Compensation, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item;
- b. to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation; and
- c. to undertake such other responsibilities of a financial nature assigned to the Finance Committee by Convocation.

#### RECOMMENDATION 4

That Convocation implement the following measures for benchers whose rights and privileges as a member of the Law Society are suspended:

- a. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, following a finding of professional misconduct or conduct unbecoming a barrister and solicitor or paralegal ceases to be a bencher as of the date of the order suspending the rights and privileges or license, or as of the date of the unsuccessful appeal order with respect to the suspension;

- b. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of an interlocutory suspension order is not permitted to act as a bencher as of the date of the order and for the duration of the suspension;
- c. A bencher whose rights and privileges as a member of the Society are suspended, or in future whose license is suspended, as a result of a summary order under sections 46 to 49 inclusive of the *Law Society Act* is not permitted to act as a bencher as of the date of the order. If the bencher fails within three months of the date the suspension begins to take the action that will end the suspension, he or she ceases to be a bencher.

The following were accepted as friendly amendments to Recommendation 4:

- (1) Delete the words “ceases to be” in paragraphs a. and c. and substitute “is not permitted to act as”.
- (2) Add the words “for the duration of the suspension” at the end of paragraphs a. and c.

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Recommendation 1 be approved.

Carried

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Recommendations 2 and 3 be approved.

Carried

It was moved by Mr. Heintzman, seconded by Professor Krishna, that Recommendation 4 as amended be approved.

Carried

#### TREASURER’S REPORT TO CONVOCATION

Treasurer’s Report to Convocation  
March 29, 2007

---

LAWPRO’s Annual Meeting

Purpose of Report: Decision

Prepared by: Katherine Corrick

## FOR DECISION

## Motion

1. That Convocation authorize the Treasurer to vote the proxy in favour of the proposed shareholder resolutions set out at Appendix 1.

## Background

2. The Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held on April 25, 2007.
3. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at Appendix 1.
4. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions.
5. The Treasurer seeks Convocation's guidance on the exercise of the proxy.
6. The minutes of the 2006 Annual and General Meeting of Shareholders are attached at Appendix 2.

## APPENDIX 1

## LAWYERS' PROFESSIONAL INDEMNITY COMPANY

ANNUAL AND GENERAL MEETING OF SHAREHOLDERS  
WEDNESDAY, APRIL 25, 2007PROPOSED SHAREHOLDER RESOLUTIONS

## 1. APPROVAL OF MINUTES OF PREVIOUS MEETING

RESOLVED that the minutes of the April 26, 2006 Shareholders Meeting are accepted.

## 2. APPROVAL OF FINANCIAL STATEMENTS

RESOLVED that the financial statements of the Company for the year ended December 31, 2006 are approved.

## 3. ELECTION OF DIRECTORS

RESOLVED that [George D. Anderson, Constance B. Backhouse, Kim A. Carpenter-Gunn, James R. Caskey, Q.C., Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, Lawrence A. Eustace, Abraham Feinstein, Q.C., Frederick W. Gorbet, Malcolm L. Heins, Rita Hoff, William G. Holbrook, Laurie H. Pawlitza, and Michelle L.M. Strom], are elected directors of the Company to hold office until the next annual meeting of shareholders or until their successors are elected or appointed.

4. APPOINTMENT OF AUDITORS

RESOLVED that [*Deloitte & Touche LLP*] are appointed as auditors of the Company to hold office until the next annual meeting of shareholders at such remuneration as may be fixed by the directors and the directors are authorized to fix such remuneration.

5. CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS

RESOLVED that all acts, contracts, by-laws, proceedings, appointments, elections and payments, enacted, made, done and taken by the directors and officers of the Company to the date hereof, as the same are set out or referred to in the resolutions of the board of directors, the minutes of the meetings of the board of directors or in the financial statements of the Company, are approved, sanctioned and confirmed.

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

Copy of the Draft Minutes of the Annual and General Meeting of the Shareholders of Lawyers' Professional Indemnity Company.

(Appendix 2, pages 4 – 6)

Re: LAWPRO Proxy

It was moved by Ms. Ross, seconded by Mr. Millar, that Convocation authorize the Treasurer to vote the proxy in favour of the proposed shareholder resolutions set out at Appendix 1 of the Report.

Carried

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Ruby presented the Report.

Report to Convocation  
March 29, 2007

Professional Regulation Committee

Committee Members  
Clayton Ruby, Chair  
Tom Heintzman, Vice-Chair  
Heather Ross, Vice-Chair  
Anne Marie Doyle  
George Finlayson  
Alan Gold  
Allan Gotlib  
Gary Gottlieb  
Paul Henderson  
Ross Murray  
Sydney Robins  
Robert Topp  
Roger Yachetti

Purposes of Report: Decision

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

TABLE OF CONTENTS

For Decision

*In Camera* Matter ..... TAB A

Proposed By-Law on Member Information ..... TAB B

Proposed By-Law on Payment of LawPRO Deductibles .....TAB C

### COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on March 8, 2007. In attendance were Clayton Ruby (Chair), Tom Heintzman (Vice-chair), Anne-Marie Doyle, George Finlayson, Alan Gold, Gary Gottlieb, Allan Gotlib and Paul Henderson (by telephone). Staff attending were Naomi Bussin, Malcolm Heins, Terry Knott, Zeynep Onen and Jim Varro.

### PROPOSED BY-LAW ON MEMBER INFORMATION

#### Motion

8. That Convocation approve the policy for a new by-law that would require members of the Law Society to provide current contact and other information to the Society.

#### Introduction

9. Members of the Law Society are required to complete the Member’s Annual Report (MAR) by March 31 of each year. Among other things, the MAR requires the lawyer to provide basic contact and practice/employment information.<sup>1</sup> This information is required to maintain the Law Society’s record for each lawyer, for a number of regulatory reasons. The information, however, is only obtained once a year through the filing of the MAR, and is information as of December 31 in the applicable year.
10. For the reasons explained below, there is need to maintain up-to-date information on members of the Society. The Society requests members to report changes in contact information and makes a Change of Information Form available to members. While the majority of members voluntarily advise the Society of changes in such things as their membership status, office location, home address and contact information, there is no requirement that they do so apart from the MAR. Moreover, some lawyers fail to file the MAR, leaving a gap in the Society’s information about those lawyers.
11. The Committee is recommending that Convocation approve a by-law that would require a lawyer to provide information to the Society on an on-going basis so that the lawyer’s record with the Society is current. The by-law would codify what many members already do to provide the Society with relevant information.

#### Reasons for the New By-Law

12. In the Committee’s view, the following are some reasons for adopting a mandatory requirement for current member information:

---

<sup>1</sup> This includes the following:

Member Name, Firm Name, Street Address, City, Province, Postal Code, Membership Number, Year of Call, E-mail address, Status

- a. If a member is the subject of a complaint, current contact information is necessary to investigate the complaint, in particular, to request a response from the member. Without current information, an investigation can be stalled, which ultimately affects the Society's ability to address in a timely way an allegation of misconduct;
- b. If a conduct, competence or capacity matter proceeds to a hearing level, an address is required for service on the member. A lack of current contact information can make service more difficult and extend the time required to deal with the matter;
- c. If a member's right to practise is suspended or restricted by an order or undertaking, a lack of current contact information can impede the ability of the Society's Monitoring & Enforcement Department to monitor the member's compliance with the order or undertaking;
- d. If allegations are raised that a member has abandoned his or her practice or other issues arise that require the services of the Society's Trustee Services Department, a lack of current contact information can impede the ability of the Department to respond in a timely way to address potential risks to the public;
- e. Changes in a member's status will impact a lawyer's ability to use Teranet, the electronic land registry system, which relies on the Law Society's current member list (for practicing status) for certain requirements under the system<sup>2</sup>. A lack of current contact information may impede the Society's timely notification to the lawyer of a suspension, and as a result the lawyer's clients may be prejudiced;
- f. The Society's Administrative Compliances Processes Department relies on the currency of the member database to send notices to members for a number of requirements under the By-Laws (including filings for multi-discipline practices, professional corporations and affiliations). Inaccurate records may result in the inability to contact members, which affects the integrity of these regulatory processes and the public protections they provide.

#### The Proposed By-Law

13. The new by-law would require members of the Society to provide the Society with, and notify the Society in a timely way of any changes in, such information as:
  - a. Full legal name;
  - b. Names "also known by" (this is to address the issue of members' use of a name other than his or her legal name (as evidenced, for example, by a birth certificate or change of name certificate);
  - c. Practicing/employment/other status;

---

<sup>2</sup> In the electronic land registry system, a "compliance with law statement" may only be made by a person who is entitled to practice law in Ontario as a solicitor. Therefore a change in the lawyer's status may affect the lawyer's ability to register real estate documents containing compliance with law statements. For example, lawyers who are suspended or disbarred will be precluded from making compliance with law statements. Suspension includes a lawyer suspended for "administrative" reasons such as for the failure to pay Law Society fees or LAWPRO levies or for the failure to file Law Society or LAWPRO forms. The Law Society provides timely updates to Teranet of changes in the status of lawyers.

- d. Effective date of status change;
  - e. Home address;
  - f. Home telephone number;
  - g. Home e-mail address;
  - h. Employer's name or law firm/practice name;
  - i. Business address;
  - j. Business telephone number;
  - k. Business fax number;
  - l. Business e-mail address;
  - m. Cell phone number.
14. It is anticipated that the By-law would specify time periods within which certain information must be provided to the Society. The By-Law could also stipulate information that is public and not public.
15. Authority to make such a by-law exists under the Law Society Act. The Act includes by-law-making authority for the Society to require certain information from a member:
- 62. (0.1) Convocation may make by-laws,
  - ...
  - 8. requiring members and student members to register an address with the Society and to notify the Society of any changes in the address;
  - 9. requiring members and student members, or any class of either of them specified in the by-laws or specified by the Secretary, to provide the Society *with information relating to the Society's functions under this Act*;
- [Note: Effective May 1, 2007, paragraph 9 is repealed by the Statutes of Ontario, 2006, chapter 21, Schedule C, subsection 95 (7) and the following substituted:
- 9. requiring licensees or any class of licensees, or authorizing the Society to require licensees or any class of licensees, to provide the Society with *information* or to file certificates, reports or other documents with the Society, relating to the Society's functions under this Act;]
- (emphasis added)
16. If Convocation approves the policy for the new by-law, a by-law based on this policy will be drafted for Convocation's approval.

PROPOSED BY-LAW RESPECTING PAYMENT OF  
LAWPRO DEDUCTIBLE

Motion

17. That Convocation approve the policy for a new by-law requiring that a member of the Law Society pay the LAWPRO deductible when required to do so.

## Introduction

18. One of the obligations of a lawyer under the LAWPRO policy for professional indemnity coverage is payment of the deductible amount under the policy in the event LAWPRO pays a claim on the lawyer's behalf.<sup>3</sup>
19. The *Rules of Professional Conduct* include an ethical requirement to pay the deductible, which is described as a financial obligation relating to the lawyer's practice. Rule 6.01(2) reads:
 

A lawyer shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a professional liability insurance policy when properly called upon to do so.
20. Some lawyers do not pay the deductible. The following information provided by LAWPRO describes the current situation.
21. At present, and for some period of time, the total amount of unpaid deductibles at LAWPRO in any given month has been in excess of \$1 million. As at February 28, 2007 the amount was \$1,090,031. Subtracting amounts in respect of files in which a payment plan is in place, an arbitration regarding the imposition of the deductible under the Policy is pending, or the deductible is otherwise being held in abeyance, the outstanding amount in any given month is approximately \$850,000 involving 223 files. This amount represents approximately five percent of all deductibles triggered over the last eight years. Of the \$850,000, approximately \$580,000 has been outstanding for over 90 days and in some instances for many months or even years.
22. Concerted and significant efforts by LawPRO have been made in all instances to contact the insured member and collect the outstanding deductible. Collection efforts involve an escalating series of letters and, in many instances, phone calls made by LAWPRO staff to the insured member requesting payment. A significant number of the insured members from whom a deductible remains unpaid are either currently or have recently been in discipline.
23. The typical outstanding deductible ranges from \$2500 to \$25,000 depending on the deductible option selected by the insured member in the applicable policy. Two thousand five hundred dollars and \$5,000 are the most common amounts owing. In many instances, the insured member owes more than one deductible.<sup>4</sup>

---

<sup>3</sup> The relevant excerpt from the LAWPRO Policy for 2007 reads:

### Part IV - GENERAL CONDITIONS

#### C. DEDUCTIBLE:

...

(ii) The INSURER may pay any part or all of the DEDUCTIBLE amount to effect settlement of a CLAIM and, upon notification of the action taken, the INSURED shall reimburse the INSURER for payment of the DEDUCTIBLE, failing which the NAMED INSURED shall promptly place the INSURER in funds sufficient to satisfy the DEDUCTIBLE.

<sup>4</sup> The outstanding deductibles primarily fall into two categories: (1) expense deductibles that are triggered under the policy (a) 50% for the filing of a defence and (b) 50% at the commencement of discoveries or pre-trial, or (2) deductibles triggered upon the making of an indemnity payment

24. As the named insured, the Law Society is responsible for outstanding deductibles, and LAWPRO could demand payment from the Law Society, after which the Society would attempt to collect the amounts directly from the members.

Legislative Authority to Address the Issue

25. The recent amendments to the *Law Society Act* include new s. 47.1 which reads:

Summary suspension for failure to comply with indemnity requirements

47.1 (1) A person appointed for the purpose by Convocation may make an order suspending a licensee's licence if the licensee has failed to comply with the requirements of the by-laws with respect to indemnity for professional liability.

Eligibility for appointment

(2) Convocation shall not appoint a person for the purpose of subsection (1) unless the person is,

(a) a bencher; or

(b) an employee of the Society holding an office prescribed by the by-laws for the purpose of this section.

Length of suspension

(3) A suspension under this section remains in effect until the licensee complies with the requirements of the by-laws with respect to indemnity for professional liability to the satisfaction of the Society.

26. This section permits the Society to suspend a licensee's license for failure to comply with the by-laws with respect to liability insurance. Currently, By-Laws 16 (Professional Liability Insurance Levies) and 27 (Failure to Complete or File Insurance Documents) deal with this subject. By-Law 16 requires the payment of levies for insurance coverage<sup>5</sup> and By-Law 27 deals with the time within which insurance documents must be filed with the Society or the Society's insurer under s. 47(1)(b) of the Act.<sup>6</sup> Neither by-law includes the obligation to pay the LAWPRO deductible.

---

(including, by definition, any repair effort) in which the insured member has consented in writing to the settlement and acknowledged the deductible obligation in a signed consent document. These are clearly payable under the contract of insurance when triggered.

<sup>5</sup> By-Law 16 references s. 46(1) of the Act which states:

46. (1) An elected bencher appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws, the member has been in default for failure to pay a fee or levy payable to the Society.

<sup>6</sup> 47. (1) An elected bencher appointed for the purpose by Convocation may make an order suspending a member's rights and privileges if, for the period prescribed by the by-laws,

(a) the member has been in default for failure to complete or file with the Society any certificate, report or other document that the member is required to file under the by-laws; or

### The Regulatory Issues

27. Currently, the only enforcement mechanism available to the Society to address the lawyer's failure to honour this obligation is a disciplinary proceeding for failure to fulfill the financial obligation under rule 6.01(2). Even if LAWPRO sued and obtained a judgment, the obligation to pay under the rule remains as long as the judgment is outstanding.
28. To exercise the summary suspension authority in s. 47.1 with respect to payment of the LAWPRO deductible, a by-law would be required that imposes an obligation to pay the deductible.
29. For a number of reasons, discussed below, the Committee believes that suspending a member for failure to pay the deductible is a better tool to deal with the issue than commencing a disciplinary proceeding against a lawyer for breach of rule 6.01(2).
30. Prosecutions, which involve both Law Society and LAWPRO time and resources, are costly, and on these matters would involve the expenditure of several thousand dollars per file from intake to post-hearing enforcement. The Committee was of the view that Law Society members should not effectively be subsidizing defaulting members to this extent when a less expensive and more effective process relative to the results being sought is available.
31. In previous prosecutions of these matters by the Society, in every case but one the member agreed to a payment plan at some point after the conduct application had been issued. The matters were eventually returned to the Proceedings Authorization Committee for withdrawal of the conduct application. The Committee felt that the significant and time-consuming resources devoted to these matters would be better spent addressing more serious regulatory matters.
32. Even if a finding of misconduct is made and a penalty imposed, there is no guarantee that the Society would be able to collect on the debt, in particular without significant effort on the part of the Monitoring & Enforcement Department to enforce the judgment.

### The Committee's Proposal

33. LAWPRO has advised the Committee that it favours a proposal by the Society to address the failure to pay through the suspension authority in s. 47.1.
34. To implement this proposal, a new by-law or amendments to By-Law 16 would be required to create the obligation to pay, a breach of which would trigger the s. 47.1 summary suspension.

---

(b) the member has been in default for failure to complete or file with the Society, or with an insurer through which indemnity for professional liability is provided under section 61, any certificate, report or other document that the member is required to file under a policy for indemnity for professional liability.

35. An internal Society process for this purpose would be structured within the existing processes managed by the Law Society's Client Service Centre in respect of failure of a member's obligation to pay or file, as the case may be. As such, there would be no investigation or prosecution required, and no additional operational costs. In effect, this would likely result in an overall cost saving, when costs for investigation and prosecution are factored in. This means that suspension of the lawyer until he or she pays would be a faster and less costly way to achieve the desired result.
36. If Convocation approves the proposal, a new by-law or by-law amendments will be prepared for Convocation's approval.

Re: Proposed By-Law on Member Information

It was moved by Mr. Ruby, seconded by Ms. Ross, that Convocation approve the policy for a new by-law that would require members of the Law Society to provide current contact and other information to the Society.

The Chair amended the motion by adding the words "practice related" after the word "current".

It was moved by Ms. Curtis, seconded by Mr. Simpson, that paragraph 13, e., f., g., and m. on page 9 of the Report be deleted.

Withdrawn

The matter was referred back to Committee for further consideration.

Re: Proposed By-Law Respecting Payment of LAWPRO Deductible

It was moved by Mr. Ruby, seconded by Ms. Ross, that Convocation approve the policy for a new by-law requiring that a member of the Law Society pay the LAWPRO deductible when required to do so.

Carried

REAPPOINTMENT OF COMPLAINTS RESOLUTION COMMISSIONER

The Treasurer announced the reappointment of Clare Lewis, Q.C. as Complaints Resolution Commission for a three year term commencing April 1, 2007.

FINANCE AND AUDIT COMMITTEE REPORT

Mr. Millar presented the Report.

Report to Convocation  
March 29, 2007

---

## Finance and Audit Committee

Committee Members  
 Derry Millar, Chair  
 Beth Symes, Vice-Chair  
 Brad Wright, Vice-Chair  
 Abdul Chahbar  
 Andrew Coffey  
 Marshall Crowe  
 Holly Harris  
 Ross Murray  
 Alan Silverstein  
 Gerald Swaye

Purposes of Report: Decision and Information

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

## TABLE OF CONTENTS

For Decision

Task Force on Licensing and Accreditation Issue ..... Tab A

Combined Errors and Omissions Insurance Fund for the  
 year ended December 31, 2006..... Tab B

J.S. Denison Fund (In-Camera) ..... Tab C

For Information..... Tab D

- LawPro Financial Statements for the year ended December 31, 2006

## COMMITTEE PROCESS

1. The Finance and Audit Committee (“the Committee”) were polled by e-mail and also met on March 15, 2007. Committee members in attendance were: Derry Millar (c.), Brad Wright (v.c.) Abdul Chahbar, Marshall Crowe, Andrew Coffey, Holly Harris, Alan Silverstein, Ross Murray and Gerry Swaye. Bencher Vern Krishna was also in attendance.
2. Akhil Wagh and Duncan Gosnell from LawPro and David Ross from Deloitte & Touche LLP also attended. Staff in attendance were Malcolm Heins, Wendy Tysall, Fred Grady and Sophia Sperdakos.

## FOR DECISION

BUDGET FOR THE TASK FORCE ON LICENSING AND  
ACCREDITATION ISSUES

## Motion

2. That Convocation approve the budget of \$50,000 for the task force on licensing and accreditation issues and the transfer of this amount from the contingency account.
3. A motion on the terms of reference for the taskforce on licensing and accreditation issues is included in the March 2007 Professional Development and Competence Committee's report to Convocation. The Professional Development and Competence Committee estimates that the task force will require a budget of \$50,000 in 2007. This is made up of \$30,000 for consultation expenses (meetings, travel and accommodation for those consulted) and \$20,000 for any research to be undertaken.
4. Funding for this 2007 expenditure comes from the Law Society's contingency fund. The contingency fund had a balance of \$600,000 at the beginning of the year and has had \$33,000 allocated from it for the Gardens of Justice project, leaving a balance of \$566,667 for the remainder of the year.
5. Any additional funding for 2008 would be incorporated into the operating budget approved by Convocation in October 2007.

## FOR DECISION

COMBINED FINANCIAL STATEMENTS OF THE ERRORS AND  
OMISSIONS INSURANCE FUND  
FOR THE YEAR ENDED DECEMBER 31, 2006

## Motion

1. That Convocation approve the audited combined financial statements for the Errors & Omissions Insurance Fund for the year ended December 31, 2006 set out at Appendix 1.

## Background Information

Annually the Finance and Audit reviews and recommends approval of the combined annual financial statements of The Law Society of Upper Canada Errors and Omissions Insurance Fund. The Lawyers' Professional Indemnity Company administers the fund under a management services agreement.

FOR INFORMATION  
FINANCIAL STATEMENTS FOR THE LAYWERS PROFESSIONAL  
INDEMNITY COMPANY  
FOR THE YEAR ENDED DECEMBER 31, 2006

Background

The audited financial statements for the Lawyers Professional Indemnity Company, for the year ended December 31, 2006 are at Appendix 1. These statements were approved at the February LawPro Board meeting and reviewed by the Finance and Audit Committee.

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

- (1) Copies of Combined Financial Statements of the Errors and Omissions Insurance Fund for the Year Ended December 31, 2006.  
(Tab B, Appendix 1, pages 6 – 25)
- (2) Copies of the audited financial statements for the Lawyers Professional Indemnity Company for the year ended December 31, 2006.  
(Tab C, Appendix 1, pages 29 – 52)

Re: Budget for Task Force on Licensing and Accreditation

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the budget of \$50,000 for the task force on licensing and accreditation issues and the transfer of this amount from the contingency account.

Carried

Re: Audited Combined Errors and Omissions Insurance Fund Financial Statements for 2006

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the audited combined financial statements for the Errors & Omissions Insurance Fund for the year ended December 31, 2006 set out at Appendix 1 of the Report.

Carried

Re: J. S. Denison Fund Application (in camera)

It was moved by Mr. Millar, seconded by Ms. Symes, that Convocation approve the decision to award a requested grant of \$4,000 to Applicant 2007-8.

Carried

*Item for Information*

- LAWPRO Audited Financial Statements for 2006

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M. AND  
RESUMED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Alexander, Backhouse, Boyd, Chahbar, Cherniak, Copeland, Crowe, Curtis, Dickson, Doyle, Dray, Eber, Furlong, Go, Gottlieb, Harris, Heintzman, Henderson, Krishna, Lawrie, Legge, Manes, Minor, Murphy, O'Donnell, Pawlitza, Porter, Potter, Ross, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Wardlaw, Warkentin and Wright.

.....

TRIBUNALS COMMITTEE REPORT

Mr. Sandler presented the Report.

Report To Convocation  
March 29, 2007

---

Tribunals Committee

Committee Members  
Larry Banack, Chair  
Mark Sandler, Vice Chair  
Carole Curtis  
Sy Eber  
Derry Millar  
Janet Minor  
Bonnie Warkentin

Purposes of Report: Decision  
Information

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

## TABLE OF CONTENTS

For Decision

Proposed Revised Ontario Regulation 30/99 ..... TAB A

For Information..... TAB B

Tribunals Office Statistics (Fourth Quarter Report, 2006)

Adjudicator Education Binders

### COMMITTEE PROCESS

1. The Committee met on January 30, 2007, February 8, 2007, February 22, 2007 and March 8, 2007.
2. On January 30, 2007 Committee members Mark Sandler (Vice Chair), Carole Curtis, and Janet Minor attended. Bencher Heather Ross attended the meeting from the Professional Regulation Committee. Staff members Grace Knakowski, Dulce Mitchell, Elliot Spears, Sophia Sperdakos and James Varro attended.

3. On February 8, 2007 Committee members Mark Sandler (Vice Chair), Derry Millar, Sy Eber, Janet Minor, and Bonnie Warkentin attended. Bencher Heather Ross attended the meeting from the Professional Regulation Committee. Bencher Ross Murray also attended from the Professional Regulation Committee for a portion of the meeting. Staff members Lesley Cameron, Katherine Corrick, Grace Knakowski, Dulce Mitchell, Zeynep Onen, Elliot Spears, Sophia Sperdakos and James Varro attended.
4. On February 22, 2007 Committee members Larry Banack (Chair), Mark Sandler (Vice Chair), Carole Curtis, Sy Eber, Derry Millar, Janet Minor, and Bonnie Warkentin attended. Bencher Heather Ross attended the meeting from the Professional Regulation Committee. Staff members Lesley Cameron, Grace Knakowski, Dulce Mitchell, Zeynep Onen, Elliot Spears, Sophia Sperdakos, Sybila Valdivieso and James Varro attended.
5. On March 8, 2007 Committee members Larry Banack (Chair), Carole Curtis, Janet Minor, and Bonnie Warkentin attended. Lay bencher Anne Marie Doyle attended the meeting from the Professional Regulation Committee. Staff members Lesley Cameron, Grace Knakowski, Dulce Mitchell, Zeynep Onen, Elliot Spears, Sophia Sperdakos, Sybila Valdivieso and James Varro attended.

#### FOR DECISION

#### PROPOSED REVISED ONTARIO REGULATION 30/99

#### MOTION

6. That Convocation approve the proposed revisions to Ontario Regulation 30/99 set out at Appendix 1 to be recommended to the Ministry of the Attorney General for approval by the Lieutenant Governor-in-Council.

#### Introduction and Background

7. On May 1, 2007 amendments to the *Law Society Act* will come into effect. These amendments necessitate changes to Ontario Regulation 30/99, which addresses hearings before the Hearing Panel.
8. Typically, where changes are proposed to Regulations affecting the Law Society, the Law Society would communicate the policy proposals to Legislative Council for the Ministry of the Attorney General and the Ministry would undertake the drafting. Because Regulation 30/99 must be in place by May 1, 2007, the Ministry has requested that the Law Society provide it with a draft regulation for its review to speed up the process. The Ministry is, of course, free to draft the Regulation as it determines is appropriate.
9. Regulation 30/99 was introduced in 1999 when the *Law Society Act* was last amended and the Hearing Panel was first introduced. The regulation has had no amendments since that time.
10. Given the need to amend the Regulation to address changes to the Act, the Tribunals Committee has also taken the opportunity to consider the provisions of the Regulation

overall and is proposing a number of amendments to better reflect the Law Society's experience with the Hearing and Appeal Panels over the last 7 years.

11. In its current form the Regulation,
  - a. addresses those proceedings to be heard by three members of the Hearing Panel, setting out certain requirements for the composition of such panels;
  - b. enumerates those proceedings where the Chair of the Hearing Panel *shall* assign one member of the Panel to determine the merits of the proceedings and sets out certain requirements for who will preside;
  - c. enumerates those motions in proceedings to be heard by three members that are to be heard by the same panel that is to determine the merits of the proceeding and those motions that do not need to be heard by the same panel that is to determine the merits of the proceeding; and
  - d. enumerates those motions in proceedings to be heard by one member that are to be heard by the same member who will determine the merits of the proceeding on the merits and those motions that do not need to be heard by the same member who will determine the merits of the proceeding.
  
12. The proposed revised Regulation accomplishes the following:
  - a. It provides that the Vice Chair of the Hearing Panel may act in the absence of the Chair.
  - b. It modifies the language in the Regulation to conform with the Act's reference to licensees (licensed to practise law in Ontario as a barrister and solicitor [lawyer]; licensed to provide legal services in Ontario [paralegal]).
  - c. It incorporates the necessary additions to address hearings in which the subject of the proceeding is a licensee licensed to provide legal services (paralegal).
  - d. The amendments to the *Law Society Act* authorize licensees (in addition to elected benchers) to be appointed to the Hearing Panel. The proposed Regulation reflects this authority. No such appointments would occur, however, unless Convocation at a future date passes policies to implement this authority.
  - e. Where proceedings are to be heard by three members of the Hearing Panel, the Regulation sets out certain requirements for the composition of such panels where,
    - i. the subject of the proceeding is licensed or seeking to be licensed to practise law in Ontario as a barrister and solicitor; and
    - ii. where the subject of the proceeding is licensed or seeking to be licensed to provide legal services in Ontario.

- f. It enumerates those proceedings where the Chair or Vice Chair of the Hearing Panel may assign one member of the Hearing Panel to determine the merits.
  - g. It enumerates motions in proceedings to be heard by three members that must be heard by the same panel that is to determine the merits of the proceeding. The revised proposed Regulation reduces the number of such motions from the current Regulation. This reflects experience gained over the seven years since the Regulation came into force that suggests seized panels are unnecessary for a number of the motions enumerated in the current Regulation.
  - h. It specifies that three members of the Hearing Panel shall be assigned to hear a motion for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services and the three members do not need to be the same ones as will determine the merits of the proceeding. This reflects already approved Convocation policy. Whether the hearing on the merits is to be before three or one panel member any motion for an interlocutory suspension is to be before three panel members.
  - i. It provides that the Chair or Vice Chair may assign one member or three members to the hearing of any motion not coming within those described in paragraphs (g) and (h), above. This simplifies the Regulation and reflects the importance of flexibility in managing the Tribunals process.
  - j. It reduces the enumerated motions in proceedings to be heard by one member that are to be heard by the same member who will determine the merits of the proceeding. Motions not coming within the enumerated list do not need to be heard by the same member who is to determine the merits of the proceeding.
  - k. It includes provisions respecting appeals before the Appeal Panel, which the current Regulation does not address. Specifically, it addresses appeals to be heard by five members and appeals to be heard by three members and addresses requirements respecting composition of such Appeal Panels.
13. The proposed revised Regulation 30/99 is set out at Appendix 1. The black-lined version of the current Regulation is set out for comparison at Appendix 2.

Appendix 1

## HEARINGS BEFORE THE HEARING AND APPEAL PANEL

### HEARINGS BEFORE THE HEARING PANEL

#### PROCEEDINGS TO BE HEARD BY THREE MEMBERS

1. (1) Subject to section 2, the chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to a hearing to determine the merits of a proceeding.

