MINUTES OF CONVOCATION

Thursday, 28th April, 2005
9:00 a.m.

PRESENT:

The Treasurer (Frank N. Marrocco, Q.C.), Backhouse, Banack, Bobesich, Bourque, Boyd, Campion, Carpenter-Gunn, Caskey, Cass, Chahbar, Cherniak, Chilcott, Coffey, Copeland, Curtis, Dickson, Doyle, Dray, Eber, Feinstein, Filion, Finkelstein, Finlayson, Gotlib, Gottlieb, Harris, Heintzman, Krishna, Lawrence, Legge, MacKenzie, Martin (by telephone), Millar, Murphy, Murray, O'Donnell, Pattillo, Pawlitza, Potter, Robins, Ross, St. Lewis, Sandler, Silverstein, Simpson, Swaye, Symes, Warkentin and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

.....

TREASURER'S REMARKS

The Treasurer thanked Mr. Ab Chahbar for his nine years serving as Complaints Review Commissioner.

DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of March 24, 2005 were confirmed.

MOTION - APPOINTMENTS TO APPEAL PANEL

It was moved by Ms. St. Lewis, seconded by Mr. Copeland,

THAT in accordance with section 49.29 of the *Law Society Act*, the following benchers be appointed to the Law Society Appeal Panel for a term of two years:

Anne Marie Doyle
Alan Gold
Laurie Pawlitza
Mark Sandler
William Simpson

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

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

Carried

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED

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

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 28th, 2005:

Tanis Lorain Bolt	Bar Admission Course
Ravneet Kaur Brar	Bar Admission Course
Teri Renal Burant	Bar Admission Course
Chantal Marie Da Silva	Bar Admission Course
JosephPaul Louis-Philippe Dubrule	Bar Admission Course
Darilyn Lesley Pamela Haddon	