(2) If the subject of the proceeding is a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

- (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
  - (b) at least one of the members assigned under subsection (1) shall be any of the following:
    - (i) a lay bencher,
    - (ii) a person approved by the Attorney General for Ontario.
- (3) Subsection (2) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (2) would unduly delay the hearing.
- (4) If the subject of the proceeding is a person licensed or applying to be licensed to provide legal services in Ontario,
- (a) one of the members assigned under subsection (1) shall be any of the following:
    - (i) an elected bencher licensed to provide legal services in Ontario,
    - (ii) a person licensed to provide legal services in Ontario,
    - (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.21 (3) of the Act;
  - (b) one of the members assigned under subsection (1) shall be any of the following:
    - (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
    - (ii) a person licensed to practise law in Ontario as a barrister and solicitor,
- and
- (c) one of the members assigned under subsection (1) shall be any of the following:
    - (i) a lay bencher,
    - (ii) a person approved by the Attorney General for Ontario.
- (5) Subsection (4) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (4) would unduly delay the hearing.
- (6) The chair or the vice-chair of the Hearing Panel may not assign more than one life bencher to a hearing to determine the merits of a proceeding.
- (7) The chair or the vice-chair of the Hearing Panel may not assign more than one bencher who holds office under section 14 of the Act to a hearing to determine the merits of a proceeding.

## PROCEEDINGS TO BE HEARD BY ONE MEMBER

2. (1) Subject to subsection (3), the chair or, in the absence of the chair, the vice-chair of the Hearing Panel may assign one member of the Panel to a hearing to determine the merits of any of the following applications:

1. An application under subsection 34 (1) of the Act for a determination of whether a licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
  - i. Practising law in Ontario or providing legal services in Ontario or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario while his or her licence is suspended.
  - ii. Breaching an undertaking to the Society.
  - iii. Failing to honour a financial obligation to the Society.
  - iv. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
  - v. Failing to maintain financial records as required by the by-laws.
  - vi. Failing to respond to inquiries from the Society.
  - vii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
  - viii. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
3. An application under subsection 45 (1) of the Act.
4. An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
5. An application under subsection 49.42 (3) of the Act.
6. An application under subsection 49.43 (1) of the Act.

(2) If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her own motion, transfer the hearing to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel, and subsections 1 (2) to (7) apply for that purpose.

(3) If a hearing is transferred under subsection (2) to three members of the Hearing Panel, the hearing shall begin anew.

#### MOTIONS IN PROCEEDINGS TO BE HEARD BY THREE MEMBERS

3. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, under section 1 or subsection 2 (2), assigns three members of the Panel to the hearing to determine the merits of the proceeding.

(2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the same three members of the Panel who are to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue.

(3) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

(4) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel may assign one member or three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3).

(5) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned to the hearing of a motion, the members assigned to the hearing of the motion may, on motion by a party to the motion or on their own motion, transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding.

(6) If one member of the Hearing Panel is assigned to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing,

(a) to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel; or

(b) to the three members of the Panel who are to determine the merits of the proceeding.

(7) If a hearing is transferred under subsection (5) or (6), the hearing shall begin anew.

(8) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, subsections 1 (6) and (7) apply.

#### MOTIONS IN PROCEEDINGS TO BE HEARD BY ONE MEMBER

4. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, under section 2, assigns one member of the Panel to the hearing to determine the merits of the proceeding.

(2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

(3) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the member of the Panel who is to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. A stay of the proceeding.
5. The exclusion of witnesses from all or part of a hearing.
6. A constitutional issue.

(4) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign the member who is to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3).

(5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing to the member who is to determine the merits of the proceeding.

(6) If a hearing is transferred under subsection (5) to the member of the Hearing Panel who is to determine the merits of the proceeding, the hearing shall begin anew.

#### HEARINGS BEFORE THE APPEAL PANEL

## APPEALS TO BE HEARD BY FIVE MEMBERS

5. (1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign five members of the Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
2. A costs order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
3. An interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

(2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

- (a) at least three of the members assigned under subsection (1) shall be elected benchers licensed to practise law in Ontario as barristers and solicitors; and
- (b) at least one of the members assigned under subsection (1) shall be any of the following:
  - (i) a lay bencher,
  - (ii) a person approved by the Attorney General for Ontario.

(3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,

- (a) two of the members assigned under subsection (1) shall be one or more of any of the following:
  - (i) an elected bencher licensed to provide legal services in Ontario,
  - (ii) a person licensed to provide legal services in Ontario,
  - (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;
- (b) two of the members assigned under subsection (1) shall be one or more of any of the following:
  - (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
  - (ii) a person licensed to practise law in Ontario as a barrister and solicitor;

and

- (c) one of the members assigned under subsection (1) shall be any of the following:
  - (i) a lay bencher,
  - (ii) a person approved by the Attorney General for Ontario.

#### APPEALS TO BE HEARD BY THREE MEMBERS

6. (1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign three members of the Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.
2. A costs order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.
3. An order made under section 46, 47, 47.1, 48 or 49 of the Act.

(2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

- (a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor; and
- (b) at least one of the members assigned under subsection (1) shall be any of the following:

- (i) a lay bencher,
- (ii) a person approved by the Attorney General for Ontario.

(3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,

- (a) one of the members assigned under subsection (1) shall be any of the following:
  - (i) an elected bencher licensed to provide legal services in Ontario,
  - (ii) a person licensed to provide legal services in Ontario,
  - (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;
- (b) one of the members assigned under subsection (1) shall be any of the following:

- (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,
- (ii) a person licensed to practise law in Ontario as a barrister and solicitor;
- and
- (c) one of the members assigned under subsection (1) shall be any of the following:
- (i) a lay bencher,
- (ii) a person approved by the Attorney General for Ontario.

March 14, 2007

Appendix 2

## HEARINGS BEFORE THE HEARING AND APPEAL PANEL

### HEARINGS BEFORE THE HEARING PANEL

#### PROCEEDINGS TO BE HEARD BY THREE MEMBERS

1. (1) Subject to section 2, the chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to a hearing to determine the merits of a proceeding.

(2) If the subject of the proceeding is a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor, hearing is to determine the merits of an application under section 34 or 38 of the Act,

(a) at least one of the members assigned under subsection (1) shall be an elected bencher; ~~and; and~~

(b) at least one of the members assigned under subsection (1) shall be any of the following:

(i) a lay bencher,

(ii) a person approved by the Attorney General for Ontario.

(3) Subsection (2) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (2) would unduly delay the hearing.

(4) If the subject of the proceeding is a person licensed or applying to be licensed to provide legal services in Ontario,

(a) one of the members assigned under subsection (1) shall be any of the following:

(i) an elected bencher licensed to provide legal services in Ontario,

(ii) a person licensed to provide legal services in Ontario,

(iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.21 (3) of the Act;

(b) one of the members assigned under subsection (1) shall be any of the following:

(i) a bencher licensed to practise law in Ontario as a barrister and solicitor,

(ii) a person licensed to practise law in Ontario as a barrister and solicitor; and

(c) one of the members assigned under subsection (1) shall be any of the following:

(i) a lay bencher,

(ii) a person approved by the Attorney General for Ontario.

(5) Subsection (4) does not apply if the chair or the vice-chair of the Hearing Panel is of the opinion that compliance with subsection (4) would unduly delay the hearing.

(46) The chair or the vice-chair of the Hearing Panel may not assign more than one life bencher to a hearing before the Panel to determine the merits of a proceeding.

(57) The chair or the vice-chair of the Hearing Panel may not assign more than one bencher who holds office under section 14 of the Act to a hearing before the Panel to determine the merits of a proceeding.

## PROCEEDINGS TO BE HEARD BY ONE MEMBER

2. (1) Subject to subsection (3), the chair or, in the absence of the chair, the vice-chair of the Hearing Panel ~~shall~~ may assign one member of the Panel to a hearing to determine the merits of any of the following applications:
1. An application under subsection 34 (1) of the Act for a determination of whether a member-licensee has contravened section 33 of the Act by one or more of the following means (but not by other means):
    - i. ~~Acting as a barrister or solicitor, holding himself or herself out as or representing himself or herself to be a barrister or solicitor or practising law as a barrister or solicitor while his or her rights and privileges are suspended~~ Practising law in Ontario or providing legal services in Ontario or holding himself or herself out as, or representing himself or herself to be, a person who may practise law in Ontario or a person who may provide legal services in Ontario while his or her licence is suspended.
    - ii. Breaching an undertaking to the Society.
    - iii. Failing to honour a financial obligation to the Society.
    - iv. Failing to maintain an investment authority or a report on an investment as required by the by-laws.
    - v. Failing to maintain financial records as required by the by-laws.
    - vi. Failing to respond to inquiries from the Society.
    - vii. Failing to co-operate with a person conducting an audit, investigation, review, search or seizure under Part II of the Act.
    - viii. Failing to pay costs awarded to the Society by the Hearing Panel or the Appeal Panel.
  2. An application under subsection 34 (1) of the Act, if the parties to the application consent, in accordance with the rules of practice and procedure, to the application being heard by one member of the Hearing Panel.
  3. An application under subsection 45 (1) of the Act.
  4. ~~An application under subsection 49.1 (4) of the Act.~~
  - ~~5.~~ An application under subsection 49.42 (1) of the Act, if the order giving rise to the application was made by one member of the Hearing Panel.
  - ~~6.~~ An application under subsection 49.42 (3) of the Act.
  - ~~7.~~ An application under subsection 49.43 (1) of the Act.
- (2) ~~If the chair of the Hearing Panel is required under subsection (1) to assign one member of the Panel to a hearing, the chair shall assign an elected benchler to the hearing.~~
- ~~(3)~~ If one member of the Hearing Panel is assigned to a hearing under subsection (1), the member assigned to the hearing may, on motion by a party to the application or on his or her own motion, transfer the hearing to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel, and subsections 1 (2) to (~~5~~) apply for that purpose.
- (~~4~~) If a hearing is transferred under subsection (~~3~~) to three members of the Hearing Panel, the hearing shall begin anew.

## MOTIONS IN PROCEEDINGS TO BE HEARD BY THREE MEMBERS

3. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, ~~is required by~~ under section 1 or subsection 2 (~~3~~), ~~to assign~~ three members of the Panel to the hearing to determine the merits of the proceeding.
- (2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the same three members of the Panel who are to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:
1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
  2. The jurisdiction of the Society to initiate the proceeding.
  3. The exclusion of the public from all or part of a hearing.
  4. ~~Disclosure of particulars, documents or things from a person who is not a party to the proceeding.~~

- ~~—5. The production of documents by a person who is a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion will likely require the members of the Panel who hear the motion to examine some or all of the documents.~~
- ~~—6. A stay of the proceeding.~~
- 75. The exclusion of witnesses from all or part of a hearing.
- 86. A constitutional issue.
- ~~9. A motion under subsection 39 (1) of the Act to require the member or student member who is the subject of the proceeding to be examined by one or more physicians or psychologists.~~
- ~~—10. A motion made, with the consent of the parties, to deal in an application under section 34 of the Act with a matter that would otherwise have to be the subject of an application under section 38 of the Act.~~
- ~~—11. A motion to which, in the opinion of the chair of the Hearing Panel, the *Mental Health Act* may apply.~~
- ~~—12. A motion that is transferred under this section to the three members of the Panel who are to determine the merits of the proceeding.~~
- ~~—13. Any matter that arises during the hearing of the merits of the proceeding.~~
- (3) Subject to paragraphs 12 and 13 of subsection (2), the chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion relates to any of the following matters:
  - ~~—1. The issue of whether two or more proceedings should be heard together.~~
  - ~~—2. Disclosure of particulars and things that are not documents from a party to the proceeding.~~
  - ~~—3. The production of documents by a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion is not likely to require the members of the Panel who hear the motion to examine any of the documents.~~
  - ~~—4. Adding a party to the proceeding or authorizing a person who is not a party to participate in a hearing.~~
  - ~~—5. Withdrawal of the counsel or agent for a party to the proceeding.~~
  - ~~—6. A request for an order prohibiting a party to the proceeding from making further motions in the proceeding without leave of the Hearing Panel.~~
- ~~(4) Subject to paragraphs 12 and 13 of subsection (2), the chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion relates to any of the following matters:~~
  - ~~—1. The extension or abridgement of any time prescribed by the rules of practice and procedure or by a previous order of the Hearing Panel.~~
  - ~~—2. The place of hearing for the hearing of a motion or for the hearing of the merits of the proceeding.~~
  - ~~—3. The form of a hearing, including the issue of whether to hold an electronic hearing.~~
  - ~~—4. The holding of a pre-hearing conference or the terms on which a pre-hearing conference may be held.~~
  - ~~—5. The consequences of failure to comply with an interlocutory order made in the proceeding by one member of the Hearing Panel.~~
- The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is for an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.
- (54) Subject to paragraphs 12 and 13 of subsection (2), ~~the chair or, in the absence of the chair, the vice-chair~~ of the Hearing Panel shall may assign one member or three members of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2), or (3) ~~or~~ (4).
- (6) Despite subsection (5), if the parties to the motion agree, the chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign any of the members who are to determine the merits of the proceeding, if the motion is not described in subsection (2), (3) or (4).
- ~~(7) Despite subsection (4) and despite the agreement of the parties under subsection (6), the chair of the Hearing Panel may assign three members of the Panel to the hearing of a motion that is described in subsection (4) or to the hearing of a motion that is not described in subsection (2), (3) or (4) if the chair is of the opinion that the assignment~~

~~of three members would facilitate the hearing of the motion together with another motion to which the chair is required to assign three members.~~

(85) If three members of the Hearing Panel other than the three members who are to determine the merits of the proceeding are assigned to the hearing of a motion, the members assigned to the hearing of ~~the hearing of~~ the motion may, on motion by a party to the motion or on their own motion, transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding.

(96) If one member of the Hearing Panel is assigned to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing.

(a) to three members of the Panel assigned by the chair or, in the absence of the chair, the vice-chair of the Panel; or

(b) to the three members of the Panel who are to determine the merits of the proceeding.

~~(10) If a motion that relates to the production of documents by a party to the proceeding is not assigned to the three members of the Hearing Panel who are to determine the merits of the proceeding and the members of the Panel who are assigned to hear the motion are of the opinion that some or all of the documents should be examined, the members of the Panel who are assigned to hear the motion shall transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding.~~

~~—(11) If a motion is not assigned to the three members of the Hearing Panel who are to determine the merits of the proceeding and the member or members of the Panel who are assigned to hear the motion are of the opinion that the *Mental Health Act* may apply to the motion, the member or members of the Panel who are assigned to hear the motion shall transfer the hearing to the three members of the Panel who are to determine the merits of the proceeding.~~

~~(127) If a hearing is transferred under subsection (8), (9), (105) or (116), the hearing shall begin anew.~~

(138) If three members of the Hearing Panel are assigned to the hearing of a motion under this section, subsections 1 (46) and (57) apply.

#### MOTIONS IN PROCEEDINGS TO BE HEARD BY ONE MEMBER

4. (1) This section applies to the hearing of motions in a proceeding in which the chair or the vice-chair of the Hearing Panel, ~~is required by under~~ section 2, ~~to assign~~ one member of the Panel to the hearing to determine the merits of the proceeding.

(2) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign three members of the Panel to the hearing of a motion in the proceeding for an interlocutory order suspending ~~the rights and privileges of a member or student member~~ a licensee's licence or restricting the manner in which a ~~member-licencee~~ may practise law or provide legal services.

(3) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign the member of the Panel who is to determine the merits of the proceeding to the hearing of a motion in the proceeding if the motion relates to any of the following matters:

1. The jurisdiction of the Hearing Panel to hear and determine the proceeding.
2. The jurisdiction of the Society to initiate the proceeding.
3. The exclusion of the public from all or part of a hearing.
4. ~~Disclosure of particulars, documents or things from a person who is not a party to the proceeding.~~
- ~~—5. The production of documents by a person who is a party to the proceeding, if the chair of the Hearing Panel is of the opinion that the motion will likely require the member of the Panel who hears the motion to examine some or all of the documents.~~
- ~~—6. A stay of the proceeding.~~
75. The exclusion of witnesses from all or part of a hearing.
86. A constitutional issue.
- ~~—9. A motion to which, in the opinion of the chair of the Hearing Panel, the *Mental Health Act* may apply.~~
- ~~—10. A motion that is transferred under this section to the member of the Panel who is to determine the merits of the proceeding.~~
- ~~—11. Any matter that arises during the hearing of the merits of the proceeding.~~

(4) The chair or, in the absence of the chair, the vice-chair of the Hearing Panel shall assign one member of the Panel to the hearing of a motion in the proceeding, and is not required to assign the member who is to determine the merits of the proceeding, if the motion is not described in subsection (2) or (3).

(5) If a member of the Hearing Panel other than the member who is to determine the merits of the proceeding is assigned under subsection (4) to the hearing of a motion, the member assigned to the hearing may, on motion by a party to the motion or on his or her own motion, transfer the hearing to the member who is to determine the merits of the proceeding.

~~—(6) Despite subsections (3), (4) and (5), the chair of the Hearing Panel may assign three members of the Panel to the hearing of a motion if the chair is of the opinion that the assignment of three members would facilitate the hearing of the motion together with a motion to which the chair is required by subsection (2) to assign three members.~~

~~—(7) If a motion that relates to the production of documents by a party to the proceeding is not assigned to the member of the Hearing Panel who is to determine the merits of the proceeding and the member of the Panel who is assigned to hear the motion is of the opinion that some or all of the documents should be examined, the member of the Panel who is assigned to hear the motion shall transfer the hearing to the member of the Panel who is to determine the merits of the proceeding.~~

~~—(8) If a motion is not assigned to the member of the Hearing Panel who is to determine the merits of the proceeding and the member of the Panel who is assigned to hear the motion is of the opinion that the *Mental Health Act* may apply to the motion, the member of the Panel who is assigned to hear the motion shall transfer the hearing to the member of the Panel who is to determine the merits of the proceeding.~~

(96) If a hearing is transferred under subsection (5), ~~(7) or (8)~~ to the member of the Hearing Panel who is to determine the merits of the proceeding, the hearing shall begin anew.

#### MOTIONS IN INTENDED PROCEEDINGS HEARINGS BEFORE THE APPEAL PANEL

##### APPEALS TO BE HEARD BY FIVE MEMBERS

~~5. Despite sections 3 and 4, the chair of the Hearing Panel shall assign three members of the Panel, and is not required to assign any of the members who are to determine the merits of the proceeding, to the hearing of all motions in an intended proceeding.~~(1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign five members of the Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
2. A costs order made in a proceeding before the Hearing Panel in which three members of the Hearing Panel were assigned to the hearing to determine the merits of the proceeding.
3. An interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services.

(2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

(a) at least three of the members assigned under subsection (1) shall be elected benchers licensed to practise law in Ontario as barristers and solicitors; and

(b) at least one of the members assigned under subsection (1) shall be any of the following:

- (i) a lay bencher,
- (ii) a person approved by the Attorney General for Ontario.

(3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,

(a) two of the members assigned under subsection (1) shall be one or more of the following:

- (i) an elected bencher licensed to provide legal services in Ontario,
- (ii) a person licensed to provide legal services in Ontario,
- (iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;

(b) two of the members assigned under subsection (1) shall be one or more of the following:

- (i) a bencher licensed to practise law in Ontario as a barrister and solicitor,

(ii) a person licensed to practise law in Ontario as a barrister and solicitor; and

(c) one of the members assigned under subsection (1) shall be any of the following:

(i) a lay bencher,

(ii) a person approved by the Attorney General for Ontario.

APPEALS TO BE HEARD BY THREE MEMBERS

6. (1) The chair or, in the absence of the chair, the vice-chair of the Appeal Panel shall assign three members of the Panel to a hearing of an appeal if the appeal is from any of the following:

1. A final decision or order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.

2. A costs order made in a proceeding before the Hearing Panel in which one member of the Hearing Panel was assigned to the hearing to determine the merits of the proceeding.

3. An order made under section 46, 47, 47.1, 48 or 49 of the Act.

(2) If the decision or order appealed from affects a person licensed or applying to be licensed to practise law in Ontario as a barrister and solicitor,

(a) at least one of the members assigned under subsection (1) shall be an elected bencher licensed to practise law in Ontario as a barrister and solicitor, and

(b) at least one of the members assigned under subsection (1) shall be any of the following:

(i) a lay bencher,

(ii) a person approved by the Attorney General for Ontario.

(3) If the decision or order appealed from affects a person licensed or applying to be licensed to provide legal services in Ontario,

(a) one of the members assigned under subsection (1) shall be any of the following:

(i) an elected bencher licensed to provide legal services in Ontario,

(ii) a person licensed to provide legal services in Ontario,

(iii) a person appointed by the Attorney General for Ontario under subsection 25.2 (2) of the Act and approved by the Attorney General for Ontario for the purposes of subsection 49.29 (3) of the Act;

(b) one of the members assigned under subsection (1) shall be any of the following:

(i) a bencher licensed to practise law in Ontario as a barrister and solicitor,

(ii) a person licensed to practise law in Ontario as a barrister and solicitor; and

(c) one of the members assigned under subsection (1) shall be any of the following:

(i) a lay bencher,

(ii) a person approved by the Attorney General for Ontario. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION).

March 14, 2007

FOR INFORMATION

TRIBUNALS OFFICE STATISTICS

14. The Tribunals Office Fourth Quarter Report for the period October 1, 2006 – December 31, 2006 is set out at Appendix 1.

## ADJUDICATOR EDUCATION BINDERS

15. The Tribunals Task Force Report to Convocation dated May 26, 2005 recommended, and Convocation approved, mandatory adjudicator education. This reflected Convocation's commitment to enhancing adjudicator competence and professional development opportunities.
16. At Convocation benchers will be provided with an adjudicator education binder. For adjudicators' convenience and easy reference it is suggested that binders be kept in benchers' lockers at the Law Society.
17. The binder contains the following information under the following headings:
- Rules of Practice and Procedure
  - Adjudicator Code of Conduct
  - Memoranda from Chairs
  - Guidelines and Templates
  - Adjudicator Education Programs
18. The material will be updated periodically and inserts, with an updated Table of Contents page, will be sent to adjudicators.

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

Copy of the Tribunals Office Statistics Fourth Quarter (Q4) Report (*October 1 to December 31, 2006*).

(Tab B, Appendix 1, pages 18 – 33)

Re: Proposed Revised Ontario Regulation 30/99

It was moved by Mr. Sandler, seconded by Ms. Warkentin, that Convocation approve the proposed revisions to Ontario Regulation 30/99 set out at Appendix 1 to the Report to be recommended to the Ministry of the Attorney General for approval by the Lieutenant Governor-in-Council.

Carried

ROLL-CALL VOTE

Aaron	For	Heintzman	For
Alexander	For	Henderson	For
Backhouse	For	Lawrie	For
Boyd	For	Legge	For
Chahbar	For	Manes	For
Cherniak	For	Minor	For
Copeland	For	O'Donnell	For
Crowe	For	Pawlitza	For
Curtis	For	Porter	For
Dickson	For	Potter	Abstain
Doyle	For	Ross	Against
Dray	For	Sandler	For
Eber	For	Simpson	For
Go	For	Swaye	Against

Gottlieb	Against	Symes	For
Harris	For	Warkentin	For
		Wright	For

Vote: 29 For; 3 Against; 1 Abstention

*Items for Information*

- Tribunals Office Statistics (Fourth Quarter Report, 2006)
- Adjudicator Education Binders

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

.....

IN PUBLIC

.....

EQUITY AND ABORIGINAL ISSUES COMMITTEE/Comité sur l'équité et les affaires autochtones Report

(Report previously dealt with *in camera*)

Re: Human Rights Monitoring Group

It was moved by Mr. Copeland, seconded by Ms. Ross, that Convocation approve the Law Society of Upper Canada letters of intervention in the following cases and make public the reports of the Monitoring Group about those cases:

- a. lawyer Yang Maodong (also known as Guo Feixiong) (China) – letter of intervention presented at Appendix 1;
- b. lawyers Sulieman al-Rushudi and Essam al-Basrawi (Saudi Arabia) – letter of intervention presented at Appendix 2.

That Convocation make public the reports of the Monitoring Group about the following cases:

- a. Gao Zhisheng (China); Zheng Enchong (China); Mohammed Abbou (Tunisia); Chen Guangcheng (China); and Mossaad Mohamed Ali, Rasha Souraj, Ebtisam Alsemani, Najat Dafaalla and Mohamed Badawi (Sudan) – presented to Convocation on October 26, 2006;
- b. attacks against Filipino judges and lawyers, including attacks against Norman Bocar, Felidito Dacut, Reuel Daguntas, Henrick Gingoyon, Charles Juloya, Milnar Lammawin, Jovy Magsino, Ambrosio Matias, Victor Padilla, Voltaire Rosales, Paterno Tiamson, Teresita Vidamo and Arbet Yongco; Leitanthem Umakanta Meitei ((Tunisia); Yalemzewd Bekele (Ethiopia); and Anwar al-Bunni (Syria) – presented to Convocation on November 23, 2006;
- c. Amine Sidhoum Abderramane and Hassiba Boumerdesi (Algeria); Marie-Thérèse Nlandu Mpolo-Nene (Democratic Republic of Congo); Nasser Zarafshan (Iran); Giorgi Getsadze (Georgia); Bui Thi Kim Thanh (Vietnam) – presented to Convocation on January 25, 2007; and
- d. Dionisio Díaz Garcia (Honduras); Abdolfattah Soltani (Iran); Saleh Kamrani (Iran) – presented to Convocation on February 22, 2007.

Carried

*Items for Information*

- Consultation with Bencher Election Candidates
- Human Rights Monitoring Group
- Public Education Series 2007

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Report.

Report to Convocation  
March 29th, 2007

Paralegal Standing Committee

Committee Members  
Paul Dray, Chair  
William Simpson, Vice-Chair  
Andrea Alexander  
Marion Boyd  
James Caskey  
Anne Marie Doyle  
Michelle Haigh  
Abraham Feinstein  
Thomas Heintzman  
Brian Lawrie  
Margaret Louter  
Stephen Parker  
Bonnie Warkentin

Purpose of Report: Decision and Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

TABLE OF CONTENTS

For Decision

Paralegal Rules of Conduct..... TAB A

Draft Licensing By-law ..... TAB B

Exemptions Policy..... TAB C

For Information

Hearing Panel Regulation ..... TAB D

Grandparenting Policy..... TAB E

## COMMITTEE PROCESS

1. The Paralegal Standing Committee met on February 21st, 2007. Committee members participating were Paul Dray, Chair, William Simpson, Vice-Chair (by telephone), Andrea Alexander, Marion Boyd, James Caskey, Abe Feinstein, Michelle Haigh, Brian Lawrie, Margaret Louter, Stephen Parker and Bonnie Warkentin. Staff members in attendance were Malcolm Heins, Diana Miles, Terry Knott, Janice Laforme, Elliot Spears, Allyson O'Shea and Julia Bass.
2. The Committee further met on March 8th, 2007. Committee members participating were Paul Dray, Chair, Andrea Alexander, Marion Boyd, Anne Marie Doyle, Michelle Haigh, Abe Feinstein, Thomas Heintzman, Brian Lawrie, Margaret Louter (by telephone), Stephen Parker, and Bonnie Warkentin. Staff members in attendance were Malcolm Heins, Zeynep Onen, Naomi Bussin, Elliot Spears, Diana Miles, Terry Knott, Jim Varro, Sheena Weir, Josée Bouchard, Janice Laforme, Allyson O'Shea and Julia Bass.

## FOR DECISION

### PARALEGAL RULES OF CONDUCT

#### MOTION

3. That Convocation approve the Paralegal Rules of Conduct attached at APPENDIX 1.

#### Background

4. The Paralegal Standing Committee has developed a Code of Conduct for Convocation's approval. The Rules are based on principles and directions emerging from the 2004 Report of the Law Society's Task Force on Paralegal Regulation, as well as meetings with interested groups and individuals. The primary objectives were that the Rules should be:
  - a. Consistent with the *Rules of Professional Conduct* for lawyers;
  - b. Focused on the ethical and professional obligations of paralegals;
  - c. Clear and accessible for paralegals and the public, and
  - d. Enforceable in a fair and transparent process.
5. The draft Rules are designed to adhere to these principles, and are therefore compatible with and conform to the obligations of lawyers contained in the *Rules of Professional Conduct*, to the extent possible.
6. In preparation for the development of the Rules, Law Society staff met informally with a number of stakeholders in order to understand the context in which the rules of professional conduct would be used. These consultations included meetings with representatives of four large Ontario tribunals before which a number of paralegals appear – the Financial Services Commission of Ontario, the Ontario Rental Housing

Tribunal, the Assessment Review Board and the Workplace Safety & Insurance Appeals Tribunal. In addition, staff met with representatives of Ontario colleges and some paralegal representatives. Codes of Conduct developed by Ontario agencies and paralegal organizations were also reviewed.

7. The information gathered through these meetings was extremely valuable, and may be summarized as follows:
  - a. Agencies have generally positive experiences with the paralegal representatives who appear before them, and believe that paralegals have an important role to play in providing legal services to the public and in increasing access to justice.
  - b. Many paralegals have a good sense of their obligations to their clients and to the tribunal before which they are appearing. Many paralegals have significant expertise in their area of focus, understand the law, rules and procedures of the tribunal, act in the best interests of their client and respect the tribunal and the administration of justice.
  - c. Paralegals currently in practice have a variety of training and backgrounds, often without formal academic education in legal subjects, and it would be helpful to have a clear, focused and accessible code of conduct, both for paralegals and the agencies in their area of practice.
  
8. The consultations indicated that the focus of the rules of conduct should be:
  - a. Competence, particularly in the area of advocacy, understanding both the law and the procedures required for a hearing;
  - b. Understanding of the duties owed to clients, for example, the duty to communicate with clients;
  - c. Fees, including issues of quantum, disclosure, retainer agreements and reporting obligations;
  - d. Handling of client money, or money awarded to a client;
  - e. Conflicts of interest – understanding and avoiding conflicts of interest, e.g. where a paralegal's relationship to a service provider interferes with the ability to provide objective advice to a client;
  - f. Civility; and
  - g. Respect for the tribunal and the administration of justice.

#### Overview of the Rules

9. As with the lawyers' Rules, the structure of the document is based on obligations to various parties – general duties, duties to the client, the tribunal, other licensees and to the Society. This will also be reflected in the competence blueprint and licensing examination requirements being developed for paralegals by the Professional Development and Competence Department of the Law Society.
  
10. Since the draft reflects the Task Force Report on Paralegal Regulation approved by Convocation, the rules are not identical to those for lawyers, and there are some format differences. Based on responses from our consultations, some of the information found in commentaries in the lawyer rules has been integrated into the paralegal Rules. Where the purpose of the commentary in the lawyer Rules is educational, a practice guideline to the paralegal Rules will be developed as an explanatory aid. These guidelines will be developed after the paralegal Rules have been approved.

11. It is important that a Code of Conduct be approved prior to May 1st, as the 'grandparent' applicants will be asked to commit to compliance with the Code as part of the application process.

#### The Committee's Deliberations

12. The Committee was of the view that the current draft is a satisfactory starting point and can successfully be used during the 'grandparenting' phase. Amendments and additions will probably be necessary as the model of paralegal regulation goes into full operation.

APPENDIX 1

CONFIDENTIAL  
Draft 6.01

## PARALEGAL RULES OF CONDUCT

### TABLE OF CONTENTS

#### Rule 1 – Citation and Interpretation

- 1.01 Citation
- 1.02 Interpretation
  - Definitions
  - Singular and Plural Words
  - What Constitutes Consent
- 1.03 Manner of Interpretation
  - Standards of Paralegals

#### Rule 2 – Professionalism

- 2.01 Integrity and Civility
  - Integrity
  - Civility
  - Outside Interests and Public Office
  - Acting as Mediator
- 2.02 Undertakings
- 2.03 Harassment and Discrimination
  - Application of *Human Rights Code*
  - Harassment
  - Discrimination
  - Services

## Employment Practices

## Rule 3 – Duty to Clients

- 3.01 Competence
  - Required Standard
  - Who is Competent
  
- 3.02 Advising Clients
  - General
  - Dishonesty, Fraud, etc. by Client
  - Settlement
  - Client Under a Disability
  - Medical-Legal Reports
  - Errors
  - Official Language Rights
  - Claims Under Statutory Accident Benefits Schedule
  
- 3.03 Confidentiality
  - Confidential Information
  - Justified or Permitted Disclosure
  
- 3.04 Conflicts of Interest – General
  - Definition
  - Avoidance of Conflicts of Interest
  - Acting Against Clients
  - Joint Retainers
  
- 3.05 Conflict of Interest - Transfers
  - Application of Rule
  - Paralegal Firm Disqualification
  - Transferring Paralegal Disqualification
  
- 3.06 Doing Business with a Client
  - Investment by Client Where Paralegal Has an Interest
  - Borrowing from Clients
  - Guarantees by a Paralegal
  
- 3.07 Client Property
  - Preservation of Client's Property
  - Notification of Receipt of Property
  - Identification of Property
  - Accounting and Delivery
  
- 3.08 Withdrawal from Representation
  - Withdrawal from Representation
  - Optional Withdrawal
  - Mandatory Withdrawal
  - Non-payment of Fees
  - Withdrawal from Quasi-Criminal and Criminal Proceedings
  - Manner of Withdrawal

## Duties of Successor Paralegal

### Rule 4 – Advocacy

- 4.01 The Paralegal as Advocate
  - Duty to the Clients, Tribunals and Others
  - The Paralegal and the Tribunal Process
  - Disclosure of Documents
  - Errors and Omissions
  - Agreement on Guilty Pleas
- 4.02 Interviewing Witnesses
  - Interviewing Witnesses
  - Definition
- 4.03 Communication with Witnesses Giving Testimony
  - Communication with Witnesses Giving Testimony
- 4.04 The Paralegal as Witness
  - The Paralegal as Witness
- 4.05 Dealing with Unrepresented Persons

### Rule 5 – Fees and Retainers

- 5.01 Fees and Retainers
  - Reasonable Fees and Disbursements
  - Contingency Fees
  - Joint Retainers
  - Division of Fees
  - Fee Splitting
  - Referral Fees

### Rule 6 – Duty to the Administration of Justice

- 6.01 Encouraging Respect for the Administration of Justice
  - General Duty
  - Security of Court Facilities
  - Public Appearances and Statements
  - Unauthorized Practice

### Rule 7 – Duty to Licensees and Others

- 7.01 Courtesy and Good Faith

### Rule 8 – Practice Management

- 8.01 General Obligations
  - Professional Responsibility
  - Financial Responsibility
  - Supervisory Responsibility
  - Delegation

- 8.02 Advertising
  - Permitted Advertising
  - Restrictions on Advertising
- 8.03 Paralegal Firm Names, Letterheads and Signs
  - Paralegal Firm Names
  - Letterheads and Signs
- 8.04 Compulsory Errors and Omissions Insurance
  - Duty to Obtain and Maintain Insurance

#### Rule 9 – Responsibility to the Law Society

- 9.01 Responsibility to the Law Society
  - Communications from the Law Society
  - Duty to Report Misconduct
  - Duty to Report Criminal Charges and Convictions
  - Disciplinary Authority
  - Professional Misconduct
  - Conduct Unbecoming a Paralegal
  - Definitions

#### Rule 1 – Citation and Interpretation

##### 1.01 Citation

1.01 (1) These Rules may be cited as the *Paralegal Rules of Conduct*.

##### 1.02 Interpretation

###### Definitions

1.02 In these Rules,

“client” includes a client of the paralegal firm of which the paralegal is a partner or employee, whether or not the paralegal handles the client’s work;

“Law Society” means the Law Society of Upper Canada;

“paralegal” means a paralegal licensee of the Law Society;

“paralegal firm” includes one or more paralegals practising in a sole proprietorship, partnership or professional corporation;

"Rules" means the *Paralegal Rules of Conduct*;

“tribunal” includes courts, boards, arbitrators, mediators, administrative agencies, and bodies that resolve disputes, regardless of their function or the informality of their procedures. (Rule 1.02)

## Singular and Plural Words

(2) In these Rules, words importing the singular number include more than one person, party, or thing of the same kind and a word interpreted in the singular number has a corresponding meaning when interpreted in the plural. (Rule 1.03 (2))

## What Constitutes Consent

(3) A consent required under these Rules may be given in writing or orally.

(4) If the consent of more than one person is required and,

- (a) the consent is in writing, each may sign a separate document recording his or her consent; or
- (b) the consent is oral, the paralegal shall give each person a separate letter recording his or her consent. (Rule 1.01 definition of "consent")

## 1.03 Manner of Interpretation

### Standards of Paralegals

1.03 These Rules shall be interpreted in a way that recognizes that,

- (a) a paralegal has a duty to provide legal services and discharge all responsibilities to clients, tribunals, the public and other licensees honourably and with integrity;
- (b) a paralegal, as a provider of legal services, has an important role to play in a free and democratic society and in the administration of justice and a responsibility to recognize the diversity of the Ontario community, to protect the dignity of individuals, and to respect human rights laws in force in Ontario;
- (c) a paralegal has a duty to uphold the standards and reputation of the paralegal profession and to assist in the advancement of its goals, organizations and institutions;
- (d) the Rules are intended to express to licensees and the public, the high ethical ideals of paralegals;
- (e) the Rules are intended to specify the basis on which paralegals may be disciplined; and
- (f) the Rules cannot address every situation, and a paralegal should observe the Rules in the spirit, as well as in the letter. (Rule 1.03)

## Rule 2 – Professionalism

### 2.01 Integrity and Civility

#### Integrity

2.01 (1) A paralegal shall conduct himself or herself in such a way as to maintain the integrity of the paralegal profession. (Rule 6.01 (1))

(2) Paralegals shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the paralegal profession. (Rule 3.01)

#### Civility

(3) A paralegal shall be courteous and civil, and shall act in good faith with all persons with whom he or she has dealings in the course of his or her practice. (Rule 6.03 (1) & Commentary)

#### Outside Interests and Public Office

(4) A paralegal who engages in another profession, business, occupation or other outside interest or who holds public office concurrently with the provision of legal services, shall not allow the outside interest or public office to jeopardize the paralegal's integrity, independence, or competence. (Rule 6.04 (1))

(5) A paralegal shall not allow involvement in an outside interest or public office to impair the exercise of his or her independent judgment on behalf of a client. (Rule 6.04 (2))

#### Acting as Mediator

(6) A paralegal who acts as a mediator shall, at the outset of the mediation, ensure that the parties to it understand fully that the paralegal is not acting as a representative for either party but, as mediator, is acting to assist the parties to resolve the issues in dispute. (Rule 4.07)

### 2.02 Undertakings

2.02 (1) A paralegal shall fulfil every undertaking given and shall not give an undertaking that cannot be fulfilled. (Rule 6.03 (8))

(2) Except in exceptional circumstances, a paralegal shall give his or her undertaking in writing or confirm it in writing as soon as practicable after giving it. (Rule 6.03 (8) Commentary)

(3) Unless clearly stated in the undertaking, a paralegal's undertaking is a personal promise and it is his or her personal responsibility. (Rule 6.03 (8) Commentary)

## 2.03 Harassment and Discrimination

### Application of *Human Rights Code*

2.03 (1) The principles of the Ontario *Human Rights Code* and related case law apply to the interpretation of this rule. (Rule 5.04 Commentary)

(2) A term used in this rule that is defined in the *Human Rights Code* has the same meaning as in the *Human Rights Code*.

### Harassment

(3) A paralegal shall not engage in sexual or other forms of harassment of a colleague, a staff member, a client or any other person on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability. (Rule 5.04 Commentary and Rule 5.03 (2))

### Discrimination

(4) A paralegal shall respect the requirements of human rights laws in force in Ontario and without restricting the generality of the foregoing, a paralegal shall not discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, or disability with respect to the employment of others or in dealings with other licensees or any other person. (Rule 5.04 (1))

(5) The right to equal treatment without discrimination because of sex includes the right to equal treatment without discrimination because a woman is or may become pregnant. (Rule 5.04 Commentary).

### Services

(6) A paralegal shall ensure that no one is denied services or receives inferior service on the basis of the grounds set out in this rule. (Rule 5.04 (2))

### Employment Practices

(7) A paralegal shall ensure that his or her employment practices do not offend this rule. (Rule 5.04 (3))

## Rule 3 – Duty to Clients

### 3.01 Competence

#### Required Standard

3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal. (Rule 2.01 (2))

(2) A paralegal shall be alert to recognize any lack of competence for a particular task and the disservice that would be done to the client by undertaking that task and shall not

undertake a matter without being competent to handle it or being able to become competent without undue delay or expense to the client. (Rule 2.01 (2) and 2.01 (1) Commentary)

(3) If a paralegal discovers that he or she lacks the competence to complete the task for which he or she has been retained, the paralegal shall either decline to act or obtain the client's consent to retain, consult or collaborate with another licensee who is competent and licensed to perform that task. (Rule 2.01 (1) Commentary)

#### Who is Competent

(4) For the purposes of this rule, a competent paralegal is one who has and applies the relevant skills, attributes, and values appropriate to each matter undertaken on behalf of a client including,

- (a) knowing general legal principles and procedures and the substantive law and procedures for the legal services that the paralegal provides;
- (b) investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising clients on appropriate courses of action;
- (c) implementing, as each matter requires, the chosen course of action through the application of appropriate skills, including,
  - (i) legal research,
  - (ii) analysis,
  - (iii) application of the law to the relevant facts,
  - (iv) writing and drafting,
  - (v) negotiation,
  - (vi) alternative dispute resolution,
  - (vii) advocacy, and
  - (viii) problem-solving ability;
- (d) representing the client in a conscientious, diligent, and cost-effective manner;
- (e) communicating with the client at all stages of a matter in a timely and effective manner that is appropriate to the age and abilities of the client and engaging the services of an interpreter when necessary;
- (f) answering reasonable client requests in a timely and effective manner;
- (g) ensuring that all applicable deadlines are met;
- (h) managing one's practice effectively;

- (i) applying intellectual capacity, judgment, and deliberation to all functions;
- (j) pursuing appropriate training and development to maintain and enhance knowledge and skills;
- (k) adapting to changing requirements, standards, techniques and practices; and
- (l) complying in letter and in spirit with these Rules. (Rule 2.01 (1))

### 3.02 Advising Clients

#### General

3.02 (1) A paralegal shall be honest and candid when advising clients. (Rule 2.02 (1))

(2) A paralegal shall not undertake or provide advice with respect to a matter that is outside his or her permissible scope of practice.

#### Dishonesty, Fraud, etc. by Client

(3) A paralegal shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct when advising a client and he or she shall not instruct the client on how to violate the law and avoid punishment. (Rule 2.02 (5))

(4) A paralegal shall take all reasonable measures to avoid becoming the tool or dupe of an unscrupulous client or persons associated with such a client (Rule 2.02 (5) Commentary)

#### Settlement

(5) A paralegal shall advise and encourage a client to compromise or settle a dispute whenever it is possible to do so on a reasonable basis, and shall discourage the client from commencing ill-advised legal proceedings. (Rule 2.02 (2))

(6) The paralegal shall consider the use of alternative dispute resolution for every dispute, and,

- (a) if appropriate, the paralegal shall inform the client of the client's alternative dispute resolution options; and
- (b) if so instructed, take steps to pursue those options. (Rule 2.02 (3))

#### Client Under a Disability

(7) If a client's ability to make decisions is impaired because of minority, mental disability or for some other reason, the paralegal shall, as far as reasonably possible, maintain a normal professional relationship with that client. (Rule 2.02 (6))

(8) If the disability of the client is such that the client no longer has the legal capacity to manage his or her legal affairs, the paralegal shall take such steps as are appropriate to have a lawfully authorized representative appointed. (Rule 2.02 (6) Commentary)

## Medical-Legal Reports

(9) A paralegal who receives a medical-legal report from a physician or health professional that is accompanied by a proviso that it not be shown to the client, shall return the report immediately to the physician or health professional, without making a copy, unless the paralegal has received specific instructions to accept the report on that basis. (Rule 2.02 (7))

(10) A paralegal who receives a medical-legal report from a physician or health professional containing opinions or findings that, if disclosed, might cause harm or injury to the client, shall attempt to dissuade the client from seeing the report but, if the client insists, the paralegal shall produce the report. (Rule 2.02 (8))

(11) If a client insists on seeing a medical-legal report about which the paralegal has reservations for the reasons noted in subrule (10), the paralegal shall recommend that the client attend at the office of the physician or health professional to see the report, in order that the client will have the benefit of the expertise of the physician or health professional in understanding the significance of the conclusions contained in the medical-legal report. (Rule 2.02 (9))

## Errors

(12) If, in connection with a matter for which a paralegal is responsible, the paralegal discovers an error or omission that is or may be damaging to the client and that cannot be rectified readily, the paralegal shall,

- (a) promptly inform the client of the error or omission, being careful not to prejudice any rights of indemnity that either of them may have under an insurance, client's protection or indemnity plan, or otherwise;
- (b) recommend that the client obtain legal advice elsewhere concerning any rights the client may have arising from the error or omission; and
- (c) advise the client that in the circumstances, the paralegal may no longer be able to act for the client. (Rule 6.09 (1))

(13) A paralegal shall give prompt notice of any circumstances that he or she may reasonably expect to give rise to a claim, to an insurer or other indemnitor, so that the client's protection from that source will not be prejudiced. (Rule 6.09 (2))

## Official Language Rights

(14) A paralegal shall, where appropriate, advise a client who speaks French of the client's language rights, including the right of the client to be served by a paralegal who is competent to provide legal services in the French language. (Rule 1.03 Commentary)

## Claims under Statutory Accident Benefits Schedule

(15) In addition to complying with these Rules, a paralegal when acting as an adviser, consultant or representative to a person making a claim under the Statutory Accident Benefits

Schedule to the *Insurance Act* shall comply with that Act, the regulations under that Act and the Code of Conduct for Statutory Accident Benefit Representatives.

### 3.03 Confidentiality

#### Confidential Information

3.03 (1) A paralegal shall, at all times, hold in strict confidence all information concerning the business and affairs of a client acquired in the course of their professional relationship and shall not disclose any such information unless expressly or impliedly authorized by the client or required by law to do so. (Rule 2.03 (1))

(2) The duty of confidentiality under subrule (1) continues indefinitely after the paralegal has ceased to act for the client, whether or not differences have arisen between them. (Rule 2.03 (1) Commentary)

(3) The paralegal shall keep the client's papers and other property out of sight, as well as out of reach, of those not entitled to see them. (Rule 2.07 (1) Commentary)

#### Justified or Permitted Disclosure

(4) A paralegal shall disclose confidential information when required by law or by order of a tribunal of competent jurisdiction. (Rule 2.03 (2))

(5) If a paralegal believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the paralegal may disclose, pursuant to judicial order where practicable, confidential information if it is necessary to do so in order to prevent the death or harm. (Rule 2.03 (3))

(6) In order to defend against the allegations, a paralegal may disclose confidential information if it is alleged that the paralegal or his or her employees are,

- (a) guilty of a criminal offence involving a client's affairs;
- (b) civilly liable with respect to a matter involving a client's affairs; or
- (c) guilty of malpractice or misconduct. (Rule 2.03 (4))

(7) A paralegal may disclose confidential information in order to establish or collect his or her fees. (Rule 2.03 (5))

(8) A paralegal shall not disclose more information than is necessary when he or she discloses confidential information as required or permitted by subrules (4), (5), (6) and (7). (Rule 2.03 (5))

### 3.04 Conflicts of Interest – General

#### Definition

3.04 (1) In this rule and rule 3.05,

"conflict of interest" or "conflicting interest" means an interest, financial or otherwise,

- (a) that would be likely to affect adversely a paralegal's judgment on behalf of, or loyalty to, a client or prospective client; or
- (b) that a paralegal might be prompted to prefer over the interests of a client or prospective client. (Rule 2.04 (1))

#### Avoidance of Conflicts of Interest

(2) A paralegal shall not advise or represent more than one side of a dispute. (Rule 2.04 (2))

(3) A paralegal shall not act or continue to act in a matter when there is, or is likely to be, a conflicting interest unless, after disclosure adequate to make an informed decision, the client or prospective client consents. (Rule 2.04 (3))

#### Acting Against Clients

(4) Unless the client and those involved or associated with the client consent, a paralegal who has acted for a client in a matter shall not thereafter act against the client or against persons who were involved or associated with the client in that matter,

- (a) in the same matter;
- (b) in any related matter; or
- (c) except as provided by subrule (6), in any new matter, if the paralegal has obtained from the other retainer, relevant confidential information. (Rule 2.04 (4))

(5) If a paralegal has acted for a client and obtained confidential information relevant to a matter, the paralegal's partner or employee may act in a subsequent matter against that client, if,

- (a) the former client consents to the paralegal's partner or employee acting; or
- (b) the paralegal's firm establishes that it is appropriate to act in the new matter having regard to all the circumstances, including,
  - (i) the availability of suitable alternative representation,
  - (ii) the measures in place to ensure that no disclosure of the former client's confidential information to the partner or employee having carriage of the new matter will occur,
  - (iii) the extent of prejudice to any party,
  - (iv) the good faith of the parties, and
  - (v) issues affecting the public interest. (Rule 2.04 (5))

(6) If a partner or paralegal employed in a paralegal firm has obtained confidential information from a former client that is relevant to a new matter, no partner or paralegal employed in the firm may act against the former client in the new matter unless the requirements of subrule (5) have been satisfied. (Rule 2.04 (5) Commentary)

(7) A paralegal may act against a client in a fresh, independent and unrelated matter if previously obtained confidential information is irrelevant to that matter. (Rule 2.04 (4) Commentary)

#### Joint Retainers

(8) Before agreeing to act for more than one client in a matter or transaction, a paralegal shall advise the clients that,

- (a) the paralegal has been asked to act for both or all of them;
- (b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and
- (c) if a conflict develops that cannot be resolved, the paralegal cannot continue to act for both or all of them and may have to withdraw completely. (Rule 2.04 (6))

(9) If a paralegal has a continuing relationship with a client for whom he or she acts regularly, before agreeing to act for that client and another client in a matter or transaction, the paralegal shall advise the other client of the continuing relationship and recommend that the client obtain independent legal advice about the joint retainer. (Rule 2.04 (7))

(10) If a paralegal has advised the clients, as provided under subrules (8) and (9), and the parties are content that the paralegal act for both or all of them, the paralegal shall obtain their consent. (Rule 2.04 (8))

(11) Although all parties concerned may consent, a paralegal shall avoid acting for more than one client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses. (Rule 2.04 (7) Commentary)

(12) Except as provided by subrule (14), if a paralegal's clients have consented to a joint retainer and an issue contentious between them or some of them arises, the paralegal shall not advise them on the contentious issue, but shall refer the clients to other licensees, unless,

- (a) the contentious issue does not involve the provision of legal services; and
- (b) the clients are sophisticated. (Rule 2.04 (9))

(13) If the conditions set out in clauses (a) and (b) of subrule (12) are met, the clients may settle the contentious issue by direct negotiation in which the paralegal does not participate. (Rule 2.04 (9))

(14) If a paralegal's clients consent to a joint retainer and also agree that if a contentious issue arises the paralegal may continue to advise one of them and a contentious issue does

arise, the paralegal may advise the one client about the contentious matter and shall refer the other or others to another licensee. (Rule 2.04 (10))

### 3.05 Conflicts of Interest - Transfers

#### Application of Rule

3.05 (1) This rule applies where a paralegal transfers from one paralegal firm ("former paralegal firm") to another ("new paralegal firm"), and either the transferring paralegal or the new paralegal firm is aware at the time of the transfer or later discovers that,

- (a) the new paralegal firm represents a client in a matter that is the same as or related to a matter in which the former paralegal firm represents its client ("former client");
- (b) the interests of those clients in that matter conflict; and
- (c) the transferring paralegal actually possesses relevant information respecting that matter. (Rule 2.05 (2))

#### Paralegal Firm Disqualification

(2) If a transferring paralegal actually possesses information respecting a former client that is confidential and that, if disclosed to a paralegal in the new paralegal firm, may prejudice the former client, the new paralegal firm shall cease representation of its client unless the former client consents to the new paralegal firm's continued representation or the new paralegal firm establishes that it is in the interests of justice that it continue to represent the client.

(3) In deciding whether or not it is appropriate to continue to act for a client, the new paralegal firm shall consider all the circumstances including,

- (a) the adequacy and timing of the measures taken to ensure that no disclosure to any paralegal of the new paralegal firm of the former client's confidential information will occur;
- (b) the availability of suitable alternative representation;
- (c) the measures taken to ensure that no disclosure of the former client's confidential information, to any paralegal in the new paralegal firm, will occur;
- (d) the extent of any prejudice to any party;
- (e) the good faith of the parties; and
- (f) issues affecting the public interest. (Rule 2.05 (4))

(4) If a transferring paralegal actually possesses relevant information respecting a former client but that information is not confidential information as described in subrule (2), the paralegal shall execute an affidavit or solemn declaration to that effect, and the new paralegal firm shall,

- (a) notify its client and the former client, or if the former client is represented in that matter by a licensee, notify that licensee, of the relevant circumstances and its intended action under this rule; and
- (b) deliver to the persons referred to in clause (a) a copy of the paralegal's affidavit or solemn declaration executed under this subrule. (Rule 2.05 (6))

#### Transferring Paralegal Disqualification

(5) A transferring paralegal described in subrule (2) or (4) shall not, unless the former client consents,

- (a) participate in any manner in the new paralegal firm's representation of its client in that matter; or
- (b) disclose any confidential information respecting the former client. (Rule 2.05 (7))

(6) No paralegal in the new paralegal firm shall, unless the former client consents, discuss with a transferring paralegal described in subrule (2) or (4) the new paralegal firm's representation of its client or the former paralegal firm's representation of the former client in that matter. (Rule 2.05 (8))

(7) Anyone who has an interest in, or who represents a party in, a matter referred to in this rule may apply to a tribunal of competent jurisdiction for a determination of any aspect of this rule. (Rule 2.05 (9))

#### 3.06 Doing Business with a Client

##### Investment by Client where Paralegal has an Interest

3.06 (1) Subject to subrule (2), if a client intends to enter into a transaction with a paralegal who is representing the client, or with a corporation or other entity in which the paralegal has an interest other than a corporation or other entity whose securities are publicly traded, the paralegal, before accepting any retainer,

- (a) shall disclose and explain the nature of the conflicting interest to the client, or, in the case of a potential conflict, how and why it might develop later;
- (b) shall recommend independent legal representation and shall require that the client receive independent legal advice; and
- (c) if the client requests the paralegal to act, shall obtain the client's written consent. (Rule 2.06 (2))

(2) If a client intends to pay for legal services by transferring to a paralegal a share, participation or other interest in property or in an enterprise, the paralegal shall recommend, but need not require, that the client receive independent legal advice before agreeing to act for the client. (Rule 2.06 (2.1))

(3) This rule does not apply to a transfer of a non-material interest in a publicly traded enterprise.

(4) If the paralegal does not choose to make disclosure of the conflicting interest or cannot do so without breaching a confidence, the paralegal shall decline the retainer. (Rule 2.06 (2.1) Commentary)

#### Borrowing from Clients

- (5) A paralegal shall not borrow money from a client unless,
- (a) the client is a lending institution, financial institution, insurance company, trust corporation or any similar institution whose business includes lending money to members of the public; or
  - (b) the client is a related person as defined by the Income Tax Act (Canada) and the paralegal is able to discharge the onus of proving that the client's interests were fully protected by the nature of the case and by independent legal advice or independent legal representation. (Rule 2.06 (4))

#### Guarantees by Paralegal

(6) Subject to subrule (7), a paralegal shall not guarantee personally, or otherwise provide security for, any indebtedness in respect of which a client is a borrower or lender. (Rule 2.06 (9))

- (7) A paralegal may give a personal guarantee if,
- (a) the lender is a lending institution, financial institution, insurance company, trust company or any similar corporation whose business includes lending money to members of the public, and the lender is directly or indirectly providing funds solely for the paralegal, the paralegal's spouse, parent or child;
  - (b) the transaction is for the benefit of a non-profit or charitable institution where the paralegal as a member or supporter of such institution is asked, either individually or together with other members or supporters of the institution to provide a guarantee; or
  - (c) the paralegal has entered into a business venture with a client and the lender requires personal guarantees from all participants in the venture as a matter of course and,
    - (i) the paralegal has complied with the requirements of these Rules regarding the avoidance of conflicts of interest, and
    - (ii) the lender and the participants in the venture who are or were clients of the paralegal have received independent legal representation. (Rule 2.06 (1))

### 3.07 Client Property

#### Preservation of Client's Property

3.07 (1) A paralegal shall care for a client's property as a careful and prudent owner would when dealing with like property and shall observe all relevant rules and law about the preservation of property entrusted to a fiduciary. (Rule 2.07 (1))

#### Notification of Receipt of Property

(2) A paralegal shall promptly notify the client of the receipt of any money or other property of the client, unless satisfied that the client is aware they have come into the paralegal's custody. (Rule 2.07 (2))

#### Identification of Property

(3) A paralegal shall clearly label and identify the client's property and place it in safekeeping, distinguishable from the paralegal's own property. (Rule 2.07 (3)).

(4) A paralegal shall maintain such records as necessary to identify a client's property that is in the paralegal's custody. (Rule 2.07 (4)).

#### Accounting and delivery

(5) A paralegal shall account promptly for a client's property that is in the paralegal's custody and upon request, shall deliver it to the order of the client. (Rule 2.07 (5)).

(6) If a paralegal is unsure of the proper person to receive a client's property, the paralegal shall apply to a tribunal of competent jurisdiction for direction. (Rule 2.07 (6)).

### 3.08 Withdrawal from Representation

#### Withdrawal from Representation

3.08 (1) A paralegal shall not withdraw from representation of a client except for good cause and upon notice to the client appropriate in the circumstances. (Rule 2.09 (1))

#### Optional Withdrawal

(2) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal may withdraw if there has been a serious loss of confidence between the paralegal and the client. (Rule 2.09 (2))

(3) Without limiting subrule (2), a paralegal may withdraw if the client deceives the paralegal or refuses to accept and act upon the paralegal's advice on a significant point. (Rule 2.09 (2) Commentary)

(4) A paralegal shall not use the threat of withdrawal as a device to force a hasty decision by the client on a difficult question. (Rule 2.09 (2) Commentary)

### Mandatory Withdrawal

(5) Subject to subrules (7), (8) and (9) and the direction of the tribunal, a paralegal shall withdraw if,

- (a) discharged by the client;
- (b) the paralegal is instructed by the client to do something inconsistent with the paralegal's duty to the tribunal and, following explanation, the client persists in such instructions;
- (c) the client is guilty of dishonourable conduct in the proceedings or is taking a position solely to harass or maliciously injure another;
- (d) it becomes clear that the paralegal's continued representation will lead to a breach of these Rules; or
- (e) the paralegal is not competent to handle the matter. (Rule 2.09 (7))

### Non-payment of Fees

(6) Subject to subrules (7), (8) and (9) and the direction of the tribunal, unless serious prejudice to the client would result, a paralegal may withdraw from a quasi-criminal or criminal case if, after reasonable notice, the client fails to provide funds on account of disbursements or fees. (Rule 2.09 (3))

### Withdrawal from Quasi-Criminal and Criminal Cases

(7) A paralegal who has agreed to act in a quasi-criminal or criminal case may withdraw if the interval between the withdrawal and the trial of the case is sufficient to enable the client to obtain alternate representation and to allow such other licensee adequate time for preparation and if the paralegal,

- (a) advises the client, preferably in writing, that the paralegal is withdrawing and the reason for the withdrawal;
- (b) accounts to the client for any monies received on account of fees and disbursements;
- (c) notifies the prosecution in writing that the paralegal is no longer acting; and
- (d) in a case where the paralegal's name appears in the records of the court as acting for the accused, notifies the clerk or registrar of the appropriate court in writing that the paralegal is no longer acting. (Rule 2.09 (4))

(8) A paralegal who has agreed to act in a quasi-criminal or criminal case may not withdraw because of non-payment of fees if the date set for trial is not far enough removed to enable the client to obtain the services of another licensee or to enable another licensee to prepare adequately for trial and if an adjournment of the trial date cannot be obtained without adversely affecting the client's interests. (Rule 2.09 (5))

- (9) If,
- (a) a paralegal is justified in withdrawing from a quasi-criminal or criminal case for reasons other than non-payment of fees; and
  - (b) there is not a sufficient interval between a notice to the client of the paralegal's intention to withdraw and the date when the case is to be tried to enable the client to obtain the services of another licensee and to enable the new licensee to prepare adequately for trial,

the paralegal, unless instructed otherwise by the client, shall attempt to have the trial date adjourned and may withdraw from the case only with permission of the court before which the case is to be tried. (Rule 2.09 (6))

#### Manner of Withdrawal

(10) When a paralegal withdraws, he or she shall try to minimize expense and avoid prejudice to the client and shall do all that can reasonably be done to facilitate the orderly transfer of the matter to the successor licensee. (Rule 2.09 (8))

- (11) Upon discharge or withdrawal, a paralegal shall,
- (a) deliver to or to the order of the client, all papers and property to which the client is entitled;
  - (b) give the client all information that may be required in connection with the case or matter;
  - (c) account for all funds of the client then held or previously dealt with, including the refunding of any monies not earned during the representation;
  - (d) promptly render an account for outstanding fees and disbursements; and
  - (e) cooperate with the successor licensee so as to minimize expense and avoid prejudice to the client. (Rule 2.09 (9))

#### Duties of Successor Paralegal

(12) Before agreeing to represent a client of a predecessor licensee, a successor paralegal shall be satisfied that the predecessor has withdrawn or has been discharged by the client. (Rule 2.09 (10))

#### Rule 4 – Advocacy

##### 4.01 The Paralegal as Advocate

##### Duty to Clients, Tribunals and Others

4.01 (1) When acting as an advocate, the paralegal shall represent the client resolutely and honourably within the limits of the law while, at the same time, treating the tribunal and other licensees with candour, fairness, courtesy and respect. (Rule 4.01 (1))

(2) This rule applies to appearances and proceedings before all tribunals in which the paralegal may appear. (Rule 4.01 (1) Commentary)

(3) This rule does not require a paralegal, except as otherwise provided in these Rules, to assist an adversary or advance matters derogatory to the client's case. (Rule 4.01 (1) Commentary)

(4) Without restricting the generality of subrule (1), the paralegal shall,

- (a) raise fearlessly every issue, advance every argument, and ask every question, however distasteful, that the paralegal thinks will help the client's case;
- (b) endeavour, on the client's behalf, to obtain the benefit of every remedy and defence authorized by law;
- (c) never waive or abandon a client's legal rights, for example, an available defence under a statute of limitations, without the client's informed consent; and
- (d) avoid and discourage the client from resorting to frivolous and vexatious objections, or from attempts to gain advantage from mistakes or oversights not going to the merits, or from tactics designed to merely delay or harass the other side. (Rule 4.01 (1) Commentary)

#### The Paralegal and the Tribunal Process

(5) When acting as an advocate, the paralegal shall not,

- (a) abuse the process of the tribunal by instituting or prosecuting proceedings which, although legal in themselves, are clearly motivated by malice on the part of the client and are brought solely for the purpose of injuring the other party;
- (b) knowingly assist or permit the client to do anything that the paralegal considers to be dishonest or dishonourable;
- (c) knowingly attempt to deceive a tribunal or influence the course of justice by offering false evidence, misstating facts or law, presenting or relying upon a false or deceptive affidavit, suppressing what ought to be disclosed, or otherwise assisting in any deception, crime or illegal conduct;
- (d) deliberately refrain from informing the tribunal of any binding authority that the paralegal considers to be directly on point and that has not been mentioned by an opponent;
- (e) appear before a judicial officer when the paralegal, a partner of the paralegal, a paralegal employed by the paralegal firm or the client has a business or personal relationship with the officer that gives rise to, or might reasonably appear to give rise to, pressure, influence or inducement affecting the impartiality of the officer;
- (f) knowingly assert as true, a fact when its truth cannot reasonably be supported by the evidence or as a matter of which notice may be taken by the tribunal;

- (g) endeavour or allow anyone else to endeavour, directly or indirectly, to influence the decision or action of the tribunal or any of its officials in any case or matter by any means other than open persuasion as an advocate;
- (h) knowingly misstate the contents of a document, the testimony of a witness, the substance of an argument or the provisions of a statute or like authority;
- (i) knowingly permit a witness or party to be presented in a false or misleading way or to impersonate another;
- (j) needlessly abuse, hector, harass or inconvenience a witness;
- (k) dissuade a witness from giving evidence or suggest that a witness be absent;
- (l) when representing a complainant or potential complainant, attempt to gain a benefit for the complainant by threatening the laying of a criminal charge or by offering to seek or to procure the withdrawal of a criminal charge; or
- (m) needlessly inconvenience a witness. (Rule 4.01 (2))

#### Disclosure of Documents

(6) If the rules of a tribunal require the parties to produce documents, a paralegal, when acting as an advocate,

- (a) shall explain to his or her client the necessity of making full disclosure of all documents relating to any matter in issue and the duty to answer to the best of his or her knowledge, information and belief, any proper question relating to any issue in the action;
- (b) shall assist the client in fulfilling his or her obligation to make full disclosure; and
- (c) shall not make frivolous requests for the production of documents or make frivolous demands for information. (Rule 4.01 (4))

#### Errors and Omissions

(7) A paralegal who does, or fails to do, something which may involve a breach of this rule, shall, subject to rule 3.03 relating to confidentiality, disclose the error or omission and do all that can reasonably be done in the circumstances to rectify it (Rule 4.01 (5)).

#### Agreement on Guilty Pleas

(8) Before a charge is laid or at any time after a charge is laid, a paralegal acting for an accused or potential accused may discuss with the prosecutor the possible disposition of the case, unless the client instructs otherwise. (Rule 4.01 (8))

(9) A paralegal, on behalf of his or her client, may enter into an agreement with a prosecutor about a guilty plea, if, following investigation,

- (a) the paralegal advises the client about the prospects for an acquittal or finding of guilt;
- (b) the paralegal advises the client of the implications and possible consequences of a guilty plea and particularly of the sentencing authority and discretion of the court, including the fact that the court is not bound by any agreement about a guilty plea;
- (c) the client is prepared voluntarily to admit the necessary factual and mental elements of the offence charged; and
- (d) the client voluntarily instructs the paralegal to enter into an agreement as to a guilty plea. (Rule 4.01 (9))

#### 4.02 Interviewing Witnesses

##### Interviewing Witnesses

4.02 (1) Subject to subrules (2) and (3), a paralegal may seek information from any potential witness, whether under subpoena or not, but shall disclose the paralegal's interest and take care not to subvert or suppress any evidence or procure the witness to stay out of the way. (Rule 4.03 (1))

(2) A paralegal shall not approach or deal with a person who is represented by another licensee, except through or with the consent of that licensee. (Rule 4.03 (2))

(3) A paralegal retained to act for a party in a matter involving a corporation or organization represented by another licensee shall not, without the other licensee's consent or unless otherwise authorized or required by law,

- (a) approach directors, officers or persons likely involved in the decision-making process for the corporation or organization; or
- (b) approach employees and agents of the corporation or organization whose acts or omissions in connection with the matter may expose the corporation or organization to quasi-criminal, criminal or civil liability. (Rule 4.03(3))

(4) This rule applies to communications with any person, whether or not a party to a formal adjudicative proceeding, contract, or negotiation, who is represented by a licensee concerning the matter to which the communication relates. (Rule 4.03 (3) Commentary)

(5) The prohibition on communications with a represented person applies if the paralegal has direct knowledge of the representation or if he or she should be able to infer the representation from the circumstances. (Rule 4.03 (3) Commentary)

##### Definition

(6) In this rule,

"organization" includes a partnership, limited partnership, sole proprietorship, association, union, unincorporated group, government department, government agency, tribunal, and regulatory body. (Rule 4.03 (3) Commentary)

#### 4.03 Communication with Witnesses Giving Testimony

##### Communication with Witnesses Giving Testimony

4.03 (1) Subject to the direction of the tribunal, a paralegal shall observe the following rules respecting communication with witnesses giving evidence:

1. During examination-in-chief, the examining paralegal may discuss with the witness any matter that has not been covered in the examination up to that point.
2. During examination-in-chief by another licensee of a witness who is unsympathetic to the paralegal's cause, the paralegal not conducting the examination-in-chief may discuss the evidence with the witness.
3. Between completion of examination-in-chief and commencement of cross-examination of the paralegal's own witness, the paralegal ought not to discuss the evidence given in chief or relating to any matter introduced or touched on during the examination-in-chief.
4. During cross-examination by an opposing licensee, the witness's own representative ought not to have any conversation with the witness about the witness's evidence or any issue in the proceeding.
5. Between completion of cross-examination and commencement of a re-examination, a paralegal who is going to re-examine the witness ought not to have any discussion about evidence that will be dealt with on re-examination.
6. During cross-examination by the representative of a witness unsympathetic to the cross-examiner's cause, the paralegal may discuss the witness's evidence with the witness.
7. During cross-examination by the representative of a witness who is sympathetic to that licensee's cause, any conversations ought to be restricted in the same way as communications during examination-in-chief of one's own witness.
8. During re-examination of a witness called by an opposing licensee, if the witness is sympathetic to the paralegal's cause, the paralegal ought not to discuss the evidence to be given by that witness during re-examination. The paralegal may, however, properly discuss the evidence with a witness who is adverse in interest. (Rule 4.04)

(2) With the consent of the opposing licensee or with leave of the tribunal, a paralegal may enter into discussions with a witness that might otherwise raise a question under this rule as to the propriety of the discussions. (Rule 4.04 Commentary)

(3) This rule applies, with necessary modifications, to examinations out of court. (Rule 4.04 Commentary)

#### 4.04 The Paralegal as Witness

##### The Paralegal as Witness

4.04 (1) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, the paralegal who appears as an advocate shall not submit his or her own affidavit to the tribunal. (Rule 4.02 (1))

(2) Subject to any contrary provisions of the law or the discretion of the tribunal before which a paralegal is appearing, a paralegal who appears as an advocate shall not testify before the tribunal unless permitted to do so by the rules of the court or the rules of procedure of the tribunal, or unless the matter is purely formal or uncontroverted. (Rule 4.02 (2))

(3) A paralegal who is to testify before a tribunal shall entrust the conduct of the case to another licensee. (Rule 4.02 (2) Commentary)

(4) A paralegal shall not express personal opinions or beliefs or assert as a fact anything that is properly subject to legal proof, cross-examination or challenge. (Rule 4.02 (2) Commentary)

#### 4.05 Dealing with Unrepresented Persons

4.05 When a paralegal is dealing on a client's behalf with an unrepresented person, the paralegal shall,

- (a) urge the unrepresented person to obtain independent representation;
- (b) take care to see that the unrepresented person is not proceeding under the impression that his or her interests will be protected by the paralegal; and
- (c) make clear to the unrepresented person that the paralegal is acting exclusively in the interests of the client and accordingly his or her comments may be partisan. (Rule 2.04 (14))

#### Rule 5 - Fees and Retainers

##### 5.01 Fees and Retainers

##### Reasonable Fees and Disbursements

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

(2) What is a fair and reasonable fee will depend upon such factors as,

- (a) the time and effort required and spent;
- (b) the difficulty and importance of the matter;
- (c) whether special skill or service was required and provided;

- (d) the amount involved or the value of the subject matter;
- (e) the results obtained;
- (f) fees authorized by statute or regulation; and
- (g) special circumstances, such as the loss of other retainers, postponement of payment, uncertainty of reward, or urgency. (Rule 2.08 (2) Commentary)

(3) No fee, reward, costs, commission, interest, rebate, agency or forwarding allowance, or other compensation related to his or her employment may be taken by the paralegal from anyone other than the client, without full disclosure to, and the consent of, the client. (Rule 2.08 (2) Commentary)

(4) In a statement of account delivered to the client, a paralegal shall clearly and separately detail amounts charged as fees and as disbursements. (Rule 2.08 (4))

(5) A paralegal shall not appropriate any funds of the client held in trust, or otherwise under the paralegal's control, for or on account of fees, except as permitted by the by-laws under the *Law Society Act*. (Rule 2.08 (10))

#### Contingency Fees

(6) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided. (Rule 2.08 (3))

(7) In determining the appropriate percentage or other basis of a contingency fee under subrule (6), the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery, who is to receive an award of costs and the amount of costs awarded. (Rule 2.08 (3) Commentary)

(8) The percentage or other basis of a contingency fee agreed upon under subrule (6) shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subrule (7). (Rule 2.08 (3) Commentary)

#### Joint Retainers

(9) If a paralegal is acting for two or more clients, the paralegal shall divide the fees and disbursements equitably between them, unless there is an agreement by the clients otherwise. (Rule 2.08 (5))

#### Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same paralegal firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed. (Rule 2.08 (6))

### Fee Splitting

(11) A paralegal shall not,

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee; or
- (b) give any financial or other reward to any person who is not a licensee, for the referral of clients or client matters. (Rule 2.08 (8))

### Referral Fees

(12) A paralegal who refers a matter to another licensee because of the expertise and ability of the other licensee to handle the matter may accept, and the other licensee may pay, a referral fee if,

- (a) the referral was not made because of a conflict of interest,
- (b) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (c) the client is informed and consents. (Rule 2.08 (7))

### Rule 6 – Duty to the Administration of Justice

#### 6.01 Encouraging Respect for the Administration of Justice

##### General Duty

6.01 (1) A paralegal shall encourage public respect for, and try to improve, the administration of justice. (Rule 4.06(1))

(2) A paralegal shall take care not to weaken or destroy public confidence in legal institutions or authorities by making irresponsible allegations or comments particularly when commenting on judges or members of a tribunal. (Rule 4.06 (1) Commentary)

##### Security of Court Facilities

(3) Subject to Rule 3.03 relating to confidentiality, a paralegal who has reasonable grounds for believing that a dangerous situation is likely to develop at a court facility shall inform the local police force and give particulars. (Rule 4.06 (3))

##### Public Appearances and Statements

(4) So long as there is no infringement of the paralegal's obligation to the client, the paralegal profession, the courts, or the administration of justice, a paralegal may communicate information to the media and may make public appearances and statements. (Rule 6.06 (1))

## Unauthorized Practice

(5) A paralegal shall assist in preventing the unauthorized practice of law and the unauthorized provision of legal services. (Rule 6.07 (1))

(6) Without the express approval of a committee of Convocation appointed for the purpose, a paralegal shall not retain, occupy office space with, use the services of, partner with, or employ in any capacity having to do with the provision of legal services, any person who, in Ontario or elsewhere, has been disbarred and struck off the Rolls, has been suspended, has had his or her licence suspended or revoked, has undertaken not to practise, or who has been involved in disciplinary action and been permitted to resign, and has not had his or her licence reinstated. (Rule 6.07 (2))

## Rule 7 – Duty to Licensees and Others

### 7.01 Courtesy and Good Faith

(1) A paralegal shall avoid sharp practice and shall not take advantage of or act without fair warning on slips, irregularities or mistakes on the part of other licensees not going to the merits or involving the sacrifice of a client's rights. (Rule 6.03 (3))

(2) A paralegal shall agree to reasonable requests concerning trial dates, adjournments, waiver of procedural formalities and similar matters that do not prejudice the rights of the client. (Rule 6.03 (2))

(3) A paralegal shall not, in the course of a providing legal services, communicate, in writing or otherwise, with a client, another licensee, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a paralegal. (Rule 6.03 (5))

(4) A paralegal shall not engage in ill-considered or uninformed criticism of the competence, conduct, advice or charges of other licensees, but should be prepared, when requested, to represent a client in a complaint involving another licensee. (Rule 6.03 (1) Commentary)

(5) A paralegal shall answer with reasonable promptness, all professional letters and communications from other licensees that require an answer, and a paralegal shall be punctual in fulfilling all commitments. (Rule 6.03 (6))

(6) A paralegal shall not communicate with or attempt to negotiate or compromise a matter directly with any person who is represented by another licensee, except with the consent of that licensee. (Rule 6.03 (7))

(7) A paralegal shall not use a tape recorder or other device to record a conversation between the paralegal and a client or another licensee, even if lawful, without first informing the other person of the intention to do so. (Rule 6.03 (4))

## Rule 8 – Practice Management

### 8.01 General Obligations

#### Professional Responsibility

8.01 (1) A paralegal shall assume complete responsibility for all business entrusted to him or her. (Rule 5.01 (2))

#### Financial Responsibility

(2) A paralegal shall promptly meet financial obligations in relation to his or her practice, including payment of the deductible under a liability insurance policy when properly called upon to do so. (Rule 6.01 (2))

#### Supervisory Responsibility

(3) A paralegal shall directly supervise staff and assistants to whom particular tasks and functions are delegated. (Rule 5.01 (2))

#### Delegation

(4) A paralegal shall not permit a non-licensee,

- (a) to provide legal services;
- (b) to be held out as a licensee; or
- (c) to perform any of the duties that only paralegals may perform or do things that paralegals themselves may not do. (Rule 5.01 (3))

### 8.02 Advertising

#### Permitted Advertising

8.02 (1) Subject to subrules (2) through (5), A paralegal or a paralegal firm may advertise their services or fees in any medium including the use of brochures and similar documents, if the advertising,

- (a) is not false or misleading;
- (b) is in good taste and is not such as to bring the paralegal profession or the administration of justice into disrepute; and
- (c) does not compare services or charges with other firms. (Rule 3.04 (1))

#### Restrictions on Advertising

(2) A paralegal or paralegal firm shall not advertise services that are beyond the permissible scope of practice of a paralegal.

(3) The means by which it is sought to make legal services more readily available to the public, shall be consistent with the public interest and shall not detract from the integrity, independence, or effectiveness of the paralegal profession. (Rule 3.04 (3) Commentary)

(4) In addition to the requirements of subrule (1), the following conditions apply to an advertisement of fees:

1. An advertisement of fees for consultation or for specific services shall contain an accurate statement of the services provided for the fee and the circumstances, if any, in which higher fees may be charged.
2. The fact that disbursements are an additional cost shall be made clear in the advertisement.
3. An advertisement shall not use words or expressions such as "from...", "minimum" or "... and up", or the like in referring to the fees to be charged.
4. Services covered by advertised fees shall be provided at the advertised rate to all clients who retain the advertising paralegal or paralegal firm during the 30-day period following the last publication of the fees unless there are special circumstances that could not reasonably have been foreseen, the burden of proving which rests upon the paralegal. (Rule 3.04 (2))

(5) A paralegal shall not,

- (a) permit the paralegal's name to appear as representative on any advertising material,
  - (i) offering goods, other than legal publications, to the public, or
  - (ii) offering services, other than legal services, to the public; and
- (b) while in private practice, permit the paralegal's name to appear on the letterhead of a company as being its representative, other than an honorary designation on the letterhead of a nonprofit or philanthropic organization. (Rule 3.04 (3))

### 8.03 Paralegal Firm Names, Letterheads and Signs

#### Paralegal Firm Names

8.03 (1) The name of a paralegal firm shall not include any name that is not,

- (a) a name of a current, a retired from practice, or a deceased member of the paralegal firm who is or was qualified to provide legal services in Ontario; or
- (b) a descriptive or trade name that is in keeping with the dignity, integrity, independence and the role of the paralegal profession. (Rule 3.02 (1))

(2) A paralegal who purchases a practice may, for a reasonable length of time, use the words "Successor to \_\_\_\_\_" in small print under the paralegal's own name. (Rule 3.02 (2))

(3) A paralegal firm name shall not include a descriptive or trade name that is misleading about,

- (a) the identities, responsibilities, or relationships of the paralegals practising under the paralegal firm name; or
- (b) the association or relationship of the paralegal firm with other licensees or with non-licensees.

(4) The name of a paralegal firm shall not include the use of phrases such as "John Doe and Associates", "John Doe and Company" or "John Doe and Partners" unless there are in fact, respectively, two or more other paralegals employed by John Doe in the paralegal firm or two or more partners of John Doe in the paralegal firm. (Rule 3.02 (4))

#### Letterheads and Signs

(5) The letterhead and the signs identifying the office of a paralegal firm may only include,

- (a) the name of the paralegal firm;
- (b) a list of paralegals who are partners or employees of the paralegal firm;
- (c) the words "licensed paralegal" or "licensed paralegals", as the case may be;
- (d) the words "notary" or "commissioner for oaths" or both, if applicable;
- (e) the words "patent and trade mark agent" if applicable;
- (f) the addresses, telephone numbers, office hours, and the languages in which the paralegal firm is competent and capable of conducting a practice;
- (g) a logo; and
- (h) advertising permitted under these Rules. (Rule 3.03 (1))

(6) A paralegal or paralegal firm may place, after the names on its letterhead, degrees from bona fide universities and postsecondary institutions including honorary degrees, professional qualifications such as the designations of P. Eng., C.A. and M.D. and recognized civil and military decorations and awards. (Rule 3.03 (3)).

#### 8.04 Compulsory Errors and Omissions Insurance

##### Duty to Obtain and Maintain Insurance

8.04 (1) All paralegals practising in Ontario shall obtain and maintain adequate errors and omissions insurance as required by the Law Society.

(2) When a claim of professional negligence is made against a paralegal, he or she shall assist and cooperate with the insurer or other indemnitor to the extent necessary to enable the claim to be dealt with promptly. (Rule 6.09(3))

(3) In cases where liability is clear and the insurer or other indemnitor is prepared to pay its portion of the claim, the paralegal shall pay the balance. (Rule 6.09 (5))

## Rule 9 – Responsibility to the Law Society

### 9.01 Responsibility to the Law Society

#### Communications from the Law Society

9.01 (1) A paralegal shall reply promptly to any communication from the Law Society and shall provide a complete response to any request from the Law Society. (Rule 6.02)

#### Duty to Report Misconduct

(2) A paralegal shall report to the Law Society, unless to do so would be unlawful or would involve a breach of confidentiality between the paralegal and his or her client,

- (a) the misappropriation or misapplication of trust monies by a licensee;
- (b) the abandonment of a law practice by a lawyer or a legal services practice by a paralegal;
- (c) participation in serious criminal activity related to a licensee's practice;
- (d) the mental instability of a licensee of such a serious nature that the licensee's clients are likely to be seriously prejudiced; and
- (e) any other situation where a licensee's clients are likely to be severely prejudiced. (Rule 6.01 (3))

(3) Nothing in subrule (2) is meant to interfere with the paralegal's duty to the client. (Rule 6.01 (3) Commentary)

(4) A report under subrule (2) must be made in good faith and without malice or ulterior motive. (Rule 6.01 (3) Commentary)

(5) A paralegal shall attempt to persuade a client who has a claim against an apparently dishonest licensee to report the facts to the Law Society before pursuing private remedies. (Rule 6.01 (4))

(6) If the client refuses to report a claim against an apparently dishonest licensee to the Law Society, the paralegal shall obtain instructions in writing to proceed with the client's private remedies without notice to the Law Society. (Rule 6.01 (5))

(7) A paralegal shall inform the client of the provision of the Criminal Code of Canada dealing with the concealment of an indictable offence in return for an agreement to obtain valuable consideration. (section 141) (Rule 6.01 (4))

(8) If the client wishes to pursue a private agreement with the apparently dishonest licensee, the paralegal shall not continue to act if the agreement constitutes a breach of section 141 of the Criminal Code of Canada. (Rule 6.01 (7))

### Duty to Report Criminal Charges and Convictions

(9) If a paralegal is charged with an offence described in By-Law 20 of the Law Society, he or she shall inform the Law Society of the charge and of its disposition in accordance with the By-Law. (Rule 6.01 (8))

### Disciplinary Authority

(10) A paralegal is subject to the disciplinary authority of the Law Society regardless of where the paralegal's conduct occurs. (Rule 6.11 (1))

### Professional Misconduct

(11) The Law Society may discipline a paralegal for professional misconduct. (Rule 6.11 (2))

### Conduct Unbecoming a Paralegal

(12) The Law Society may discipline a paralegal for conduct unbecoming a paralegal. (Rule 6.11 (3))

### Definitions

(13) In subrules (11) and (12),

“conduct unbecoming a paralegal” means conduct in a paralegal's personal or private capacity that tends to bring discredit upon the paralegal profession including,

- (a) committing a criminal act that reflects adversely on the paralegal's honesty, trustworthiness, or fitness as a paralegal,
- (b) taking improper advantage of the youth, inexperience, lack of education, unsophistication, ill health or unbusinesslike habits of another, or
- (c) engaging in conduct involving dishonesty;

“professional misconduct” means conduct by a paralegal that tends to bring discredit upon the paralegal profession, including,

- (a) violating or attempting to violate one of these Rules, a requirement of the *Law Society Act* or the regulations or by-laws under that Act,
- (b) knowingly assisting or inducing another licensee to violate or attempt to violate these Rules, a requirement of the *Law Society Act* or the regulations or by-laws under that Act,
- (c) misappropriating or otherwise dealing dishonestly with a client's or a third party's money or property,
- (d) engaging in conduct that is prejudicial to the administration of justice,

- (e) stating or implying an ability to influence improperly a government agency or official, or
- (f) knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. (Rule 1.02, definitions)

## LICENSING BY-LAW

### MOTION

13. That Convocation approve in principle the licensing by-law attached at APPENDIX 2.

### Background

14. The changes to the *Law Society Act* effected by Bill 14 will require the passage of several by-laws. These include, but are not limited to, the implementation of paralegal regulation, as the bill changed some of the Law Society's processes and some of the terminology for the regulation of lawyers as well. A draft of the first implementing by-law, on the licensing process for both lawyers and paralegals, has been prepared for Convocation's review.
15. The provisions regarding the regulation of lawyers do not represent any change in policy from current practices and procedures. Rather, the by-law reflects current processes but is reworded to be consistent with the language in the amended *Law Society Act*.
16. The by-law has several parts, some relating to paralegals, some to lawyers and some to both, described below.
17. The by-law attached at Appendix 2 is not the official version of the licensing by-law, as it has not yet been assigned a by-law number and it references several other new by-laws that have not yet been assigned by-law numbers. Convocation is asked to approve in principle the by-law attached at Appendix 2. The official version of the licensing by-law will be presented at a future meeting of Convocation.
18. PART I
- a. Under the heading 'LICENCE TO PRACTISE LAW,' section 1 provides for the classes of licence for lawyers. There are two classes of licence, Class L1, which will apply to most lawyers and Class L2, which refers to lawyers from other jurisdictions who are granted the temporary right to practise in Ontario at the request of the Attorney General;
  - b. Under the heading 'LICENCE TO PROVIDE LEGAL SERVICES,' section 4 provides for the classes of licence for paralegals - there is currently only one class, Class 'P1'.
  - c. Section 5 sets out the permitted areas of practice for this class of licence, reflecting the recommendations of the 2004 Report to Convocation of the Task Force on Paralegal Regulation. The policy that the Task Force adopted was that the introduction of paralegal regulation should not change the areas of practice that are permitted for non-lawyers.

19. The omission of sections 6 and 7 is intentional. The by-law will be renumbered in its official version.
20. PART II
  - a. ISSUANCE OF A LICENCE: This part provides for the issuing of licences, for all classes of licence.
    - i) Section 9 contains general requirements, such as completion of an application form and payment of a fee.
    - ii) Sections 10 to 11.1 contain requirements for lawyers, such as an LL.B. and completion of articles;
    - iii) Sections 12 to 14 contain the requirements for paralegals. Subsection 12 (1) implements the grandparent applicant policy, while section 13 implements the transitional applicant policy.
    - iv) Section 14 sets out the requirements under the permanent licensing process for paralegals that will be in effect by 2010.
  - b. LICENSING EXAMINATION: Section 15 sets out the general requirements for taking an examination, such as filing of forms and payment of fees, for all classes of licence.
    - i) Section 16 subsection (1) prescribes the examination for lawyers;
    - ii) Subsections (2) and (3) prescribes the examination for paralegals. Subsection (3) provides that an applicant under the grandparent and transitional provisions will have three opportunities to sit the examination. An applicant who fails all three times will be required to apply under the permanent licensing process.
  - c. ARTICLES OF CLERKSHIP: sections 17 and 18 apply only to lawyers.
  - d. REGISTRATION: sections 19 to 21 set out the general requirements which apply to all classes of licence.
  - e. OATH: Subsection 23 (1) prescribes the Oath for lawyers, while subsection 23(2) prescribes the Oath for Paralegals. Section 24 provides for the optional Oath of Allegiance for all classes of licence.

#### The Committee's Deliberations

21. The Committee approved the proposed by-law at the meeting on March 8th.

## APPENDIX 2

5-aes (mar 15-07)

BY-LAW #  
LICENSING  
PART I  
CLASSES OF LICENCE

## LICENCE TO PRACTISE LAW

## Classes of licence

1. (1) There shall be the following two classes of licence to practise law in Ontario as a barrister and solicitor:

1. Class L1.
2. Class L2.

## Transition

## Interpretation

(2) In subsections (3) and (4),

“member” means a member as defined in section 1 of the Act as it read immediately before May 1, 2007;

“temporary member” means a person admitted as a temporary member of the Society under section 28.1 of the Act as it read immediately before May 1, 2007.

## Member other than temporary member

(3) Every person who is a member, other than a temporary member, immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L1 licence.

## Temporary member

(4) Every person who is a temporary member immediately before May 1, 2007 is deemed, on May 1, 2007, to hold a Class L2 licence.

## Scope of activities

### Class L1

2. (1) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L1 licence is entitled to practise law in Ontario as a barrister and solicitor.

### Class L2

(2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class L2 licence is entitled to practise law in Ontario as a barrister and solicitor in the employ of the Attorney General for Ontario or, if appointed under the *Crown Attorneys Act*, as a Crown Attorney or as an assistant Crown Attorney.

### Terms, etc.

### Application of section

3. (1) This section applies to licensees who hold a Class L1 licence.

### Over 65 years

(2) A licensee who is granted an exemption from payment of the annual fee on the grounds that he or she is over 65 years of age is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is restricted to practising law in Ontario as a barrister and solicitor on a *pro bono* basis through,
  - i. a program registered with Pro Bono Law Ontario, or
  - ii. a clinic, within the meaning of the *Legal Aid Services Act, 1998*, funded by Legal Aid Ontario, that is approved by Pro Bono Law Ontario.
2. The licensee is restricted to practising law in Ontario as a barrister and solicitor in the capacity of an estate trustee, a trustee for an *inter vivos* trust or an attorney for property in respect of an estate, trust or property of which the licensee was, at the time of his or her application for the exemption, named as an estate trustee, trustee or an attorney for property.

### Incapacity

(3) A licensee who is granted an exemption from payment of the annual fee on the grounds that he or she is incapacitated is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor.

### Exempt from payment of insurance premium levies

(4) A licensee who is required to pay the annual fee, or who would be required to pay the annual fee but for being granted an exemption from payment of the annual fee on the grounds that he or she has been entitled to practise law in Ontario as a barrister and solicitor for a period of fifty years, and who is exempt from the payment of insurance premium levies is subject to the following terms, conditions, limitations and restrictions:

1. The licensee is prohibited from practising law in Ontario as a barrister and solicitor through a sole proprietorship, a partnership, a professional corporation or any arrangement that permits two or more licensees to share all or certain common expenses but to practise law as independent practitioners other than on a *pro bono* basis for or on behalf of non-profit organizations.

### Authorized to practise law outside Ontario

(5) A licensee who is authorized to practise law in a province or territory of Canada outside Ontario is subject to any term, condition, limitation or restriction imposed on the licensee's authority to practise law in that province or territory.

### Duration of terms, *etc.*

(6) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 3.1.

### Cancellation of terms, *etc.*

3.1 (1) A licensee who is subject to terms, conditions, limitations and restrictions under section 3 may apply to the Society to have the terms, conditions, limitations and restrictions cancelled and the Society may,

- (a) cancel the terms, conditions, limitations and restrictions;
- (b) require the licensee to complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions, and, if the licensee completes the education and obtains the experience, cancel the terms, conditions, limitations and restrictions; or
- (c) cancel the terms, conditions, limitations and restrictions subject to the following terms, conditions, limitations and restrictions:
  - i) the licensee must practise law only,
    - A) as an employee of a person approved by the Society,
    - (B) as an employee or partner, and under the supervision, of a holder of a Class L1 licence who is approved by the Society, or

- (C) under the supervision of a holder of a Class L1 licence who is approved by the Society,
- (ii) the licensee must, within a time specified by the Society, complete education and obtain experience that the Society determines is necessary to ensure that the licensee has the skills necessary to practise law in Ontario as a barrister and solicitor without any terms, conditions, limitations and restrictions.

Breach of terms, *etc.* imposed under subs. (1)

(2) If a licensee fails to comply with a term, condition, limitation or restriction imposed on the licensee under clause (1) (c), the cancellation of terms, conditions, limitations and restrictions under clause (1) (c) is deemed thereafter to be void.

Information to be provided by licensee

(3) A licensee shall provide to the Society all documents and information, as may be required by the Society, relating to this section.

## LICENCE TO PROVIDE LEGAL SERVICES

Classes of licence

4. There shall be the following classes of licence to provide legal services in Ontario:

- 1. Class P1.

Scope of activities

Class P1

Interpretation

5. (1) In this section, unless the context requires otherwise,

“claim” means a claim for statutory accident benefits within the meaning of the *Insurance Act*, excluding a claim of an individual who has or appears to have a catastrophic impairment within the meaning of the Statutory Accident Benefits Schedule;

“party” means a party to a proceeding;

“proceeding” means a proceeding or intended proceeding,

- (a) in the Small Claims Court,
- (b) in the Ontario Court of Justice under the *Provincial Offences Act*,
- (c) in a summary conviction court under the *Criminal Code (Canada)*,

- (d) before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, or
- (e) before a person dealing with a claim or a matter related to a claim, including a mediator, a person performing an evaluation, an arbitrator or the Director acting under section 280, 280.1, 282 or 283 or 284, respectively, of the *Insurance Act*;

“Statutory Accident Benefits Schedule” means the Statutory Accident Benefits Schedule within the meaning of the *Insurance Act*.

#### Activities authorized

- (2) Subject to any terms, conditions, limitations or restrictions imposed on the class of licence or on the licensee and subject to any order made under the Act, a licensee who holds a Class P1 licence is authorized to do any of the following:
1. Give a party advice on his, her or its legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
  2. Represent a party before,
    - i. in the case of a proceeding in the Small Claims Court, before the Small Claims Court,
    - ii. in the case of a proceeding under the *Provincial Offences Act*, before the Ontario Court of Justice,
    - iii. in the case of a proceeding under the *Criminal Code*, before a summary conviction court,
    - iv. in the case of a proceeding before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament, before the tribunal, and
    - v. in the case of a proceeding before a person dealing with a claim or a matter related to a claim, before the person.
  3. Anything mentioned in subsection 1 (7) of the Act, provided the activity is required by the rules of procedure governing a proceeding.
  4. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document for use in a proceeding.
  5. Negotiate a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.
  6. Select, draft, complete or revise, or assist in the selection, drafting, completion or revision of, a document that affects a party’s legal interests, rights or responsibilities with respect to a proceeding or the subject matter of a proceeding.

## PART II

## ISSUANCE OF LICENCE

## INTERPRETATION

## Interpretation

8. In this Part,

“accredited law school” means a law school in Canada that is accredited by the Society;

“accredited program” means a legal services program in Ontario approved by the Minister of Training, Colleges and Universities that is accredited by the Society;

“licensing cycle” means,

- (a) for a person registering with the Society to be eligible to take a licensing examination or to enter into articles of clerkship that is a requirement for a Class L1 licence, a period running from May 1 in a year to April 30 in the following year; and
- (b) for a person registering with the Society to be eligible to take a licensing examination that is a requirement for a Class P1 licence, a period running from June 1 in a year to May 31 in the following year.

## GENERAL REQUIREMENTS

## Requirements for issuance of any licence

9. (1) The following are the requirements for the issuance of any licence under the Act:
- 1. The applicant must submit to the Society a completed application, for the class of licence for which application is made, in a form provided by the Society.
  - 2. The applicant must pay the applicable fees, including the applicable application fee and annual fee.
  - 3. The applicant must be of good character.
  - 4. The applicant must take the applicable oath.
  - 5. The applicant must provide to the Society all documents and information, as may be required by the Society, relating to any licensing requirement.

## Misrepresentations

- (2) An applicant who makes any false or misleading representation or declaration on or in connection with an application for a licence, by commission or omission, is deemed

thereafter not to meet, and not to have met, the requirements for the issuance of any licence under the Act.

### LICENCE TO PRACTISE LAW

#### Requirements for issuance of Class L1 licence

10. (1) The following are the requirements for the issuance of a Class L1 licence:
  1. The applicant must have one of the following:
    - i. A bachelor of laws degree from a law school in Canada that was, at the time the applicant graduated from the law school, an accredited law school.
    - ii. A certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Law Deans.
  2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.
  3. The applicant must have successfully completed a skills and professional responsibility program conducted by the Society not more than three years prior to the application for licensing.
  4. The applicant must have,
    - i. successfully completed service under articles of clerkship for a period of time, not to exceed ten months, as determined by the Society, and
    - ii. if service under articles of clerkship was completed more than three years prior to the application for licensing, successfully completed the additional education and obtained the additional experience that the Society determines is necessary to ensure that the applicant is familiar with current law and practice.

#### Exemption from examination requirement

- (2) An applicant is exempt from the requirement mentioned in paragraph 2 of subsection (1) if,
  - (a) the applicant,
    - (i) is authorized to practise law in a province or territory of Canada outside Ontario where the governing body of the legal profession would authorize a licensee holding a Class L1 licence to practise law in that province or territory without requiring the licensee to successfully complete an examination,

- (ii) reviews the materials that the Society, acting reasonably, determines are necessary to ensure that the applicant is familiar with current law and practice in Ontario, and
- (iii) certifies that he or she has reviewed and understands the materials mentioned in sub-clause (ii), in a form provided by the Society;
- (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or
- (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

#### Exemption from articling and skills and professional responsibility program requirement

- (3) An applicant is exempt from the requirements mentioned in paragraphs 3 and 4 of subsection (1) if,
- (a) the applicant is authorized to practise law in a province or territory of Canada outside Ontario;
  - (b) the applicant is a dean of an accredited law school and has entered upon the second consecutive year in that position; or
  - (c) the applicant is a full-time member of the faculty of an accredited law school and has entered upon the third consecutive year in that position.

#### Requirements for issuance of Class L2

11. The following are the requirements for the issuance of a Class L2:
- 1. The applicant must be authorized to practise law outside Ontario
  - 2. The Attorney General for Ontario must request the Society to issue the licence to the applicant.

#### Call to the bar and admission and enrolment as solicitor

- 11.1 A person who meets the requirements for the issuance of a Class L1 licence mentioned in section 10 qualifies for,
- (a) call to the bar; and
  - (b) admission and enrolment as a solicitor of the Court of Appeal for Ontario and of the Superior Court of Justice.

### LICENCE TO PROVIDE LEGAL SERVICES

Requirements for issuance of Class P1 licence: application received prior to November 1, 2007

12. (1) The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence prior to November 1, 2007:

1. The applicant must have,
  - i. provided legal services, that a holder of a Class P1 licence is authorized to provide, on a full-time basis for a total of three years in the five years prior to May 1, 2007,
  - ii. obtained education, in a legal services program in Ontario, that the Society determines is equivalent to at least nine courses in a legal services program in Ontario approved by the Minister of Training, Colleges and Universities and provided legal services, that a holder of a Class P1 licence is authorized to provide, in the five years prior to May 1, 2007, that include ten instances of representing a party before the Small Claims Court, before the Ontario Court of Justice, before a summary conviction court, before a tribunal established under an Act of the Legislature of Ontario or under an Act of Parliament or before a person dealing with a claim, within the meaning of section 5, or a matter related to a claim when the Small Claims Court, the Ontario Court of Justice, the summary conviction court the tribunal or the person was hearing the merits of a proceeding, or
  - iii. graduated, within the three years prior to the application for licensing, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
    - A. 18 courses, the majority of which provided instruction on legal services that a holder of a Class P1 licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
    - B. a field placement of a least 120 hours.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.
3. The applicant must provide written confirmation from two persons, from a list of persons and in a form provided by the Society, verifying that the applicant has met the experience requirement mentioned in paragraph 1.

Interpretation: "full-time basis"

(2) For the purposes of this section, an applicant provides legal services on a full-time basis if the applicant provides legal services, on the average, 30 hours per week.

Requirements for issuance of Class P1 licence: application received after October 31, 2007 and prior to July 1, 2010

13. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after October 31, 2007 and prior to July 1, 2010:

1. The applicant must have graduated, within the three years prior to the application, from a legal services program in Ontario that, at the time the applicant graduated, was approved by the Minister of Training, Colleges and Universities and that included,
  - i. 18 courses, the majority of which provided instruction on legal services that a holder of a Class P1 (Providing Legal Services) licence is authorized to provide and one of which was a course on professional responsibility and ethics, and
  - ii. a field placement of a least 120 hours.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society.

Requirements for issuance of Class P1 licence: application received after June 30, 2010

14. The following are the requirements for the issuance of a Class P1 licence for an applicant who applies for the licence after June 30, 2010:

1. The applicant must have graduated from a legal services program in Ontario that was, at the time the applicant graduated from the program, an accredited program.
2. The applicant must have successfully completed the applicable licensing examination or examinations set by the Society not more than three years prior to the application for licensing.

## LICENSING EXAMINATIONS

### General requirements

15. (1) A person who meets the following requirements is entitled to take a licensing examination set by the Society:

1. The person must register with the Society, prior to the day of the examination, by the time specified by the Society.
2. The person must submit to the Society a completed examination application, for the examination that the person wishes to take, in a form provided by the Society, prior to the day of the examination, by the time specified by the Society.
3. The person must pay the applicable examination fee, prior to the day of the examination, by the time specified by the Society.
4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for taking an examination.

5. The person must not be ineligible to take the examination under this By-Law.

#### Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with an examination application, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for taking a licensing examination and, subject to subsection (3), the successful completion of any licensing examination taken by the person is deemed thereafter to be void.

#### Deferred voiding of examination result

(3) Where the false or misleading representation mentioned in subsection (2) relates to meeting the requirement of paragraph 1 of subsection 10 (1) or paragraph 1 of section 14 and was made by the person in good faith, the person is deemed not to meet, and not to have met, the requirements for taking a licensing examination, and the successful completion of any licensing examination taken by the person is deemed to be void, if the person does not meet the requirement of paragraph 1 of subsection 10 (1) or paragraph 1 of section 14, as the case may be, by the end of the licensing cycle in which the person registered with the Society to be eligible to take the applicable licensing examination.

#### Licensing examination for Class L1 licence

16. (1) A person who meets the requirement of paragraph 1 of subsection 10 (1) is entitled to take a licensing examination that is a requirement for the issuance of a Class L1 licence.

#### Licensing examination for Class P1 licence

(2) A person is entitled to take a licensing examination that is a requirement for a Class P1 licence if,

- (a) in the case of an applicant who applies for a Class P1 licence prior to November 1, 2007, the person meets the requirements of paragraphs 1 and 3 of subsection 12 (1);
- (b) in the case of an applicant who applies for a Class P1 after October 31, 2007 and prior to July 1, 2010, the person meets the requirement of paragraph 1 of section 13; and
- (c) in the case of an applicant who applies for a Class P1 licence after June 30, 2010, the person meets the requirement of paragraph 1 of section 14.

#### Failing licensing examination

(3) A person who qualified to take a licensing examination that is a requirement for a Class P1 licence by meeting the requirement of subclause i or ii of paragraph 1 of subsection 12 (1) and failed the examination on three occasions may no longer qualify to take the examination by meeting the requirement of subclause i or ii of paragraph 1 of subsection 12 (1).

## ARTICLES OF CLERKSHIP

## Requirements

17. (1) A person who meets the following requirements is entitled to enter into service under articles of clerkship that is a requirement for the issuance of a Class L1 licence:

1. The person must register with the Society.
2. The person must meet the requirement of paragraph 1 of subsection 10 (1).
3. The person must successfully complete a skills and professional responsibility program conducted by the Society not more than three years prior to entering into service under articles or clerkship.
4. The person must provide to the Society all documents and information, as may be required by the Society, relating to any requirement for entering into service under articles of clerkship.

## Exemption from skills and professional responsibility program requirement

(2) The Society may, on such terms as it considers appropriate, exempt a person from meeting the requirement mentioned in paragraph 3 of subsection (1), and, if a person is so exempted by the Society, the person is exempt from the requirement for the purposes of this section.

## Exemption and service void

(3) If a person who is exempt, under subsection (2), from the requirement mentioned in paragraph 3 of subsection (1) fails to comply with a term of his or her exemption, the person is deemed thereafter not to be, and not to have been, exempt from the requirement and any service under articles of clerkship is deemed thereafter to be void.

## Student

18. (1) A person who has entered into service under articles of clerkship is a student.

Application of Act, *etc.* to students

(2) The following apply, with necessary modifications, to a student:

1. The following sections of the Act:
  - i. Sections 33 to 40.
  - ii. Section 45.
  - iii. Section 49.3.
  - iv. Sections 49.8 to 49.13.

- v. Sections 49.20 to 49.43.
- 2. Ontario Regulation 30/99, made under the Act.
- [3. By-Laws ... .]
- 4. The rules of practice and procedure.

## REGISTRATION

### General requirements

19. (1) A person who meets the following requirements is entitled to be registered with the Society:
- 1. The person must submit to the Society a completed registration form, as provided by the Society.
  - 2. The person must pay the applicable registration fee.
  - 3. The person must provide to the Society all documents and information, as may be required by the Society, relating to any registration requirement.

### Misrepresentations

(2) A person who makes any false or misleading representation or declaration on or in connection with registration, by commission or omission, is deemed thereafter not to meet, and not to have met, the requirements for registration, the person's registration is deemed thereafter to be void, the successful completion of any licensing examination taken by the person is deemed thereafter to be void, the successful completion of any skills and responsibility program conducted by the Society taken by the person is deemed thereafter to be void and any service under articles of clerkship is deemed thereafter to be void.

### Registration into licensing cycle

20. (1) A person who registers with the Society shall be registered into a specific licensing cycle.

### Transition

#### Student-at-law in Bar Admission Course

(2) Every person who is, immediately before May 1, 2007, a student-at-law in the Bar Admission Course under By-Law 12 as it read immediately before May 1, 2007, is deemed, on May 1, 2007, to be registered with the Society and to have been registered into the licensing cycle that corresponds to the academic year in which the person was admitted to the Course.

Availability of name of registrant to public

21. The Society may make available for public inspection the names of its registrants at a given point in time.

#### OATH

Applicant for Class L1 or Class L2 licence

22. An applicant for a Class L1 or Class L2 licence shall take the applicable oath as part of the applicant's call to the bar and admission and enrolment as a solicitor of the Court of Appeal for Ontario and of the Superior Court of Justice.

Required oath: Class LI licence

23. (1) The required oath for an applicant for the issuance of a Class LI licence under the Act is as follows:

I swear or affirm that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the practice of law in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.

Required oath: Class P1 licence

(2) The required oath for an applicant for the issuance of a Class PI licence under the Act is as follows:

I swear or affirm that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the provision of legal services in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.

Optional oath: oath of allegiance

24. An applicant for the issuance of a licence under the Act may take the following oath:

I swear or affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law.

## EXEMPTIONS BY-LAW

## MOTION

22. That Convocation approve the policy on exemptions at paragraphs 26 to 30, below.

## Background

23. The model of regulation of legal services set out in Bill 14, now incorporated into the *Law Society Act*, reflects the recommended approach in the 2004 Report to Convocation of the Task Force on Paralegal Regulation, including the following:

*67. The objective is to permit the Law Society to regulate the delivery of all legal services. . . Exemptions can then be created for those whom it is not necessary or appropriate for the Law Society to regulate.*

*68. Many of the details that remain to be settled need not be embodied in the legislation, and can be developed for inclusion in the regulations and by-laws, simultaneously with the progress of the legislative framework.*

24. Accordingly, the *Law Society Act* now contains a very broad definition of the provision of legal services and it is necessary to create exemptions for persons it is not necessary or appropriate for the Law Society to regulate.

25. The exemptions created by the bylaws will be in addition to the exclusions that Bill 14 placed in the *Law Society Act*, which are as follows:

*(7.1) For the purposes of this Act, the following persons shall be deemed not to be practising law or providing legal services:*

- 1. A person who is acting in the normal course of carrying on a profession or occupation governed by another Act of the Legislature, or an Act of Parliament, that regulates specifically the activities of persons engaged in that profession or occupation.*
- 2. An employee or officer of a corporation who selects, drafts, completes or revises a document for the use of the corporation or to which the corporation is a party.*
- 3. An individual who is acting on his or her own behalf, whether in relation to a document, a proceeding or otherwise.*
- 4. An employee or a volunteer representative of a trade union who is acting on behalf of the union or a member of the union in connection with a grievance, a labour negotiation, an arbitration proceeding or a proceeding before an administrative tribunal.*
- 5. A person or a member of a class of persons prescribed by the by-laws, in the circumstances prescribed by the by-laws.*

26. Paragraph 5 in the above section provides for exemptions by by-law. Given that the regulatory model is new and original, it was anticipated that over time the Law Society would receive further requests for exemptions, to fine-tune the model. A by-law is a much more flexible mechanism for creating exemptions than, for example, a statute or a regulation requiring Cabinet approval.

27. The starting point for the policy on exemptions is the discussion of the issue in the 2004 Report to Convocation, attached at APPENDIX 3. Some key points are in the following paragraphs:

137. Throughout the consultations, there were representations about who should be included in or excluded from the regulatory model. There is no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, while law clerks and other persons providing services to lawyers should be exempted, as should family members or friends representing a person free of charge. There are also good reasons for excluding union stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a specialized area. However, the Task Force heard extensive representations about other groups.

140. The rationale for paralegal regulation is based on the need for consumer protection, particularly in the case of vulnerable clients. The problem areas do not generally involve salaried, in-house paralegals.

149. The Task Force was aware of the challenge involved in bringing a large number of persons into a system of regulation in a short period of time. For that reason, it makes sense to start with the areas where most of the problems have occurred.

150. The Task Force is proposing a model with initially, three categories of persons:
- a. Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;
  - b. Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as
    - i Family members or friends acting free of charge;
    - ii In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).
  - c. Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).

#### The Committee's Deliberations

28. At the meeting on February 21st, the Committee reviewed the exemption for in-house paralegals recommended in the 2004 Report to Convocation, and decided that this exemption should be implemented during the start-up phase of the model, but every effort should be made to encourage such paralegals to become licensed voluntarily.
29. At the meeting on March 8th, the Committee commenced a review of the groups that have requested specific exemptions and concluded that the following groups should be exempted by by-law:

- a. In-house paralegals employed by a single employer, such as municipal prosecutors;
  - b. Persons whose work is supervised by a lawyer, whether or not they are employed by the lawyer;
  - c. Persons who are not in the business of providing legal services and occasionally provide assistance to a friend or relative for no fee;
  - d. Articling students;
  - e. Employees of legal clinics funded by Legal Aid Ontario;
  - f. Employees of organizations similar to legal clinics that provide free services to low-income clients, provided they meet certain criteria as to their non-profit status and funding;
  - g. Aboriginal Court Workers;
  - h. Paralegals who comply with the requirements for grandparent applicants – this exemption should last until November 1st 2007 (the end of the grandparent application phase), unless a completed application is received;
  - i. Paralegals who have completed a grandparent application – this exemption should last until April 30th, 2008, unless there are continuing hearings into the person's eligibility for a licence.
30. Paragraph h. in the preceding paragraph is designed to address concerns raised by some paralegals that judges or justices of the peace may not permit them to appear after May 1st until their completed 'grandparent' application is received.
31. To conform to the Law Society's understanding with the Financial Services Commission of Ontario (FSCO), the by-law should provide that persons representing Statutory Accident Benefit claimants at FSCO should continue to comply with FSCO's by-laws and regulations until the Law Society's regulation of paralegals is in full effect, at which point FSCO intends to repeal its regulatory system.
32. In addition to the provisions governing paralegals, the by-law should provide for an exemption for lawyers using the 'temporary mobility' provisions of the National Mobility Agreement.
33. The drafting of a by-law in conformity with the Committee's instructions has been commenced and if completed in time will be reviewed by the Committee on March 28th and then circulated at Convocation on March 29th .

#### Further Requests for Exemptions

34. The Law Society has received requests for exemptions from a number of other groups and organizations. The Committee will be considering these at the next meetings with a view to making further recommendations to Convocation prior to May 1st, if appropriate.
35. A chart showing the existing exemptions in other Canadian provinces is attached at APPENDIX 4 for Convocation's information.

## APPENDIX 3

TASK FORCE ON PARALEGAL REGULATION  
2004 REPORT TO CONVOCATION ~ EXCERPT

## PERSONS TO BE REGULATED

136. The objective of the regulatory model is to provide both consumer protection and access to justice, especially for vulnerable clients. At the same time, the model should not be broader than is necessary to achieve these objectives.
137. Throughout the consultations, there were representations about who should be included in or excluded from the regulatory model. There is no disagreement that independent paralegals representing clients for a fee before courts and tribunals should be regulated, while law clerks and other persons providing services to lawyers should be exempted, as should family members or friends representing a person free of charge. There are also good reasons for excluding union stewards and corporate human resources representatives appearing at labour arbitrations, who represent sophisticated clients in a specialized area. However, the Task Force heard extensive representations about other groups.
138. Particularly detailed submissions were received from the Office of the Worker Adviser (OWA) and the Office of the Employer Adviser (OEA), requesting that they be exempted. These agencies of the Ministry of Labour provide free representation in Workers' Compensation claims to injured workers and small employers respectively. They have a large complement of paralegal advocates (in the case of the OWA, 46 paralegals). They make the following points:
- a. Their staff members are already accountable, falling under the *Public Service Act* (including the oath of secrecy), conflict of interest policies, the *Freedom of Information and Protection of Privacy Act*, an internal complaints process, Ministry of Labour policies, and the Ombudsman complaint process;
  - b. As an agency of the Ontario government, there are assets available to satisfy any judgment against them;
  - c. All services are provided free of charge to the client, so that there are no issues of overcharging;
  - d. There is a staff-training programme at both offices;
  - e. These offices, already subject to budget constraints with no reduction in workload, would have to absorb the cost of the licensing fees for their staff.
139. Taken together, these reasons constitute a strong case for exemption of the OWA and OEA from the regulatory model. Several of the same reasons apply to a broad range of employed paralegals, such as municipal prosecutors, community legal workers at clinics, insurance company staff, etc.
140. The rationale for paralegal regulation is based on the need for consumer protection, particularly in the case of vulnerable clients. The problem areas do not generally involve salaried, in-house paralegals.
141. Reducing the potential numbers of licensees by exempting employed paralegals reduces the funding base for the model.

142. The representatives of SOAR (the Society of Ontario Adjudicators and Regulators) generally favoured an approach whereby tribunals could apply to be exempted. It was submitted that there are many boards and tribunals in Ontario where problems with agents are rare, often where there is little money at stake in their decisions.
143. Employed paralegals and some supervised law clerks might choose to acquire a licence voluntarily, if they have the necessary qualifications. This would permit them to take advantage of the grandparenting provisions. (The representatives of the Office of the Worker and Employer Advisers mentioned that some of their staff might be interested in voluntary licensing).
144. If an employed paralegal were considering setting up a private business in the future, it may be advantageous for the employed paralegal to acquire a licence during the time permitted for applications for grandparented status.
145. Among specific exemptions requested in the submissions were,
  - a. All those providing services for no fee
  - b. Aboriginal Court Workers
  - c. Workers at Legal Aid funded clinics, including those where no lawyer is on staff
  - d. Trade union employees (not only in arbitrations)
  - e. Volunteer Special Education Advocates
  - f. Adult Protective Service Workers
  - g. Victim Service Workers
  - h. Employees of the Office of Child & Family Service Advocacy
  - i. Employees of the John Howard and Elizabeth Fry Societies
146. The Institute of Law Clerks of Ontario (ILCO) submitted that ILCO should be recognized as the formal regulator of law clerks. (Law Clerks are skilled office workers who work under the supervision of lawyer, often completing extensive work on files such as corporate and real estate transactions). If there is to be regulation of paralegals, ILCO favours formal recognition for law clerks. However, owing to the scope of practice proposed for licensed paralegals, it may be difficult to include some law clerks even on a voluntary basis, if they focus exclusively on solicitors' work.
147. In the view of the Task Force, law clerks are already regulated because lawyers supervise them. They are covered by the lawyer's insurance and the supervising lawyer is responsible for their conduct and competence. Lawyers who fail to adequately supervise their law clerks are in breach of the Rules of Professional Conduct. For these reasons, the Task Force did not consider further regulation of law clerks at this time. Those law clerks providing advocacy services would be eligible to apply for a licence.
148. The need for other exemptions may become apparent, and it will be important to provide a mechanism to add other exemptions by-law.
149. The Task Force was aware of the challenge involved in bringing a large number of persons into a system of regulation in a short period of time. For that reason, it makes sense to start with the areas where most of the problems have occurred.
150. The Task Force is proposing a model with initially, three categories of persons:

- a. Licensees, who will be authorized to provide prescribed advocacy services for a fee, so long as they hold a valid licence;
  - b. Those providing the same services as those in paragraph (a), but without charging a fee to the public, such as
    - i. Family members or friends acting free of charge;
    - ii In-house, salaried non-lawyer advocates, such as municipal prosecutors, community legal workers, insurance company representatives, etc., regardless of whether they are supervised by a lawyer. They will not be required to hold a licence, but will be encouraged to obtain a licence so that they would be entitled to move to private practice at a later date. (Their scope of practice would be limited in the same way as those in category (a), except for files that are supervised by a lawyer).
  - c. Persons providing services under the supervision of a lawyer, such as law clerks, legal assistants, etc., and those working for independent service providers whose only clients are law firms. (This model does not change their situation, although some persons in this category may be interested in acquiring a licence voluntarily).
151. It may in time be appropriate to exempt other persons. A mechanism is therefore required for considering the suitability of other applications for exemption, based on consumer protection and access to justice.

#### Recommendation Thirteen

152. As a first step in regulation, mandatory licensing should be applied only to those paralegals providing legal services to members of the public who pay for those services, either directly or indirectly.

#### FOR INFORMATION

#### AMENDED REGULATION 30/99

- 36. The Tribunals Committee has prepared proposed revisions to Ontario Regulation 30/99 under the *Law Society Act*, 'Hearings Before the Hearing Panel'.
- 37. The Tribunal Committee's Report is set out in its Report to Convocation, dated March 29, 2007 with the proposed Regulation set out as an appendix to the Report.
- 38. If approved the proposed revisions would be recommended to the Ministry of the Attorney General for approval by the Lieutenant Governor-in-Council.

#### The Committee's Deliberations

- 39. A number of the provisions of the proposed Regulation address hearings and motions where the subject of the proceeding is licensed to provide legal services (a paralegal).
- 40. The Paralegal Standing Committee reviewed the proposed new Regulation at the meeting March 8, 2007 and recommends it approval to Convocation.

## GRANDPARENTING POLICY

41. At the meeting on February 21st, the Committee reviewed the policy on grandparenting and came to the following decisions:
- a. The grandparenting 'window' of six months, from May 1st to October 31st, should be regarded as a one-time only opportunity and should not be extended.
  - b. The grandparenting provisions should not be extended to persons with no work experience as a paralegal. This includes adjudicators such as tribunal members and Justices of the Peace.
  - c. However, sitting adjudicators with previous experience as a professional paralegal should be able to apply under the transitional provisions and to provide evidence that they fit under the transitional criteria. This will apply only during the six-month window.

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

A copy of a chart showing existing exemptions in other Canadian provinces.

(Tab C, Appendix 4, pages 74 – 85)

### Re: Paralegal Rules of Conduct

It was moved by Mr. Dray, seconded by Mr. Lawrie, that Convocation approve the Paralegal Rules of Conduct attached at Appendix 1 of the Report.

The following were accepted as friendly amendments:

- (1) delete the words "quasi-criminal or criminal" from Rule 3.08 (6).
- (2) add the word "vulnerability" to Rule 9.01 (13) (b).
- (3) add definition of licensee to Rule 1.02 of the Paralegal Rules of Conduct.

The motion as amended was approved.

### Re: Licensing By-Law

It was moved by Mr. Dray, seconded by Mr. Lawrie, that Convocation approve in principle the licensing by-law attached at Appendix 2 of the Report.

Carried

### Re: Exemptions By-Law

It was moved by Mr. Dray, seconded by Mr. Lawrie, that Convocation approve the policy on exemptions at paragraphs 28 to 31 of the Report.

An amendment was accepted that the policy on exemptions be approved subject to the Paralegal Standing Committee reconsidering paragraph 28 b.

The motion as amended was approved.

*REPORT NOT REACHED*  
Emerging Issues Committee Report

Report to Convocation  
March 29, 2007

---

Emerging Issues Committee

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

Purpose of Report: Decision

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

#### 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.

### 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 (Committees) 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 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)<sup>1</sup>,
  - c. improved processes for dealing with new issues at the Society, and

---

<sup>1</sup> 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.

#### 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 and other groups has since grown to 13. The number of Policy Counsel in the Policy Secretariat who support the work of these groups 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.

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 9 to revoke the Committee's mandate will be required.

*REPORT FOR INFORMATION*  
Secretary's Report to Convocation  
▪ Revised By-Laws

Secretary's Report to Convocation  
March 29, 2007

---

Revised By-Laws

Purpose of Report: Information

Prepared by: Katherine Corrick

FOR INFORMATION

Background

1. The amendments to the *Law Society Act* contained in Bill 14, come into effect on May 1, 2007. The amendments necessitate the creation of additional by-laws to implement paralegal regulation, and the revision of the Law Society's current by-laws to align the language with the amended *Law Society Act*.
2. The time frame for the creation and revision of the by-laws is very short. The new by-laws must be in place by May 1, 2007. The official versions of the by-laws attached at Appendix 1 will be presented to Convocation in April for adoption.
3. Revisions to the current by-laws cut across many different functions of the Law Society, and may affect the work of more than one standing committee. On the other hand, the revisions may not fall within the mandate of any committee.
4. In order to expedite the process of bringing the revised by-laws to Convocation, the Treasurer asked a small group of benchers to review the by-laws, and ultimately present them to Convocation.
5. On March 1, 2007, Bonnie Warkentin, Derry Millar, Ross Murray and Bill Simpson ("the group") agreed to participate. The group thus has a member of the Professional Regulation, Professional Development, Competence & Admissions, Finance and Audit, Tribunals, Mobility, and Government Relations Committees.
6. The group is reviewing new by-laws that affect lawyer regulation, and the revisions to current by-laws. The Paralegal Standing Committee will present new by-laws that relate solely to paralegal regulation to Convocation.

7. The group met on March 6 and 16, 2007, and reviewed four by-laws.

#### New Licensing By-Law

8. This by-law is new and has not yet been numbered. The Paralegal Standing Committee will formally present this by-law to Convocation for approval. It is included as Appendix 1 to the Paralegal Standing Committee's Report to Convocation on March 29, 2007. The group reviewed it because it includes the provisions for the licensing of lawyers as well.
9. The licensing by-law embodies the provisions of existing by-laws 11, 12, and 13 and does not change the current licensing process for lawyers.
10. Section 3 of the by-law implements the policies approved by Convocation on June 22, 2006 regarding retired lawyers who provide *pro bono* legal services through Pro Bono Law Ontario, and retired lawyers who act as estate trustees.
11. The group discussed section 5 of the by-law, which sets out the permissible scope of practice for paralegals. The discussion centred on the inclusion of paralegals who practise in summary conviction court in the regulatory scheme.
12. Section 800(2) of the *Criminal Code* permits a person to appear in person, by counsel or agent, in a summary conviction court. This right is restricted by section 802.1 to cases where the defendant is liable to no more than six months imprisonment.
13. The group was of the view that despite the specific enabling provisions in the Criminal Code, it is in the public interest nonetheless to include these paralegals within the Law Society's regulatory scheme.

#### By-Laws 1, 2, and 3

14. By-laws 1, 2, and 3 have been revised to ensure that the language is consistent with the amended *Law Society Act*. Annotated copies of them are attached as Appendix 1. The group reviewed them on March 16, 2007.

#### BY-LAW 1

#### BY-LAWS

#### MAKING, AMENDING AND REVOKING BY-LAWS

##### Making, amending and revoking by-law

1. (1) Convocation shall not make, amend or revoke a by-law unless a motion to make, amend or revoke a by-law is made in accordance with this By-Law.

##### Procedure for making, amending and revoking by-law

- (2) At any meeting of Convocation, a bencher who is entitled to vote in Convocation may make a motion to make, amend or revoke a by-law and, subject to subsection (3), Convocation shall vote on a motion to make, amend or revoke a by-law at the meeting of Convocation at which it is made.

Same

(3) If a bencher who is entitled to vote in Convocation and who is present at a meeting of Convocation at which a motion is made to make, amend or revoke a by-law objects to the motion being voted on at that meeting, the motion shall not be voted on at that meeting but may be debated at that meeting and shall be voted on at the next regular meeting of Convocation or at the next special meeting of Convocation called for by the Treasurer for the purposes of voting on the motion.

#### TIME FOR COMMENCEMENT

Time for commencement: by-law and amendment to by-law

2. Unless otherwise provided in a by-law, an amendment to a by-law or the revocation of a by-law, a by-law, an amendment to a by-law or the revocation of a by-law comes into force on the day on which the motion making the by-law, amending the by-law or revoking the by-law is carried at a meeting of Convocation.

Sections 1 and 2 are lifted verbatim from sections 1 and 2 of current by-law 1. The current section mandating a review of all by-laws every four years has been deleted.

#### CHANGE POWERS

Editorial and other changes

3. (1) This section does not authorize any change that alters the legal effect of any by-law.

Same

(2) Senior Counsel, Legal Affairs may make the following changes to the by-laws:

1. Correct spelling, punctuation or grammatical errors, or errors that are of a clerical, typographical or similar nature.
2. Replace a description of a date or time with the actual date or time.
3. If a provision provides that it is contingent on the occurrence of a future event and the event occurs, remove text referring to the contingency and make any other changes that are required as a result.
4. When a reference to a body, office, person, place or thing has been altered to be a reference to another body, office, person, place or thing, change a reference to the original body, office, person, place or thing to a reference to the other.
5. When the name, title, location or address of a body, office, person, place or thing has been altered, change references to the name, title, location or address to reflect the alteration, if the body, office, person, place or thing continues under the new name or title or at the new location or address.
6. Correct errors in the numbering of provisions or other portions of a by-law and make any changes in cross-references that are required as a result.

7. Make a correction, if it is patent both that an error has been made and what the correction should be.

This is a new section. It is based on a section of the Legislation Act, 2006, S.O. 2006, c. 21, Sched. F, which reads as follows:

Editorial and other changes

42. (1) This Part does not authorize any change that alters the legal effect of any Act or regulation. 2006, c. 21, Sched. F, s. 42 (1).

Same

(2) The Chief Legislative Counsel may make the following changes to consolidated laws:

1. Correct spelling, punctuation or grammatical errors, or errors that are of a clerical, typographical or similar nature.
2. Alter the style or presentation of text or graphics to be consistent with the editorial or drafting practices of Ontario, or to improve electronic or print presentation.
3. Replace a form of reference to an Act or regulation, or a provision or other portion of an Act or regulation, with a different form of reference, in accordance with Ontario drafting practices.
4. Replace a description of a date or time with the actual date or time.
5. After a bill has been enacted, replace a reference to the bill or a provision or other portion of the bill with a reference to the Act or provision or other portion of the Act.
6. If a provision provides that it is contingent on the occurrence of a future event and the event occurs, remove text referring to the contingency and make any other changes that are required as a result.
7. Make such changes to the title of an Act or regulation, including but not limited to omitting the year from the title of an Act, as are required to accord with changes in methods of citing Acts or regulations or changes in the electronic or print presentation of Acts or regulations, and make any other changes that are required as a result.
8. If an Act or regulation provides that references to a body, office, person, place or thing are deemed or considered to be references to another body, office, person, place or thing, replace a reference to the original body, office, person, place or thing with a reference to the other.
9. When the name, title, location or address of a body, office, person, place or thing has been altered, change references to the name, title, location or address to reflect the alteration, if the body, office, person, place or thing continues under the new name or title or at the new location or address.
10. Correct errors in the numbering of provisions or other portions of an Act or regulation and make any changes in cross-references that are required as a result.

11. If a provision of a transitional nature is contained in an amending Act or regulation, incorporate it as a provision of the relevant consolidated law and make any other changes that are required as a result.

12. Make a correction, if it is patent both that an error has been made and what the correction should be. 2006, c. 21, Sched. F, s. 42 (2).

## BY-LAW 2

### CORPORATE PROVISIONS

#### PART I

#### GENERAL

#### SEAL

1. The seal of the Society in use immediately before the day this By-Law comes into force shall continue to be the seal of the Society, that is, a shield in the centre whereof stands a Doric column, surmounted by a beaver, on the dexter side of the shield the figure of Hercules, and on the sinister the figure of Justice, with scales in her right hand and the sword in the left, and the words "Magna Charta Angliae" inscribed on a ribbon floating round the column, together with the words "Law Society of Upper Canada" upon the exterior circle.

#### COAT OF ARMS

2. The coat of arms of the Society in use immediately before the day this By-Law comes into force shall continue to be the coat of arms of the Society, that is, a sable on a chevron between two stags trippant in chief and a rose in base argent barbed and seeded an open book proper bound azure edged and clasped or between two maple leaves gules and for the crest on a wreath of the colours upon a rocky mount proper a mantle ermine lined murrey thereon a beaver proper in the mouth a sprig of two maple leaves or, together with the following supporters: on the dexter side a figure representing Hercules holding with the exterior hand a club and on the sinister side a figure representing Justice holding in the exterior hand a sword erect proper pommel and hilt or and with a balance suspended from the blade.

Sections 1 and 2 repeat sections 1 and 2 of current by-law 2 verbatim.  
Current section 3, which specifies the way documents must be executed has been deleted as it is unnecessary to have such provisions in a by-law.

#### PART II

#### MEMBERS

#### HONORARY MEMBERS

Authority to make persons honorary members

3. (1) Convocation may make any person an honorary member of the Society.

Section 1 of current by-law 13 verbatim.

Rights and privileges

- (2) An honorary member has only the rights and privileges prescribed by this Part.

Transition

4. Every person who is an honorary member of the Society immediately before May 1, 2007 is an honorary member of the Society.

MEETINGS OF MEMBERS

ANNUAL GENERAL MEETING

Sections 5 to 42 repeat the provisions of current by-law 10 verbatim, except for necessary changes in language. e.g. "licenses are not suspended," rather than "rights and privileges not suspended."

Meeting of members to be held annually

5. A meeting of members shall be held annually at a time and place determined by Convocation.

Notice of meeting

6. Notice of the annual general meeting, stating the date, time and place of the meeting, shall be given by publication in an issue of the Ontario Reports dated at least sixty days before the day fixed for the meeting.

Agenda for meeting

7. The annual general meeting shall consider the following matters:
1. Minutes of the previous annual general meeting.
  2. Reports on the work of the Society and of the committees of Convocation.
  3. Financial statements.
  4. Matters of professional interest that are related to the work of the Society.

RULES OF PROCEDURE

GENERAL

Interpretation: "meeting"

8. (1) In this section and in sections 9 to 41, "meeting" means any meeting of members.

Same: "Treasurer"

- (2) In this Part, except in section 10, "Treasurer" includes a bencher who presides at a meeting in accordance with section 6.

Reference text

9. Where a matter of order or procedure is not settled by this Part, it shall be settled in accordance with the rules of order set out in the most recent edition of *Bourinot's Rules of Order*.

Presiding bencher

10. The Treasurer shall preside at each meeting, but if the Treasurer for any reason is unable to preside at a meeting, one of the following benchers shall preside, in the following order of precedence:

1. The chair of the Finance and Audit Committee.
2. The chair of the Professional Development and Competence Committee.
3. A bencher selected from among and by the benchers present at the meeting.

Secretary to prepare agenda for meeting

11. For each meeting, the secretary shall prepare an agenda showing the order of business.

## QUORUM

Quorum at a meeting

12. Fifty members, none of whose licence is suspended, constitute a quorum at a meeting.

Quorum not present

13. If within one hour after the time appointed for a meeting a quorum is not present, the Treasurer shall adjourn the meeting.

Quorum lost during meeting

14. (1) If a quorum is lost during a meeting, the Treasurer shall, subject to subsection (2), adjourn the meeting.

Same

(2) If a quorum is lost during a meeting, the Treasurer may permit the members remaining to continue to debate a motion, an amendment to a motion or an appeal of a ruling already put to the meeting but not yet disposed of if no member remaining objects.

No voting when quorum not present

(3) Even though debate on a motion, an amendment or an appeal may continue if a quorum is lost during a meeting, no motion, amendment or appeal shall be voted on when a quorum is not present.

Quorum regained

(4) If a quorum, having been lost during a meeting, is regained before the meeting is adjourned, the meeting shall continue as if the quorum had not been lost.

## MOTIONS

Subject matter

15. All motions made at a meeting shall relate to the work of the Society.

#### Procedure for making motions

16. (1) Subject to subsection (2), a motion to be made at a meeting shall be,
- (a) in writing and signed by at least ten members, none of whose licence is suspended at the time of signature; and
  - (b) delivered to the secretary at least forty days prior to the day fixed for the meeting.

#### Same

- (2) A motion may be made at any time during a meeting, even though the requirements set out in subsection (1) have not been complied with, if the motion relates to a matter then being debated.

#### Publication of motions

17. The secretary shall arrange for publication of the text of all motions delivered to him or her under section 16.

#### Introduction at meeting

18. (1) At a meeting, a motion described in subsection 16 (1) may be made by it being,
- (a) proposed by one of the ten members who signed the motion; and
  - (b) seconded by any other member whose licence is not suspended.

#### Same

- (2) At a meeting, a motion described in subsection 16 (2) may be made by it being,
- (a) proposed by one member whose licence is not suspended; and
  - (b) seconded by another member whose licence is not suspended.

#### Permitted amendments

19. (1) A motion made at a meeting may be amended by,
- (a) adding or deleting words;
  - (b) varying minor details; or
  - (c) rephrasing sentences.

#### Amendment not to alter substance of motion

- (2) An amendment to a motion shall not alter the substance of the motion.

#### Introduction of amendments

20. An amendment to a motion shall be,
- (a) proposed by one member whose licence is not suspended; and
  - (b) seconded by another member whose licence is not suspended.

#### Limit on number of amendments

21. No more than two amendments to a motion shall be before the meeting for debate at the same time.

#### Withdrawal

22. A motion or an amendment to a motion made at a meeting may be withdrawn if,
- (a) the member who proposed the motion or amendment consents to the withdrawal;
  - (b) the member who seconded the motion or amendment consents to the withdrawal; and
  - (c) no member present at the meeting objects to the withdrawal.

### DEBATE

#### Debate on motions and amendments

23. (1) Subject to subsection (2), a motion and an amendment to a motion may be debated by the members present at the meeting.

#### Debate prohibited

- (2) The following motions shall not be debated:
1. A motion to adjourn a debate.
  2. A motion to proceed to the next business.
  3. A motion to table.

#### Order of speaking

24. (1) In a debate, members are entitled to speak to a motion or an amendment to a motion in the following order:
1. The member who proposed the motion or amendment.
  2. The member who seconded the motion or amendment.
  3. Any other member present at the meeting when recognized by the Treasurer.

#### Reserving right to speak

(2) The member who seconds a motion or an amendment to a motion may reserve the right to speak until a later time in the debate.

#### Limits on speaking

25. (1) Subject to subsection (2), a member is entitled to speak to a motion or an amendment to a motion only once.

#### Exception

- (2) A member may speak to a motion or an amendment a second time if,
- (a) all members present at the meeting have exercised, or declined to exercise, their right to speak to the motion or amendment; and

- (b) the member does not repeat anything already said by any other member.

#### RULING OF TREASURER

##### Treasurer may make rulings

26. The Treasurer may make rulings as to the conduct of the meeting and, without limiting the generality of the foregoing, the Treasurer may rule upon the propriety, acceptability, form and substance of any motion or amendment to a motion proposed at a meeting.

##### Appeal of ruling of Treasurer

27. (1) Subject to subsection (2), a ruling of the Treasurer may be appealed by any member present at the meeting.

##### Appeal prohibited

(2) No member is entitled to appeal a ruling of the Treasurer that a matter may not be made the subject of debate or motion by the meeting because,

- (a) it is a matter in respect of which a hearing may be conducted under the Act, regulations, by-laws or rules of practice and procedure; or
- (b) it is a matter that is pending before an adjudicative body for determination.

##### Time for making appeal

28. Where a member wishes to appeal a ruling of the Treasurer, the appeal shall be made immediately after the ruling.

##### Debate permitted

29. (1) Subject to subsection (2), an appeal of a ruling of the Treasurer may be debated by the members present at the meeting.

##### Debate prohibited

(2) An appeal of a ruling of the Treasurer relating to inappropriate language or behaviour shall not be debated.

##### Application of ss. 24 and 25

30. Sections 24 and 25 apply, with necessary modifications, to a debate of an appeal of a ruling of the Treasurer.

##### Treasurer's reasons for ruling

31. (1) After an appeal of a ruling of the Treasurer has been made, and before commencement of debate of the appeal, if permitted, the Treasurer is entitled to give the reasons, including any authority, for the ruling.

##### Same

- (2) After debate of an appeal of a ruling of the Treasurer concludes, the Treasurer is entitled,
- (a) to answer any points raised during the debate; and
  - (b) to give, or to repeat, the reasons, including any authority, for the ruling.

#### Disposition by vote

32. (1) An appeal of a ruling of the Treasurer shall be disposed of by a vote on the question: "Should the ruling of the Treasurer be upheld? "

#### Call for vote on appeal where debate on appeal prohibited

(2) Where debate on an appeal of a ruling of the Treasurer is prohibited, the Treasurer shall call for a vote on the appeal after exercising, or declining to exercise, the rights given to the Treasurer in subsection 31 (1).

#### Call for vote on appeal where debate on appeal permitted

(3) Where debate on an appeal of a ruling of the Treasurer is permitted, the Treasurer shall call for a vote on the appeal after debate has concluded and the Treasurer has exercised, or declined to exercise, the rights given to the Treasurer in subsection 31 (2).

### VOTING

#### No appeal from call for vote

33. No member is entitled to appeal a call by the Treasurer for a vote on a motion, an amendment to a motion or an appeal of a ruling.

#### Order of voting on motions and amendments to motions

34. (1) All amendments to a motion shall be put to a vote before the motion is put to a vote.

#### Order of voting on amendments to motions

(2) Amendments to a motion shall be put to a vote in the following order:

1. The second amendment proposed.
2. The first amendment proposed.

#### Entitlement to vote

35. Every member present at a meeting, whose licence is not suspended, is entitled to one vote on each question put to the meeting.

#### Treasurer may not vote

36. Subject to section 40, the Treasurer shall not vote on any motion, amendment to a motion or appeal of a ruling.

#### Proxy voting prohibited

37. Votes may not be cast by proxy.

#### Manner of voting

38. Voting shall be by a show of hands unless a poll is required by the Treasurer or called for by a member.

#### Poll

39. (1) A poll may be required by the Treasurer or called for by a member either before a question is put to a vote or immediately after the question has been voted on by a show of hands.

Manner of conducting poll

(2) A poll shall be conducted either by ballot or by division, as determined by the Treasurer.

No appeal

(3) No member is entitled to appeal a determination by the Treasurer as to the manner of conducting a poll.

Resolution of question

40. (1) Subject to subsection (3), each question put to the meeting shall be determined by the majority of the votes cast.

Treasurer may exercise casting vote

(2) In the case of a tied vote, except on a vote of an appeal of a ruling of the Treasurer, the Treasurer shall have a casting vote.

Resolution of question: appeal of ruling of Treasurer

(3) A ruling of the Treasurer shall be upheld on appeal when,

- (a) the majority of votes cast are in favour of upholding the ruling of the Treasurer; or
- (b) the vote on the appeal results in a tie.

Entry in minutes

41. Whenever voting has been by a show of hands, unless immediately following the vote a poll on the same question is required by the Treasurer or called for by a member, an entry in the minutes of the meeting to the effect that the Treasurer declared a motion carried, an amendment to a motion approved or a ruling upheld is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion, amendment or ruling.

Communication of resolutions to Convocation

42. (1) All motions carried at a meeting of members shall be,

- (a) communicated to Convocation at its first regular meeting after the meeting of members; and
- (b) considered by Convocation within six months of the meeting of members.

Convocation not bound by resolutions of meeting

(2) A motion carried at a meeting of members is not binding on Convocation.

## PART III

## OFFICERS

## CHIEF EXECUTIVE OFFICER

## APPOINTMENT

Sections 43 to 45 repeat verbatim, (except as noted) sections 1 to 3 of current by-law 3.

Appointment of C.E.O.

43. Convocation shall, on such terms as it considers appropriate, appoint a person as Chief Executive Officer of the Society.

Current section provides that "Convocation may," rather than "Convocation shall." This accords with section 8 of the *Law Society Act*, which provides that the CEO "shall, under the direction of Convocation, manage the affairs and functions of the Society."

## REPORTING

Reporting

44. The Chief Executive Officer shall be responsible to Convocation.

## DUTIES

Duties of C.E.O.

45. (1) The Chief Executive Officer shall be responsible for the management and co-ordination of all phases of the operation, administration, finances, organization, supervision and maintenance of all activities of the Society.

Same

(2) In addition to the duties set out in subsection (1), the Chief Executive Officer shall perform all the functions and duties ordinarily associated with the office of chief executive officer including,

- (a) putting into effect all policies and procedures established by Convocation or a standing committee of Convocation;
- (b) counselling and assisting Convocation or any standing committee of Convocation in the development, adoption and implementation and advancement of the various functions of the Society; and
- (c) advising and assisting in the engaging of officers and employees of the Society and directing such personnel in the on-going administration of approved policies and programmes.

Same

(3) In addition to the duties and functions set out in subsections (1) and (2), the Chief Executive Officer shall perform such functions and duties as may be assigned to him or her by Convocation.

## SECRETARY

## APPOINTMENT

## Appointment of secretary

46. Convocation shall, on such terms as it considers appropriate, appoint a person as secretary of the Society.

## DUTIES

## Secretary's duties

47. The secretary shall perform the duties ordinarily associated with the office of the secretary, including having custody of the seal and coat of arms, the duties imposed upon the secretary by the by-laws and the duties that may be assigned to the secretary by the Chief Executive Officer.

Sections 46 and 47 repeat sections 1 and 2 of current by-law 4 verbatim. All of the delegation sections set out in section 3, current by-law 4, are no longer required as a result of the elimination of the word "Secretary" in the *Law Society Act*.

## PART IV

## FINANCIAL PROVISIONS

## FINANCIAL YEAR

Sections 48 to 50 repeat section 4 to 6 of current by-law 2 verbatim.

48. The financial year of the Society shall be from January 1 to December 31.

## AUDIT

## Accounts to be examined and certified by public accountant

49. (1) The accounts and transactions of the Society shall be examined and certified annually by a public accountant to be appointed by Convocation annually and not later than at its regular meeting in May.

## Same

(2) If Convocation fails to appoint a public accountant in any year, the accounts and transactions of the Society shall be examined and certified in that year by the public accountant most recently appointed by Convocation under subsection (1).

## BUDGET ESTIMATES

## Presentation of annual budget to Convocation

50. (1) The annual budget shall be presented to Convocation for final approval not later than November 30 each year.

Budget to be consistent with planned activities

(2) The budget shall be consistent with the activities planned by Convocation for the next financial year.

Projection of expenses and revenues

(3) The budget shall include a reasonable projection of all expenses and revenues.

Use of reserve funds

(4) The use of reserve funds to supplement estimated revenues requires the express approval of Convocation.

Cancellation of program, etc. included in budget approved by Convocation

(5) Where Convocation has approved a budget that provides for the continuation of a program, activity or service, any significant reduction or cancellation of that program, activity or service during the financial year requires the express approval of Convocation.

v2

### BY-LAW 3

## BENCHERS, CONVOCATION AND COMMITTEES

### PART I

### BENCHERS

### ELECTION OF BENCHERS LICENSED TO PRACTISE LAW

### GENERAL

Part 1 of this by-law repeats the provisions of current by-law 5. No changes have been made to this Part of the by-law other than to implement the language in the amended *Law Society Act*, e.g., licensee, and to make it clear that this part relates to the election of benchers licensed to practise law.

#### Definitions

1. In this Part,

“bencher” means a bencher licensed to practise law in Ontario as a barrister and solicitor;

“Elections Officer” means the person who is assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this Part;

“election of benchers” means an election of benchers licensed to practise law in Ontario as barristers and solicitors;

“elector” means a person who is entitled under this Part to vote in an election of benchers;

“holiday” means,

(a) any Saturday or Sunday;

- (b) Good Friday;
- (c) Easter Monday; and
- (d) Victoria Day;

“licensee” means a licensee who holds a Class L1 licence.

Interpretation: reference to a day

2. (1) In this Part, a reference to a day or time shall be a reference to a day or time in an election year.

Same: commencement, etc. of event

(2) In this Part, except where a contrary intention appears, if the day on which an event is to take place, commence or end falls on a holiday, the event shall take place, commence or end on the next day that is not a holiday.

Same: residing in electoral region

(3) For the purposes of this Part, an elector resides in an electoral region if his or her business address, or, where an elector does not have a business address, home address, as indicated on the records of the Society on the fourth Friday in March, is within the electoral region.

## ELECTION DAY

Election day

3. There shall be an election of benchers in 2007 and in every fourth year thereafter on the last day in April that is not a holiday.

## ELECTION OFFICERS

Treasurer to preside over election

4. (1) Subject to subsection (4), an election of benchers shall be presided over by the Treasurer.

Appointment of assistant

(2) The Treasurer may appoint a licensee who is not a candidate in an election of benchers to assist the Treasurer in exercising the powers and performing the duties of the Treasurer under this Part.

Appointment of licensee to act in absence of Treasurer

(3) The Treasurer shall appoint a licensee who is not a candidate in an election of benchers to exercise the powers and perform the duties of the Treasurer under this Part whenever the Treasurer is unable to act

Where Treasurer is candidate in election.

(4) If the Treasurer is a candidate in an election of benchers, Convocation shall, as soon as practicable after the Treasurer’s nomination as a candidate is accepted, appoint a licensee to preside over the election and to exercise the powers and perform the duties of the Treasurer under this Part.

Elections Officer to conduct election

5. (1) An election of benchers shall be conducted by the Elections Officer.

Elections Officer to establish procedures, etc.

- (2) The Elections Officer shall,
- (a) by December 31 of the year immediately preceding an election year,
    - (i) establish all procedures, requirements and specifications required to be established with respect to the nomination of candidates for the election, and
    - (ii) establish the procedures by which electors may vote; and
  - (b) by January 31 of an election year, publish all procedures, requirements and specifications established in respect of the election.

### ELECTORAL REGIONS

Electoral regions

6. (1) The following electoral regions are established:
- 1. The Province of Ontario "A" Electoral Region, composed of the City of Toronto.
  - 2. The Province of Ontario "B" Electoral Region, composed of the area in Ontario outside the City of Toronto.

Same

- (2) Within the Province of Ontario "B" Electoral Region, the following additional electoral regions are established:
- 1. The Northwest Electoral Region, composed of the territorial districts of Kenora, Rainy River and Thunder Bay.
  - 2. The Northeast Electoral Region, composed of the territorial districts of Algoma, Cochrane, Manitoulin, Nipissing, Parry Sound, Sudbury and Timiskaming.
  - 3. The East Electoral Region, composed of,
    - i. the counties of Frontenac, Hastings, Lanark, Lennox and Addington, Prince Edward and Renfrew,
    - ii. the united counties of Leeds and Grenville, Prescott and Russell and Stormont, Dundas and Glengarry, and
    - iii. the Regional Municipality of Ottawa-Carleton.
  - 4. The Central East Electoral Region, composed of,
    - i. the District Municipality of Muskoka,

- ii. the counties of Haliburton, Northumberland, Peterborough, Simcoe and Victoria, and
  - iii. the regional municipalities of Durham and York.
5. The Central West Electoral Region, composed of,
- i. the counties of Bruce, Dufferin, Grey and Wellington, and
  - ii. the regional municipalities of Halton and Peel.
6. The Central South Electoral Region, composed of,
- i. the County of Brant, and
  - ii. the regional municipalities of Haldimand-Norfolk, Hamilton-Wentworth, Niagara and Waterloo.
7. The Southwest Electoral Region, composed of the counties of Elgin, Essex, Huron, Kent, Lambton, Middlesex, Oxford and Perth.

Province of Ontario "A" Electoral Region

(3) Twenty benchers shall be elected for the Province of Ontario "A" Electoral Region as follows:

- 1. One bencher shall be elected on the basis of the votes cast by electors residing in the electoral region.
- 2. Nineteen benchers shall be elected on the basis of the votes cast by all electors.

Province of Ontario "B" Electoral Region

(4) Twenty benchers shall be elected for the Province of Ontario "B" Electoral Region as follows:

- 1. One bencher shall be elected for each electoral region described in paragraphs 1 to 7 of subsection (2) on the basis of the votes cast by electors residing in the electoral region.
- 2. Thirteen benchers shall be elected on the basis of the votes cast by all electors.

## CANDIDATES

Who may be candidate

7. Every licensee is qualified to be a candidate in an election of benchers if, at the time of signing a nomination form containing his or her nomination as a candidate,

- (a) the licensee's business address, or, where the licensee has no business address, home address, as indicated on the records of the Society, is within Ontario; and
- (b) the licensee's licence is not suspended.

#### Time for close of nominations

8. (1) Subject to subclause 9 (3) (b) (ii), the close of nominations of candidates shall be 5 p.m. on the second Friday in February.

#### Nomination of candidates

(2) A candidate shall be nominated by at least ten licensees whose licences are not suspended at the time of signing the nomination form.

#### Consent to nomination

(3) A nomination shall be accompanied by the candidate's consent to the nomination.

#### Nomination form

(4) The nomination of a candidate and the candidate's consent to the nomination shall be contained in a nomination form provided by the Society.

#### Signatures

(5) The nomination form shall be signed by the candidate and the ten licensees who are nominating the candidate.

#### Due date

(6) The nomination form must be received in the office of the Elections Officer at Osgoode Hall before the close of nominations.

#### Acceptance and rejection of nominations

9. (1) A licensee shall not be a candidate if a requirement specified in section 7 or 8 has not been complied with.

#### Examination of nomination form

(2) As soon as practicable after receiving a nomination form, the Elections Officer shall examine the form and,

- (a) if he or she is satisfied that the requirements specified in sections 7 and 8 have been complied with, he or she shall accept the nomination; or
- (b) if he or she is not satisfied that the requirements specified in sections 7 and 8 have been complied with, he or she shall reject the nomination.

#### Results of examination of nomination form

(3) The Elections Officer shall communicate the results of his or her examination of a nomination form to the candidate whose nomination is contained therein and,

- (a) if the Elections Officer has accepted the nomination, he or she shall communicate to the candidate,
  - (i) the manner in which the candidate's name will appear on the election ballot; and
  - (ii) the electoral regions from which the candidate may be eligible to be elected as benchers; or

- (b) if the Elections Officer has rejected the nomination, he or she shall communicate to the candidate,
- (i) the reasons why the nomination was rejected; and
  - (ii) the time by which the candidate, if he or she wishes to be a candidate in the election of benchers, must submit to the Elections Officer a valid nomination.

Nomination form: optional accompanying material

10. (1) A candidate may submit the following materials along with his or her nomination form:

- 1. A photograph of the candidate that meets all specifications established by the Elections Officer.
- 2. A statement of not more than 120 words, including headings, titles and other similar parts of the statement, containing biographical information about the candidate.
- 3. A typed election statement of not more than 700 words, including headings, titles and other similar parts of the statement.

Deadline for receipt of accompanying material

(2) Subject to subclause 20 (3) (b) (iii), the material referred to in subsection (1) must be received in the office of the Elections Officer at Osgoode Hall before the close of nominations.

Withdrawal of candidates

11. A candidate may withdraw from an election of benchers by giving the Elections Officer written notice of his or her withdrawal within seven days after the close of nominations.

## ELIGIBILITY FOR ELECTION

Who may not be elected

12. (1) No candidate shall be elected as bencher if, at the time of his or her election, the candidate's licence is suspended.

Who may be elected for electoral region

(2) A candidate is eligible to be elected as bencher for an electoral region if, at the time of his or her election, the candidate's business address, or, where the candidate has no business address, home address, as indicated on the records of the Society, is within the electoral region.

## ACCLAMATION

Election by acclamation

13. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as bencher for an electoral region is the same as or fewer than the number of benchers

to be elected for that electoral region, the Elections Officer shall declare the candidates to have been elected as benchers for that electoral region.

## POLL

### Poll

14. If after the acceptance of all valid nominations, the number of candidates eligible to be elected as bencher for an electoral region is greater than the number of benchers to be elected for that electoral region, a poll shall be conducted to elect the required number of benchers for that electoral region.

### Secret ballot

15. A poll to elect benchers shall be conducted by secret ballot.

## QUALIFICATION OF ELECTORS

### Qualification of electors

16. A licensee who, on the fourth Friday in March, and whose licence is not suspended on the fourth Friday in March is entitled to vote in an election of benchers.

### Eligibility to elect benchers for electoral regions

17. (1) An elector is eligible to elect the bencher for the Province of Ontario "A" Electoral Region who is to be elected on the basis of the votes cast by electors residing in the electoral region if the elector resides in the electoral region.

### Same

(2) An elector is eligible to elect a bencher for an electoral region mentioned in paragraphs 1 to 7 of subsection 6 (2) if the elector resides in the electoral region.

## LIST OF ELECTORS

### Polling list

18. (1) On or shortly after the first Monday after the fourth Friday in March, the Elections Officer shall prepare a polling list.

### Same

(2) The polling list shall include the names of all licensees whose licences are not suspended on the fourth Friday in March.

## ELECTION MATERIALS

### Election materials: preparation

19. (1) The Elections Officer shall cause to be prepared,
- (a) an election ballot, showing the names of all candidates who may be eligible to be elected as bencher for each electoral region; and
  - (b) an election booklet, containing the names of all candidates and, if available, the photograph, biography and, subject to subsection (4), election statement of each candidate.

(2) In causing the election ballot to be prepared, the Elections Officer shall ensure that it is prepared in a manner that preserves the anonymity of the voters and the secrecy of their votes.

All election statements included

(3) Subject to subsection (4), the Elections Officer shall include in the election booklet all election statements which he or she receives under section 10. Certain election statements not be included unless approved

(4) The Elections Officer shall not include in the election booklet any election statement that in his or her opinion may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste unless the election statement has been approved by a committee of benchers in accordance with section 20.

Appointment of committee to approve election statements

20. (1) If necessary, the Treasurer shall appoint a committee of two or more benchers who are not elected benchers to approve election statements.

Referral of election statements to committee

(2) The Elections Officer shall refer to the committee appointed under subsection (1) all election statements that in his or her opinion may be libelous, may be in breach of the Rules of Professional Conduct or are in bad taste.

(3) The committee appointed under subsection (1) shall consider all election statements that are referred to it and, in respect of each election statement, shall,

- (a) approve the election statement and direct the Elections Officer to include it in the election booklet; or
- (b) if the committee is of the opinion that the election statement may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste,
  - (i) return the election statement to the candidate who submitted it,
  - (ii) provide the candidate a written explanation of the committee's objections to the election statement, and
  - (iii) specify the time by which the candidate may submit to the committee a redrafted election statement.

Consideration of redrafted election statements by committee

(4) The committee appointed under subsection (1) shall consider all redrafted election statements that are submitted to it in accordance with subsection (3), and, in respect of each redrafted election statement, shall,

- (a) approve the redrafted election statement and direct the Elections Officer to include it in the election booklet; or
- (b) if the committee is of the opinion that the redrafted election statement may be libelous, may be in breach of the Rules of Professional Conduct or is in bad taste,

- (i) return the redrafted election statement to the candidate who submitted it,
- (ii) provide the candidate a written explanation of the committee's objections to the redrafted election statement, and
- (iii) advise the candidate that no election statement shall be included in the election booklet under his or her name.

#### Committee's decision final

- (5) A decision of the committee under subsection (4) is final.

#### Election materials: distribution

21. As soon as practicable after the Elections Officer has prepared the polling list, the Elections Officer shall distribute to every person whose name appears on the polling list,

- (a) the election materials prepared under section 19;
- (b) voting instructions; and
- (c) a return envelope.

### VOTING

#### Voting for candidates

22. An elector may vote for,

- (a) not more than 20 candidates who may be eligible to be elected as bencher for the Province of Ontario "A" Electoral Region; and
- (b) not more than 20 candidates who may be eligible to be elected as bencher for the Province of Ontario "B" Electoral Region.

#### Marking and casting ballots

23. Electors shall mark and cast their election ballots in accordance with the procedures established by the Elections Officer.

### COUNTING THE VOTES

#### Elections Officer to cause counting of votes

24. (1) Beginning immediately after the deadline for casting election ballots on election day and proceeding thereafter for so long as necessary, the Elections Officer shall cause the votes for each candidate to be counted in accordance with sections 25 to 29.

#### Presence of electors

(2) Any elector may be present at any place where and at any time when the votes for each candidate are being counted.

#### Valid votes

25. (1) Subject to subsections (2) and (3), only votes cast by electors for candidates eligible to be elected as bencher shall be counted.

Disqualified votes

(2) If an elector votes for more than 20 candidates who were shown on the election ballot to have been eligible to be elected as benchers for the Province of Ontario "A" Electoral Region, none of the elector's votes for those candidates shall be counted.

Same

(3) If an elector votes for more than 20 candidates who were shown on the election ballot to have been eligible to be elected as benchers for the Province of Ontario "B" Electoral Region, none of the elector's votes for those candidates shall be counted.

Same number of votes

26. (1) For the purposes of the count of votes under section 27, the declaration of results under subparagraph i of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 2 of subsection 29 (2), if two or more candidates have the same number of votes and that number is the largest, the Elections Officer shall, in the presence of the Treasurer, randomly select one candidate to be the candidate who has the largest number of votes.

Same

(2) For the purposes of the count of votes under section 28, the declaration of results under subparagraph ii of paragraph 1 of subsection 29 (2) and the declaration of results under paragraph 3 of subsection (2), if two or more candidates have the same number of votes, but the number of benchers remaining to be elected is fewer than the number of candidates having the same number of votes, the Elections Officer shall, in the presence of the Treasurer, randomly select the necessary number of candidates to be elected as benchers.

Counting votes: benchers elected on basis of votes cast by electors residing in electoral region

27. (1) For the Province of Ontario "A" Electoral Region, the votes cast by electors residing in the electoral region for each candidate eligible to be elected as benches from the electoral region shall be counted.

Same

(2) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the votes cast by electors residing in the electoral region for each candidate eligible to be elected as benches for the electoral region shall be counted.

Removal of candidate from pool of candidates

(3) For the Province of Ontario "A" Electoral Region, the candidate eligible to be elected as benches for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (1), shall be removed from the pool of candidates eligible to be elected as benches for the purposes of the count of votes under subsection 28 (1).

Same

(4) For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as benches for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection (2), shall be removed from the pool of candidates eligible to be elected as benches for the purposes of the count of votes under subsection 28 (2).

Counting votes: Province of Ontario "A" Electoral Region

28. (1) For the Province of Ontario "A" Electoral Region, the votes cast by all electors for each candidate eligible to be elected as benchers for the electoral region shall be counted.

Same: Province of Ontario "B" Electoral Region

(2) For the Province of Ontario "B" Electoral Region, the votes cast by all electors for each candidate eligible to be elected as benchers for the electoral region shall be counted.

Report of result to Convocation

29. (1) Immediately after the count of votes under sections 27 and 28 has been completed, the Elections Officer shall report the results to Convocation.

Declaration of results

(2) Immediately after reporting the results to Convocation, the Elections Officer shall declare the following candidates to have been elected as benchers:

1. For the Province of Ontario "A" Electoral Region,
  - i. the candidate eligible to be elected as benchers for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (1), and
  - ii. the nineteen candidates eligible to be elected as benchers for the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 28 (1).
2. For each electoral region described in paragraphs 1 to 7 of subsection 6 (2), the candidate eligible to be elected as benchers for the electoral region who has the largest number of votes from electors residing in the electoral region, as determined by the count of votes under subsection 27 (2).
3. For the Province of Ontario "B" Electoral Region, the thirteen candidates eligible to be elected as benchers for the electoral region who have the largest number of votes from all electors, as determined by the count of votes under subsection 28 (2).

Taking office

30. (1) The benchers who are elected in an election of benchers shall take office on the later of the following dates:

1. The day on which Convocation has its regular meeting in May.
2. The day on which Convocation has its first regular meeting of Convocation following the declaration of results under section 29.

Term of office

(2) Subject to any by-law that provides for the removal of benchers from office, the benchers who take office under subsection (1) shall remain in office until their successors take office.

#### Failure to elect

31. (1) If in an election of benchers no candidate is elected as bencher for the Province of Ontario "A" Electoral Region on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a bencher for the electoral region,

- (a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, are within the electoral region, one of the candidates who was not elected as bencher; or
- (b) if no candidate is available for election under clause (a), a licensee whose business address, or, where a licensee does not have a business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

#### Same

(2) If in an election of benchers no candidate is elected as bencher for an electoral region described in paragraphs 1 to 7 of subsection 6 (2) on the basis of the votes cast by electors residing in the electoral region, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as a bencher for the electoral region,

- (a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, are within the electoral region, one of the candidates who was not elected as bencher; or
- (b) if no candidate is available for election under clause (a), a licensee whose business address, or, where a licensee does not have a business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

#### Same

(3) If in an election of benchers fewer than the required number of benchers are elected for the Province of Ontario "A" Electoral Region or the Province of Ontario "B" Electoral Region on the basis of the votes cast by all electors, Convocation shall, at its regular meeting in May or at its first regular meeting following the declaration of results under section 29, whichever takes place later, elect as benchers for the electoral region,

- (a) if there are candidates whose business addresses, or, where candidates have no business address, home addresses, as indicated on the records of the Society on the day of the election by Convocation are within the electoral region, the required number of candidates who were not elected as bencher;
- (b) if there are no candidates available for election under clause (a), or if all candidates have already been elected under clause (a), the required number of licensees whose business addresses, or, where licensees have no business

address, home addresses, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

Who may not be elected

32. (1) No person shall be elected as bencher under section 31 if the person's licence is suspended.

Consent to election

(2) No person shall be elected as bencher under section 31 if he or she does not consent to the election.

Taking office and term of office

33. The benchers who are elected under section 31 shall take office immediately after their election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until their successors take office.

## PETITIONS

Right to petition

34. Any elector may petition Convocation against the election of a bencher under section 29.

Time for making petition

35. No petition shall be made after fifteen days after the declaration of results under section 29.

Filing a petition

36. (1) A petitioner shall, within fifteen days after the declaration of results under section 29, file in the office of the Elections Officer at Osgoode Hall a written petition setting out the grounds upon which the election of a bencher is disputed.

Service of petition

(2) A petitioner shall serve on the bencher whose election the petitioner disputes a copy of the written petition filed in the office of the Elections Officer at Osgoode Hall.

Time for service

(3) Service under subsection (2) shall be effected not later than the twentieth day after the declaration of results under section 29.

Bencher's status during consideration of petition

37. A bencher whose election is disputed shall continue in office until Convocation determines that he or she was not eligible to be elected as bencher or was not duly elected.

Appointment of committee to consider petition

38. (1) Where a petition is filed under subsection 36 (1), Convocation shall appoint a committee of two or more benchers to consider the petition.

Procedure

(2) Subject to subsection (3), the procedure applicable to the consideration of a petition by a committee of benchers shall be determined by the committee and, without limiting the generality of the foregoing, the committee may determine who may make submissions to it, when and in what manner.

#### Right to make submissions

(3) A petitioner and the bencher whose election the petitioner disputes are entitled to make submissions about the petition to the committee of benchers appointed to consider the petition.

#### Notice of appointment of committee, etc.

(4) The Elections Officer shall give notice to a petitioner and the bencher whose election the petitioner disputes of the appointment of a committee of benchers to consider the petition and of the procedure applicable to the consideration of the petition, including the manner in which the petitioner and the bencher will be permitted to make submissions to the committee.

#### Report to Convocation

39. (1) A committee of benchers appointed to consider a petition shall report to Convocation on its consideration of the petition.

#### Decision of Convocation

(2) Convocation shall consider the report of a committee of benchers on a petition and shall decide whether a bencher whose election is disputed was eligible to be elected as bencher and was duly elected.

#### Notice of decision

(3) Convocation shall give notice of its decision on a petition, including the reasons for the decision, to the petitioner and the bencher whose election the petitioner disputed.

#### Payment of expenses

40. (1) When Convocation decides that a bencher whose election is disputed was eligible to be elected as bencher and was duly elected, Convocation may require the petitioner who disputed the bencher's election to pay to the bencher all or part of the expenses incurred by the bencher in responding to the petition.

#### Same

(2) When Convocation decides that a bencher whose election is disputed was not eligible to be elected as bencher or was not duly elected, Convocation may require the bencher to pay to the petitioner who disputed the bencher's election all or part of the expenses incurred by the petitioner in making the petition.

### DISPOSITION OF ELECTION MATERIALS

#### How long to be retained

41. (1) The Elections Officer shall retain all election materials and other documents relating to an election of benchers for at least thirty days after the declaration of results under section 29, or if Convocation is petitioned against the election of a bencher, for at least thirty days after Convocation gives notice of its decision on the last petition made.

#### Destruction

(2) The Elections Officer may destroy all election materials and other documents relating to an election of benchers after the time for retaining the materials and documents under subsection (1) has passed.

## VACANCIES DURING TERM OF OFFICE

Interpretation – “candidate”

42. (1) For the purposes of this section, “candidate” includes a candidate elected as bencher.

Vacancy in electoral region: election on basis of votes cast by electors residing in electoral region

(2) If a bencher who was elected for an electoral region on the basis of the votes cast by electors residing in the electoral region resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect as bencher for the electoral region a candidate in the most recent election of benchers,

- (a) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and
- (b) who, among all similar candidates, had the largest number of votes from electors residing in the electoral region.

No candidate available for election under subsection (2)

(3) If no candidate is available for election under subsection (2), Convocation shall elect a licensee whose business address, or, where a licensee has no business address, whose home address, as indicated on the records of the Society on the day the election by Convocation, is within the electoral region.

Vacancy in electoral region: election on basis of votes cast by all electors

43. (1) If a bencher, who was elected for the Province of Ontario “A” Electoral Region or the Province of Ontario “B” Electoral Region on the basis of the votes cast by all electors, resigns, is removed from office, is elected as bencher under section 42 or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect as bencher for the electoral region a candidate in the most recent election of benchers,

- (a) who was not elected as bencher;
- (b) whose business address, or where a candidate has no business address, home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region; and
- (c) who, among all similar candidates, had the largest number of votes from all electors.

No candidate available for election under subsection (1)

(2) If no candidate is available for election under subsection (1), Convocation shall elect a licensee whose business address, or, where a licensee has no business address, whose home address, as indicated on the records of the Society on the day of the election by Convocation, is within the electoral region.

Application of s. 42

44. (1) Section 42 applies, with necessary modifications, to,

- (a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by electors residing in the region;
- (b) a bencher elected under subsection 31 (1);
- (c) a bencher elected under subsection 31 (2); and
- (d) a bencher elected under section 42.

Application of s. 43

- (2) Section 43 applies, with necessary modifications, to,
  - (a) a bencher elected under section 13 to fill the office of a bencher elected for an electoral region on the basis of the votes cast by all electors;
  - (b) a bencher elected under subsection 31 (3); and
  - (c) a bencher elected under section 43.

Who may not be elected to fill vacancy

45. (1) No person shall be elected as bencher under section 42 or 43 if the person's licence is suspended.

Consent to election

(2) No person shall be elected as bencher under section 42 or 43 if he or she does not consent to the election.

Term of office

46. A bencher who is elected under section 42 or 43 shall take office immediately after his or her election and, subject to any by-law that provides for the removal of benchers from office, shall remain in office until his or her successor takes office.

## PART II

### HONORARY BENCHERS

Convocation may make honorary benchers

47. Convocation may make any person an honorary bencher.

Section 47 repeats section 1 of current by-law 7 verbatim.

Transition

48. Every person who is an honorary bencher of the Society immediately before May 1, 2007 is an honorary bencher of the Society.

PART III  
BENCHERS: ADMINISTRATION  
REMUNERATION

Part III implements the by-law amendments related to bencher remuneration approved by Convocation on February 22, 2007.
---

Interpretation

49. (1) In sections 50 and 51,

“bencher year” means, as applicable,

- (a) the period beginning on the day, in one calendar year, on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors and ending, in the following calendar year, on May 31,
- (b) the twelve-month period beginning on June 1 in one calendar year and ending on May 31 in the following calendar year, and
- (c) the period beginning on June 1 in one calendar year and ending, in the following calendar year, on the day before the day on which Convocation has its first regular meeting after an election of benchers licensed to practise law in Ontario as barristers and solicitors;

“elected bencher” does not include a person who becomes a bencher under subsection 16 (6) of the Act;

“full day” means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto,
  - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto, or within a reasonable distance of the City of Toronto, and
  - (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the City of Toronto, and
- (b) in the case of a payee whose business address, or where the payee has no business address, whose home address, is outside the City of Toronto,
  - (i) a total of more than 3 hours, in a period of 24 hours, if work is performed at the payee’s business address, or home address, or within a reasonable distance of the payee’s business address or home address, and

- (ii) any number of hours, in a period of 24 hours, if work is performed anywhere outside a reasonable distance of the payee's business address or home address;

"half day" means,

- (a) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is within the City of Toronto, a total of not more than 3 hours, in a period of 24 hours, if work is performed within the City of Toronto or within a reasonable distance of the City of Toronto, and
- (b) in the case of a payee whose business address, or, where the payee has no business address, whose home address, is outside the City of Toronto, a total of not more than 3 hours, in a period of 24 hours, if work is performed at the payee's business address, or home address, or within a reasonable distance of the payee's business address or home address;

"payee" means a person who is entitled to receive remuneration from the Society under section 50;

"work" means,

- (a) attending a Convocation,
- (b) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is a member,
- (c) attending a meeting of a standing or other committee, including the Proceedings Authorization Committee and any subcommittee of a standing or other committee or the Proceedings Authorization Committee, of which the payee is not a member, at the request of the chair of the committee,
- (d) attending an information session organized by the Society for benchers,
- (e) attending a program of education or training required by the Society for benchers,
- (f) hearing a hearing before the Hearing Panel or Appeal Panel,
- (g) preparing reasons for a decision or order of the Hearing Panel or Appeal Panel,
- (h) conducting a pre-hearing conference in a proceeding before the Hearing Panel,
- (i) performing activities, as a chair or vice-chair of the Hearing Panel or Appeal Panel, that are integral to the office of chair or vice-chair of the Hearing Panel or Appeal Panel,
- (j) performing activities, as a member of the Hearing Panel or Appeal Panel, that relate to the management of a proceeding before the Hearing Panel or Appeal Panel,

- (k) performing activities, as a bencher appointed by Convocation for the purpose of making orders under sections 46, 47, 47.1, 48 and 49 of the Act, that are integral to the role of a bencher under sections 46, 47, 47.1, 48 and 49 of the Act,
- (l) attending a meeting, other than a Convocation or a meeting of a standing or other committee, at the direction of the Treasurer or Convocation, and
- (m) performing activities as a director of an organization, to which position the bencher was appointed, or nominated for appointment, by Convocation, provided that the performing of the activities would entitle any other director of the organization to be remunerated by the organization for performing the activities.

Interpretation: person elected as member of the Paralegal Standing Committee

(2) In this by-law, a person who is appointed under subsection 25.2 (2) of the Act is not a person who is elected as a member of the Paralegal Standing Committee.

Entitlement

50. (1) Subject to subsections (2) and (3), every elected bencher, every bencher who holds office under subsection 12 (1) of the Act, every bencher who holds office under subsection 12 (2) of the Act, every bencher who holds office under section 14 of the Act and every person who is elected as a member of the Paralegal Standing Committee is entitled to receive from the Society remuneration,

- (a) for each half day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time; and
- (b) for each full day of work performed for the Society in a bencher year, after the first 26 half or full days of work performed for the Society in that bencher year, in an amount determined by Convocation from time to time.

Limits on remuneration: preparing reasons

(2) A payee is not entitled to receive from the Society remuneration for more than one full day of preparing written reasons for any decision or order of the Hearing Panel or Appeal Panel.

Limits on remuneration: performing activities as director of another organization

(3) A payee is not entitled to receive from the Society remuneration for performing activities as a director of an organization if the payee is remunerated, directly or indirectly, by the organization for performing the activities.

Claiming remuneration

51. (1) Subject to subsection (2), a payee may claim remuneration by submitting to the Society a claim for remuneration in a form provided by the Society.

Same

- (2) A payee shall,
  - (a) claim remuneration for work performed for the Society within a reasonable period of time after the payee has performed the work; and

- (b) shall claim all remuneration in respect of a bencher year by not later than six months after the end of the bencher year.

Payment of remuneration to payee

- (3) Remuneration to which a payee is entitled shall be paid by the Society,
- (a) within a reasonable period of time after the payee submits a claim for remuneration; and
- (b) within the calendar year in which the payee submits a claim for remuneration.

Same

- (4) Remuneration shall be paid to the individual payee claiming the remuneration or, at the direction of the individual payee, to the firm of which the payee is a partner or employee or to the professional corporation of which the payee is a shareholder or employee.

## DISBURSEMENTS

Disbursements

52. A bencher is entitled to be reimbursed by the Society for reasonable expenses incurred by him or her in the performance of his or her duties as a bencher.

Section 52 repeats section 2 of current by-law 7 verbatim.
--

## INDEMNIFICATION

Section 53 repeats section 6 of current by-law 2 verbatim.
--

Indemnification of benchers, *etc.*

53. (1) Subject to subsection (4), the Society shall indemnify every bencher, officer of the Society, former bencher, former officer of the Society and other individual who, not being a bencher or officer of the Society, acts or acted as a bencher or officer of the Society at the request of the Society against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the person in respect of any civil, criminal, administrative, investigative or other proceeding in which the person is involved because of the person's association with the Society.

Advance of costs

- (2) The Society may advance moneys to a person referred to in subsection (1) for the costs, charges and expenses of a proceeding referred to in subsection (1).

Repayment of moneys

- (3) If a person referred to in subsection (1) does not fulfil the conditions of subsection (4), the person shall repay moneys advanced to him or her under subsection (2).

Limitation

- (4) The Society shall not indemnify a person referred to in subsection (1) unless the person,

- (a) acted honestly and in good faith with a view to the best interests of the Society; and
- (b) in the case of a criminal or administrative proceeding resulting in a monetary penalty, the person had reasonable grounds for believing that his or her conduct was lawful.

#### Insurance

(5) The Society may purchase and maintain insurance for the benefit of every person referred to in subsection (1) against any liability incurred by the person in the person's capacity as a bencher or officer.

### PART IV

#### TREASURER

#### ELECTION OF TREASURER

Part IV repeats the provisions of current by-law 6 except as otherwise noted. Changes have been made to give effect to Convocation's decisions made on December 8, 2006.

#### Time of election

54. (1) Subject to subsection (2), there shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

#### Same

(2) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection (1), all of the candidates, but one, cease, for any reason, to be candidates, there shall be an election of Treasurer on the later of the day on which the regular meeting of Convocation is held in June and the day that is ten business days after the day of the close of nominations of candidates under subsection 55 (5).

#### First matter of business

(3) If there is an election of Treasurer on the day on which the regular meeting of Convocation is held in June, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

#### Nomination of candidates

55. (1) A candidate for election as Treasurer shall be nominated by not more than two benchers who are entitled to vote in Convocation.

The words "not more than" have been added to this section to give effect to Convocation's decision on December 8, 2006 to limit the number of benchers who could nominate a Treasurer candidate to two.

#### Nomination in writing

(2) The nomination of a candidate shall be in writing, signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate

and submitted to the secretary prior to the close of nominations of candidates.

#### Time for close of nominations

(3) Subject to subsection (4), the close of nominations of candidates shall be 5 p.m. on the second Thursday in May.

#### Exception

(4) In a year in which there is an election of benchers licensed to practise law in Ontario as barristers and solicitors, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

#### Nominations reopened

(5) If after the close of nominations of candidates under subsection (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates,

- (a) the period for nominations of candidates shall be reopened; and
- (b) the new close of nominations of candidates shall be 5 p.m. on the day that is ten business days after the day on which the secretary sends the notice under section 57.

#### Invalid nomination

(6) A nomination that is made by more than two benchers who are entitled to vote in Convocation, that is not made in writing, that is not signed by the candidate, that is not signed by the two benchers nominating the candidate or that is not submitted to the secretary prior to the close of nominations of candidates is invalid and the candidate who is the subject of the nomination shall not be a candidate in the election of Treasurer.

This section is new to give effect to Convocation's decision on December 8, 2006 that a nomination that does not comply with the rule of no more than two nominators is invalid.

#### Withdrawal of candidates

56. A candidate may withdraw from an election of Treasurer at any time before the day of the election of Treasurer by giving the secretary written notice of his or her withdrawal.

#### Reduction in number of candidates: notice

57. If, after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, not later than five business days after the day on which one candidate remains, the secretary shall send to each bencher entitled to vote in an election of Treasurer a notice stating,

- (a) the day on which the notice is sent;
- (b) that the period for nominations of candidates has re-opened;
- (c) the new time for close of nominations;
- (d) that any ballots received at the advance poll shall be discarded;

- (e) the time for the beginning of the new advance poll; and
- (f) the day on which there shall be an election of Treasurer.

#### Notice of candidates to benchers

58. (1) After the close of nominations of candidates, the secretary shall, as soon as practicable, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

#### Election by acclamation

59. (1) If after the close of nominations of candidates, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

#### Same

(2) Despite any provision to the contrary in this Part, if, after the close of nominations of candidates under subsection 55 (5), there are two or more candidates, but on the day on which there shall be an election of Treasurer, there is only one candidate, the secretary shall declare that candidate to be elected as Treasurer.

#### Poll

60. (1) If after the close of nominations of candidates, there are two or more candidates, a poll shall be conducted to elect a Treasurer.

#### Secret ballot

(2) A poll to elect a Treasurer shall be conducted by secret ballot.

#### Treasurer is candidate in election

61. If the Treasurer is a candidate in an election of Treasurer, the Treasurer shall appoint a bencher who is a chair of a standing committee of Convocation and who is not a candidate in the election for the purpose of performing the duties and exercising the powers of the Treasurer under this Part.

#### Right to vote

62. (1) Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

#### List of voters

(2) If a poll is required to elect a Treasurer, after the close of nominations of candidates, the secretary shall prepare a list of benchers entitled to vote in an election of Treasurer.

#### List to show who has voted at advance poll

(3) Beginning at the opening of an advance poll and ending at the close of an advance poll, the secretary shall mark on the list prepared under subsection (2) whenever a bencher casts a ballot at the advance poll so that, at any time, the list will show the benchers who have cast ballots at the advance poll and the benchers who have not yet cast ballots in the election of Treasurer.

List to show who has voted on election day

(4) On election day, for every ballot required in order to elect a Treasurer, the secretary shall mark on the list prepared under subsection (2), marked as required under subsection (3), whenever a bencher casts a ballot on election day so that, at any time, the list will show the benchers who have cast ballots and the benchers who have not yet cast ballots in the election of Treasurer.

Availability of lists

(5) The secretary shall make the list described in subsection (3) and the list described in subsection (4) available for inspection to candidates in an election of Treasurer and benchers entitled to vote in the election of Treasurer.

Section 62(2) – (5) implements Convocation's decision on December 8, 2006 that the voter's list, showing who has voted, is available for review by candidates and benchers.

Advance poll

63. (1) An advance poll shall be conducted,
- (a) beginning at 9 a.m. on the second Wednesday in June and ending at 5 p.m. on the day preceding election day; or
  - (b) if after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, beginning at 9 a.m. on the day that is three business days after the day of the close of nominations of candidates under subsection 55 (5) and ending at 5 p.m. on the day preceding election day under subsection 34 (2).

Methods of voting at advance poll

- (2) A bencher may vote at the advance poll by,
  - (a) attending at the office of the secretary on any day that is not a Saturday or Sunday between the hours of 9 a.m. and 5 p.m. to receive a ballot and to mark the ballot in accordance with subsection (3); or
  - (b) requesting a voting package from the secretary and returning the voting package to the secretary by regular lettermail or otherwise.

Marking a ballot

(3) A bencher voting at the advance poll shall mark the ballot in accordance with subsection (4) or (5).

Two candidates

(4) If there are not more than two candidates, a bencher shall vote for one candidate only and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

More than two candidates

(5) If there are three or more candidates, a bencher shall rank the candidates in order of preference by placing the appropriate number beside the name of each candidate.

Ballot box

(6) If a bencher is voting at the advance poll under clause (2) (a), after the bencher has marked the ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 64 (3) and (4), the secretary shall remove the ballot envelope from the return envelope, remove the ballot from the ballot envelope and put the ballot into the ballot box.

Ballots not to be opened

(8) Ballots received at the advance poll shall not be opened until the ballots cast on election day are opened.

Ballots to be discarded

(9) If after the close of nominations of candidates under subsection 55 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 54 (1), all of the candidates, but one, cease, for any reason, to be candidates, the secretary shall cause to be discarded the ballots received at the advance poll conducted after the close of nominations under subsection 55 (3) or (4).

Special procedures: voting by mail

64. (1) If a bencher requests a voting package from the secretary under clause 63 (2) (b), the secretary shall send to the bencher a voting package that includes a ballot, a ballot envelope and a return envelope and shall specify the address to which the voting package must be returned.

Same

(2) If a bencher is voting at the advance poll under clause 63 (2) (b), the bencher shall,

- (a) in accordance with subsection 63 (3), mark the ballot received from the secretary;
- (b) after complying with clause (a), place the marked ballot inside the ballot envelope and seal the ballot envelope;
- (c) after complying with clause (b), place the sealed ballot envelope inside the return envelope and seal the return envelope;
- (d) after complying with clause (c), sign the return envelope; and
- (e) after complying with clause (d), send to the secretary, by regular lettermail or otherwise, the voting package, that includes the ballot, the ballot envelope and the return envelope, so that it is received by the secretary not later than 5 p.m. on the day preceding election day.

#### Receipt of return envelopes

(3) When the secretary receives a voting package at the specified address, the secretary shall check to see if the return envelope bears the signature of a bencher to whom a voting package was sent.

#### Discarding ballots

- (4) The secretary shall discard a voting package that the secretary receives,
- (a) at an address other than the specified address;
  - (b) that does not bear the signature of a bencher to whom a voting package was sent; and
  - (c) after 5 p.m. on the day preceding election day.

#### Procedure for voting on election day: first ballot

65. (1) On election day, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a first ballot listing the names of all candidates for election as Treasurer.

#### Second ballot

(2) On election day, if a Treasurer is not elected as a result of the votes cast at the advance poll and on the first ballot, each bencher entitled to vote in an election of Treasurer who has not voted at the advance poll shall receive a second ballot listing the names of the candidates remaining in the election of Treasurer at the time of that ballot.

#### Application of subs. (2) to second and further ballots

(3) Subsection (2) applies to the second ballot and, with necessary modifications, any further ballots in an election of Treasurer.

#### Marking ballot

(4) Each bencher shall vote for one candidate only on each ballot and shall indicate the candidate of his or her choice by placing a mark beside the name of the candidate.

#### Ballot box

(5) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

#### Counting votes

66. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate.

#### Counting votes cast at advance poll

(2) If at the advance poll votes were cast for candidates by rank of preference, in counting the votes cast for each candidate at the advance poll, the secretary shall assume that a bencher's candidate of choice was the candidate on the ballot given the highest rank by the bencher.

#### Application

(3) This section applies to the count of votes on the first ballot in an election of Treasurer and, with necessary modifications, to the count of votes on the second ballot and any further ballots in an election of Treasurer.

#### Report of results: two candidates

67. (1) If on any ballot there are not more than two candidates, immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the larger number of votes.

#### Report of results: three or more candidates

(2) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that at least one candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report the results to Convocation and shall declare to be elected as Treasurer the candidate who received the largest number of votes.

#### Same

(3) If on any ballot there are three or more candidates and, after counting the votes, the secretary determines that no candidate received more than 50 percent of all votes cast for all candidates, the secretary shall report to Convocation that no candidate received more than 50 percent of all votes cast for all candidates and that a further ballot will be required in order to elect a Treasurer.

#### Further ballot required

(4) If a further ballot is required under subsection (3), the secretary shall report to Convocation the candidate on the previous ballot who received the least number of votes and that candidate shall be removed as a candidate in the election.

#### Casting tie-breaking vote

68. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one of them to be declared to be elected as Treasurer, the Treasurer shall randomly select one of the candidates and cast an additional vote for that candidate.

This section implements Convocation's decision of December 8, 2006 that a tie ought to be broken by the Treasurer's random selection of one of the candidate's names.

#### Equal number of votes

69. (1) If at any time an equal number of votes is cast for two or more candidates and an additional vote would entitle one or more of them to remain in the election of Treasurer, a poll shall be conducted to select the candidates to remain in the election.

#### Secret ballot

(2) A poll conducted under subsection (1) shall be conducted by secret ballot.

#### Right to vote

(3) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

#### Ballot

(4) Each bencher entitled to vote in a poll conducted under subsection (1) shall receive a ballot listing the names of the candidates who received the equal number of votes.

#### Marking ballot

(5) A bencher shall vote for the candidate or candidates, but not for all the candidates, whom he or she wishes to remain in the election of Treasurer and shall indicate his or her choice or choices by placing a mark beside the name of each candidate chosen.

#### Ballot box

(6) After a bencher has marked a ballot, he or she shall fold the ballot so that the names of the candidates do not show and, in the presence of the secretary, put the ballot into the ballot box.

#### Counting votes

(7) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined to vote on a ballot, the secretary shall, in the absence of all persons but in the presence of the Treasurer, open the ballot box, remove all ballots from the ballot box, open the ballots and count the votes cast for each candidate.

#### Report of results

(8) Immediately after counting the votes cast for each candidate, the secretary shall report the results to Convocation.

#### Same

(9) The candidate who receives the least number of votes in the poll conducted under subsection (1) shall be removed as a candidate in the election of Treasurer.

#### Further polls

(10) If two or more candidates in a poll conducted under subsection (1) each receive the least and the same number of votes, additional polls shall be conducted under subsection (1), for the candidates with the same number of votes, until only one candidate from all the candidates included in the initial poll conducted under subsection (1) is removed as a candidate in the election of Treasurer.

### TERM OF OFFICE

#### Taking office

70. (1) In an election of Treasurer under section 54,
- (a) a bencher elected as Treasurer by acclamation shall take office at the regular meeting of Convocation in June following his or her election; and
  - (b) a bencher elected as Treasurer by poll shall take office immediately after his or her election.

#### Term of office

(2) Subject to any provision in any by-law providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office.

## HONORARIUM

Treasurer's entitlement to honorarium

71. The Treasurer is entitled to receive from the Society an honorarium in an amount determined by Convocation from time to time.

## VACANCY IN OFFICE

Vacancy

72. If a Treasurer resigns, is removed from office or for any reason is unable to act during his or her term in office, Convocation shall, as soon as practicable, elect an elected bencher to fill the office of Treasurer until the next election of Treasurer under section 54.

## ACTING TREASURER

Acting Treasurer

73. If a Treasurer for any reason is temporarily unable to perform the duties or exercise the powers of the Treasurer during his or her term in office, or if there is a vacancy in the office of Treasurer under section 72, the chair of the Finance and Audit Committee, or if he or she for any reason is unable to act, the chair of the Professional Development and Competence Committee, shall perform the duties and exercise the powers of the Treasurer until,

- (a) the Treasurer is able to perform the duties or exercise the powers of the Treasurer; or
- (b) a Treasurer is elected under section 72 or 54.

## PART V

### CONVOCATION

### INTERPRETATION

Part V repeats the provision of current by-law 8 verbatim.

Definitions

74. (1) In this Part,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“question of privilege” means a question about any right enjoyed at Convocation by the benchers present at Convocation collectively or by any bencher present at Convocation individually conferred by this Part or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being followed at any time at Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of the benchers present at Convocation concerning a matter of import to the Society.

Interpretation: tabling a motion

(2) In this Part, “to table a motion” means to defer indefinitely debating the motion or putting the motion to a vote and “a motion which was tabled” has a corresponding meaning.

## MEETINGS

Convocation conducted in accordance with Part

75. (1) Subject to subsection (2), Convocation shall be conducted in accordance with this Part.

Waiving compliance, *etc.*

(2) The Treasurer may waive compliance with any requirement, alter any requirement and abridge or extend any time period mentioned in this Part in respect of Convocation.

Matters of procedure not provided for

(3) Any matter of procedure not provided for in this Part shall be determined by the Treasurer.

Place of Convocation

76. (1) Subject to subsections (2) and (3), Convocation shall be held in Osgoode Hall.

Same

(2) The Treasurer may convene Convocation at any place.

Convocation by telephone conference call, *etc.*

(3) Convocation may be conducted by means of such telephone, electronic or other communication facilities as permit all persons participating in Convocation to communicate with each other simultaneously and instantaneously.

Convocation: when held

77. Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December, unless otherwise directed by the Treasurer.

Convocation: special meetings

78. (1) The Treasurer may convene Convocation at any time by giving at least twenty-four hours notice, or by directing the secretary to give such notice, to each bencher.

Same

(2) Upon the written request of ten benchers who are entitled to vote in Convocation, the secretary shall convene Convocation by giving at least twenty-four hours notice to each bencher.

Convocation open to public

79. (1) Subject to subsection (2), Convocation shall be open to the public.

Public excluded

(2) Convocation shall be held in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society’s personnel.

2. Litigation in which the Society is involved.
3. Negotiations with a government.
4. Intimate financial or personal matters or other matters in respect of which, in the opinion of the benchers present at Convocation, the need for privacy outweighs the public interest in disclosure.
5. Any matter at the instance of the Treasurer.

#### Order of business

80. Unless otherwise provided, the business and the order of business at Convocation shall be determined by the Treasurer.

#### Order of business: special meeting

81. At Convocation convened under subsection 78 (2), the business of Convocation shall include the matters for which Convocation was convened.

#### Minutes

82. (1) Except when Convocation is resolved into a meeting of the benchers as a committee of the whole, minutes shall be kept for Convocation.

#### Confirmation of minutes

(2) At each Convocation, the minutes of the last Convocation shall be confirmed by the benchers present at Convocation and shall be signed by the Treasurer or the bencher who presided at the meeting of the Convocation to which the minutes relate.

#### Publication of minutes

(3) Except in the case of the minutes of Convocation held in the absence of the public, the minutes of Convocation shall be made available for public inspection.

#### Transcript

83. (1) Convocation shall be recorded by a qualified verbatim reporter to permit the production of a transcript of Convocation.

#### Publication

(2) The transcript of Convocation open to the public shall be made available for public inspection.

#### Adjournment for lack of quorum

84. (1) If at any time after Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is present and, upon determining that a quorum is not present, the Treasurer shall adjourn Convocation without motion.

#### Same

(2) The matter before Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next Convocation to be held under section 77.

Removal of bencher from office for non-attendance

85. (1) The benchers present at Convocation may remove from office an elected bencher who fails to attend Convocation held under section 77 six consecutive times.

Failure to attend three meetings

(2) When an elected bencher fails to attend Convocation held under section 77 three consecutive times, the secretary shall immediately send to the elected bencher a notice of the failure and of the benchers' authority under subsection (1) to remove him or her from office.

Failure to attend six meetings: report

(3) When an elected bencher fails to attend Convocation held under section 77 six consecutive times, the secretary shall report the failure at the first Convocation held thereafter under section 77.

### TREASURER

Treasurer to preside

86. The Treasurer shall preside over Convocation.

Appeal of Treasurer's rulings and decisions

87. (1) Two or more benchers who are entitled to vote in Convocation may together appeal to the benchers present at Convocation from a ruling or decision of the Treasurer made in Convocation.

(2) Despite subsection (1), the following rulings and decisions of the Treasurer made in Convocation are not subject to an appeal:

1. A decision on a question of privilege or procedure.
2. A ruling that a bencher's remarks are out of order for the reason set out in clause 99 (3) (e).
3. A ruling that a motion is out of order because it is a motion mentioned in subsection 91 (2).
4. A decision under subsection 100 (1) to put a motion to a vote.
5. A decision about a recorded vote.

Time for making appeal

(3) An appeal from a ruling or decision of the Treasurer shall be made immediately after the ruling or decision.

Debate

(4) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 97 to 99 apply, with necessary modifications, to the debate.

Same

(5) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

Disposition

(6) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

Same

(7) Sections 100 to 104 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

Same

(8) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 79 (2) shall be conducted in the absence of the public.

Resolution: appeal of Treasurer's ruling

(9) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

#### ORDER AND DECORUM

Treasurer to preserve order, decorum, *etc.*

88. At Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

Benchers not to interrupt Treasurer

89. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

Bencher not to interrupt other bencher

(2) Unless otherwise provided in this Part, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

Questions of privilege and procedure

90. (1) A bencher may raise a question of privilege or procedure at any time during Convocation and may interrupt another bencher who is speaking to do so.

Discussion

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

Taken up immediately

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

## MOTIONS

Motions to be made in accordance with Part

91. (1) Motions made in Convocation shall be made in accordance with this Part.

Prohibited motions

- (2) No motion shall be made concerning a matter,
- (a) in respect of which a hearing may be conducted under the Act or by-laws; or
  - (b) that is pending before an adjudicative body for determination.

Who may make motion

92. (1) A motion may be made in Convocation by a bencher who is entitled to vote in Convocation.

Certain benchers to move certain motions

(2) A substantive motion of which notice has been given shall be made by the bencher who gave notice of the motion.

Notice required

93. (1) Notice is required for the following motions:

- 1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.
- 2. A motion to resume debating and to put to a vote a substantive motion which was tabled.

Method of giving notice

(2) Notice of a motion shall be given in writing by the bencher intending to make the motion by delivering a copy of the text of the motion, signed by the bencher intending to make the motion and the bencher intending to second the motion, to the secretary at least twenty days before the day fixed for Convocation at which the bencher intends to make the motion.

Sending notice to all benchers

(3) The secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchers.

Substantive motion without notice

(4) Despite subsection (1), a bencher may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at Convocation if the motion relates to a matter then being debated at Convocation.

Secunder required

94. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

Seconders

- (2) Only benchers who are entitled to vote in Convocation may second a motion.

Same

(3) A substantive motion of which notice has been given shall be seconded by the bencher who signed the text of the motion as the bencher intending to second the motion.

Introduction of substantive motion

95. (1) Subject to section 80, a substantive motion may be moved at any time at Convocation provided that no other substantive motion is before Convocation at the time.

Same

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to table a substantive motion or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded, but before it has been voted on, at Convocation.

Same

(3) A motion to amend may be made at any time after a main motion is moved and seconded, but before it has been voted on, at Convocation, provided that no other motion to amend is before Convocation at the time.

Same

(4) A motion to adjourn Convocation may be made at any time.

Withdrawal

96. (1) A bencher who has given notice of a motion may withdraw the same at any time.

Same

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

## DEBATE

Debate on motions

97. A motion before Convocation may be debated except in the following cases:

1. A motion to table a motion.
2. A motion to adjourn Convocation.

Who may participate in debate

98. Every bencher, the Chief Executive Officer and any other person with the prior permission of the Treasurer may take part in any debate at Convocation.

Order of speaking

99. (1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The bencher who moved the motion.
2. The bencher who seconded the motion.

3. Any other bencher or person, in accordance with section 98, when recognized by the Treasurer.

#### Reserving right to speak

(2) The bencher who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

#### Matters out of order in debate

- (3) In a debate, a bencher shall be called to order by the Treasurer if he or she,
  - (a) subject to subsections (4), (5), (6) and (7) speaks to a motion more than once;
  - (b) directs his or her speech to matters other than the motion being debated;
  - (c) persists in needless repetition or raises matters that have already been decided at Convocation;
  - (d) anticipates a matter already on the agenda of Convocation for consideration;
  - (e) refers to a matter,
    - (i) in respect of which a hearing may be conducted under the Act or by-laws; or
    - (ii) that is pending before an adjudicative body for determination;
  - (f) makes allegations against another bencher;
  - (g) imputes false, improper or ulterior motives to another bencher;
  - (h) charges another bencher with uttering a deliberate falsehood; or
  - (i) uses abusive or insulting language of a nature likely to create disorder.

#### Speaking twice

(4) A bencher may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the bencher shall not introduce any new points.

#### Same

(5) A bencher who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

#### Questions on speeches and replies

(6) At any time during the debate on a motion, a bencher may ask a brief question about another bencher's speech and that bencher may, with the Treasurer's permission, reply briefly.

#### Treasurer's permission to speak second time

(7) A bencher may speak to a motion a second time, in circumstances not mentioned in subsections (4), (5) and (6), with the Treasurer's permission.

Special rules of debate: motions to amend

(8) Immediately a motion to amend is made during the debate on a main motion, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

Resumption of interrupted debate

(9) A debate that has been interrupted under subsection (8) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

VOTING

Putting debatable motion to vote

100. (1) Subject to subsection (2), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been reasonably completed.

Motion to amend accepted

(2) A motion to amend shall not be put to a vote if the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend.

Putting non-debatable motion to vote

(3) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Treasurer may not vote

101. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer may cast a tie-breaking vote.

Proxy voting prohibited

102. Votes may not be cast by proxy.

Manner of voting

103. Voting shall be by a show of hands, or if Convocation is conducted by means of telephone, electronic or other communication facilities under subsection 76 (3), by oral response, unless a recorded vote is required by the Treasurer, or requested by a bencher entitled to vote in Convocation and permitted by the Treasurer, in accordance with section 104.

Recorded vote

104. (1) A recorded vote may be required by the Treasurer or requested by a bencher entitled to vote in Convocation before a motion is put to a vote.

Recorded vote requested by bencher

(2) When a recorded vote has been requested by a bencher, the Treasurer may, but is not required to, conduct a recorded vote.

Manner of conducting recorded vote

(3) When a recorded vote is being conducted, the Treasurer shall put the subject motion to the benchers present in Convocation and the secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

#### Resolution

105. A motion shall carry if a majority of the votes cast are in favour of the motion.

### COMMITTEE OF THE WHOLE

#### Committee of the Whole

106. (1) At any time, the Treasurer may require Convocation to resolve itself into a meeting of the benchers as a committee of the whole to consider any matter before Convocation at the time.

#### Appointment of chair

(2) Immediately after announcing his or her decision to require Convocation to resolve itself into a meeting of the benchers as a committee of the whole, the Treasurer may appoint a bencher as chair of the committee of the whole and, if the Treasurer does so appoint a bencher, the Treasurer shall then leave the chair.

#### Appointed bencher takes chair

(3) When the Treasurer leaves the chair in accordance with subsection (2), the bencher appointed as chair of the committee of the whole shall take the chair whereupon Convocation resolves itself into a meeting of the benchers as a committee of the whole.

#### Rules of procedure

(4) Section 24 of the Act and subsection 84 (1) and sections 86 to 105 of this By-Law apply with necessary modifications to proceedings of a committee of the whole.

#### Treasurer resumes chair

- (5) When a committee of the whole has completed its proceedings,
- (a) if the Treasurer had appointed a bencher as chair of the committee, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair; and
  - (b) Convocation shall resume as such.

#### Report to meeting

(6) When Convocation resumes after the benchers present at Convocation have met as a committee of the whole, the Treasurer or the chair of the committee may report to Convocation on the proceedings of the committee.

### PART VI

### COMMITTEES

### GENERAL

Except where noted, Part VI repeats the provisions of current by-law 9 verbatim.

## Powers of committees

107. (1) Unless expressly authorized to exercise a power, the exercise of a power by a standing committee is subject to the approval of Convocation.

Section 1 of current by-law 9 provides, "unless a by-law expressly authorizes a standing committee to exercise a power, the exercise of a power by a standing committee is subject to the approval of Convocation. The words "a by-law" are unnecessary because powers can only be exercised by Convocation unless Convocation specifically delegates them.

## Powers of Convocation

(2) Convocation may exercise a power it has delegated to a standing committee notwithstanding the delegation.

## Same

(3) Convocation may delegate to any other committee the exercise of a power notwithstanding that it has delegated the exercise of the power to a standing committee under this Part.

## STANDING COMMITTEES

## Establishment of standing committees

108. The following standing committees are hereby established:

1. Finance and Audit Committee.
2. Government and Public Affairs Committee.
3. Access to Justice Committee.
4. Litigation Committee.
5. Professional Development and Competence Committee.

The name of the Professional Development, Competence and Admissions Committee has been changed to reflect the elimination of the concept of "admission" from the *Law Society Act*. The name of the committee now corresponds to the name of the operational department. The Committee agrees with this change.

6. Professional Regulation Committee.
7. Equity and Aboriginal Issues Committee.
8. Emerging Issues Committee.
9. Inter-Jurisdictional Mobility Committee.
10. Tribunals Committee.

Lawyers Fund for Client Compensation Committee and its mandate will be moved to a by-law that will deal solely with the Compensation Fund.

#### Composition

109. (1) Each standing committee shall consist of at least six persons appointed by Convocation.

#### Benchers

(2) Each standing committee shall include at least five benchers.

#### Appointment of persons to standing committees

(3) Convocation may appoint persons to a standing committee at any time.

#### Treasurer's recommendations for appointment

(4) The Treasurer shall recommend to Convocation all persons for appointment to standing committees.

#### Treasurer

110. The Treasurer is a member of every standing committee.

#### Term of office

111. Subject to section 112, a person appointed to a standing committee under section 109 shall hold office until his or her successor is appointed.

#### Removal from office

112. Convocation may remove from a standing committee any member of the committee who fails to attend three consecutive meetings of the committee.

#### Chairs and vice-chairs

113. (1) For each standing committee, Convocation shall appoint,

- (a) one bencher, who is a member of the standing committee, as chair of the standing committee; and
- (b) one or more benchers, who are members of the standing committee, as vice-chairs of the standing committee.

#### Term of office

(2) Subject to subsection (3), the chair and vice-chairs of a standing committee hold office until their successors are appointed.

#### Appointment at pleasure

(3) The chair and vice-chairs of a standing committee hold office at the pleasure of Convocation.

#### Vacancy

(4) If the chair or a vice-chair of a standing committee for any reason is unable to act, the Treasurer may appoint another member of the standing committee as the chair or a vice-chair and, subject to subsection (3), that member shall hold office as chair or vice-chair until his or her successor is appointed.

Appointment under subs. (4) subject to ratification

(5) The appointment of a member of a standing committee as the chair or a vice-chair of the committee under subsection (4) is subject to ratification by Convocation at its first regular meeting following the appointment.

Quorum

114. (1) Four members of a standing committee who are benchers constitute a quorum for the purposes of the transaction of business.

Meetings by telephone conference call, etc.

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

The word "instantaneously" has been added.
--

Right to attend meeting

115. (1) Subject to subsection (2), no person other than a member of a standing committee may attend a meeting of the committee.

Same

(2) The following persons who are not members of a standing committee may attend a meeting of the committee:

1. A bencher.
2. An officer or employee of the Society.
3. Any person not mentioned in paragraph 1 or 2 with the permission of the chair of the committee.

Voting rights

116. Only members of a standing committee may vote at meetings of the committee.

## FINANCE AND AUDIT COMMITTEE

Mandate

117. The mandate of the Finance and Audit Committee is,

- (a) to receive and review interim and annual financial statements for the Society and the Lawyers' Professional Indemnity Company;
- (b) to review the integrity and effectiveness of policies regarding the financial operations, systems of internal control and reporting mechanisms of the Society;
- (c) to recommend the appointment of the public accountant and to review the proposed audit scope, audit fees and the public accountant's management letter;
- (d) to review the plans and projections of the annual budget of the Society, including the Compensation Fund, or any special or extraordinary budget required for the

purpose of the Society, including the Compensation Fund, to provide comments and advice to Convocation thereon, and to recommend approval of the annual budget or any special or extraordinary budget item; and

- (e) to review the plans for any expenditure arising during a financial year that was not included in the annual budget or other budget approved by Convocation for that year, to provide comments and advice to Convocation thereon and to recommend approval of the expenditure by Convocation.

#### Administrator of pension plan

118. (1) The Finance and Audit Committee shall be the administrator of and shall administer the registered pension plan for the employees of the Society.

#### Powers

(2) The performance of any duty, or the exercise of any power, by the Finance and Audit Committee under any Act relevant to its role described in subsection (1) is not subject to the approval of Convocation.

Section 118 has been added to implement Convocation's decision of June 22, 2005 that the administrative oversight duties related to the Law Society's employee pension plan be delegated to the Finance and Audit Committee.

### PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

#### Mandate

119. The mandate of the Professional Development and Competence Committee is to develop for Convocation's approval,

- (a) policy options on the following matters:
  - (i) the classes of licence for the practise of law in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence,
  - (ii) the licensing of persons to practise law in Ontario as barristers and solicitors, including qualifications and other requirements for licensing and the application for licensing,
  - (iii) the professional competence of persons licensed to practise law in Ontario as barristers and solicitors including,
    - (A) the requirements to be met by such persons with respect to continuing legal education, and
    - (B) the review of the professional business of such persons; and
- (b) guidelines for professional competence applicable to persons licensed to practise law in Ontario as barristers and solicitors.

### PROFESSIONAL REGULATION COMMITTEE

#### Mandate

120. The mandate of the Professional Regulation Committee is to develop for Convocation's approval policy options on all matters relating to,

- (a) the regulation of licensees in respect of their conduct and capacity;
- (b) policies and guidelines relating to sections 26.1 to 26.3 of the Act; and
- (c) rules of professional conduct applicable to persons licensed to practise law in Ontario as barristers and solicitors.

### GOVERNMENT AND PUBLIC AFFAIRS COMMITTEE

#### Mandate

121. The mandate of the Government and Public Affairs Committee is,

- (a) to develop and maintain an effective working relationship with the Government of Ontario, the Attorney General for Ontario, the Ontario Public Service and all elected officials of the Ontario Legislature for the purpose of ensuring that the Society's policies and positions on matters affecting the interests of the public and having to do with the practice of law in Ontario or the provision of legal services in Ontario are understood before decisions affecting those matters are made;
- (b) to ensure that the Society's legislative agenda is effectively presented to the Government of Ontario for its consideration and approval;
- (c) to develop and maintain an effective working relationship with the Government of Canada and the Attorney General for Canada with respect to federal initiatives affecting matters within the Society's jurisdiction;
- (d) to develop, for Convocation's approval, a public affairs mandate for the Society, which identifies the constituencies that the Society should address and sets out the outcomes that should be achieved with each constituency; and
- (e) to develop a long range and comprehensive public affairs strategy consistent with the Society's public affairs mandate approved by Convocation.

### EQUITY AND ABORIGINAL ISSUES COMMITTEE

#### Mandate

122. The mandate of the Equity and Aboriginal Issues Committee is,

- (a) to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice of law in Ontario or provision of legal services in Ontario and for addressing all matters related to Aboriginal peoples and French-speaking peoples; and

- (b) to consult with the Treasurer's Equity Advisory Group, Roti io' ta'-kier, AJEFO, women and equity-seeking groups in the development of such policy options.

#### EMERGING ISSUES COMMITTEE

123. The mandate of the Emerging Issues Committee is to monitor emerging policy issues affecting the Society, the practice of law in Ontario and the provision of legal services in Ontario, 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.

#### INTER-JURISDICTIONAL MOBILITY COMMITTEE

124. The mandate of the Inter-Jurisdictional Mobility Committee is to develop for Convocation's approval policy options on all matters relating to the inter-jurisdictional mobility of licensees.

#### ACCESS TO JUSTICE COMMITTEE

##### Mandate

125. The mandate of the Access to Justice Committee is to develop, for Convocation's approval, policy options for promoting access to justice throughout Ontario.

#### LITIGATION COMMITTEE

##### Mandate

126. The mandate of the Litigation Committee is,

- (a) to receive from the Chief Executive Officer notification of any new legal proceeding and progress reports on the conduct of all legal proceedings in which the Society is involved, for the purpose of communicating the reports to Convocation;
- (b) to provide assistance and guidance to the Chief Executive Officer in the conduct of legal proceedings that are outside the usual course of the Society's business; and
- (c) to consider requests made for the Society or the Federation of Law Societies of Canada to intervene in legal proceedings and to recommend to Convocation, or in urgent circumstances to decide, whether the Society should intervene in a legal proceeding or support the Federation intervening in a legal proceeding.

#### TRIBUNALS COMMITTEE

##### Mandate

127. (1) The mandate of the Tribunals Committee is to develop for Convocation's approval policy options on all matters relating to the operation and administration of the Hearing Panel and the Appeal Panel, including the development or preparation of practice directions, an adjudicator code of conduct, publication protocols for tribunal decisions and adjudicator professional development.

Rules of practice and procedure

(2) Subject to the approval of Convocation, the Tribunals Committee may prepare rules of practice and procedure.

## PART VII

### PARALEGAL STANDING COMMITTEE

#### INTERPRETATION

Part VII repeats the provisions of current by-law 9.1 verbatim approved by Convocation on November 23, 2006.

Interpretation: "Committee"

128. In this Part, "Committee" means the Paralegal Standing Committee.

#### ESTABLISHMENT OF COMMITTEE

Establishment of Committee

129. There is hereby established a standing committee to be known as the Paralegal Standing Committee in English and Comité permanent des parajuristes in French.

#### JURISDICTION OF COMMITTEE

Jurisdiction of Committee

130. The Committee is responsible for developing, for Convocation's approval, policy options on the following matters:

1. The classes of licence for the provision of legal services in Ontario issued under the Act, the scope of activities authorized under each class of licence and the terms, conditions, limitations or restrictions imposed on each class of licence.
2. The licensing of persons to provide legal services in Ontario, including the qualifications and other requirements for licensing and the application for licensing.
3. The regulation of persons licensed to provide legal services in Ontario in respect of,
  - i. the handling of money and other property, and
  - ii. the keeping of financial records.
4. The rules of professional conduct applicable to persons licensed to provide legal services in Ontario.
5. The requirements to be met by persons licensed to provide legal services in Ontario with respect to indemnity for professional liability.

6. The professional competence of persons licensed to provide legal services in Ontario, including,
  - i. the requirements to be met by such persons with respect to continuing legal education, and
  - ii. the review of the professional business of such persons.
7. Guidelines for professional competence applicable to persons licensed to provide legal services in Ontario.
8. The provision of legal services through professional corporations.
9. The provision of information to the Society, and the filing of certificates, reports and other documents, relating to the Society's functions under the Act, by persons licensed to provide legal services in Ontario.
10. The election of five persons who are licensed to provide legal services in Ontario as members of the Committee.
11. The election of two persons who are licensed to provide legal services in Ontario as benchers.
12. The appointment of the chair of the Committee.

#### OPERATION OF COMMITTEE

Term of office of Committee members appointed by Convocation

131. (1) Subject to subsection (2), a person who is appointed as a member of the Committee by Convocation shall continue to be a member of the Committee until his or her successor is appointed.

Removal from Committee

(2) Convocation may remove from the Committee any person that it has appointed as a member of the Committee if the person fails to attend three consecutive meetings of the Committee.

Quorum

132. Four members of the Committee constitute a quorum for the transaction of business.

Meetings by telephone conference call, etc.

133. The Committee may meet to transact business by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other instantaneously and simultaneously.

Right to attend meeting

134. (1) Subject to subsection (2), no person other than a member of the Committee may attend a meeting of the Committee.

Same

(2) The following persons who are not members of the Committee may attend a meeting of the Committee:

1. A bencher.
2. An officer or employee of the Society.
3. A person not mentioned in paragraph 1 or 2 with the permission of the Committee.

Voting rights

135. Only members of the Committee may vote at meetings of the Committee.

#### GENERAL

Non-application of Part VI

136. The provisions of Part VI do not apply with respect to the Committee.

#### PART VIII

#### COMMENCEMENT

Commencement

137. Part VI comes into force on May 25, 2007.

This section avoids the necessity of have transitional provisions for all the standing committees pending the bencher election scheduled to take place on April 30, 2007.
---

CONVOCATION ROSE AT 4:55 P.M.

Confirmed in Convocation this 26<sup>th</sup> day of April, 2007.

Treasurer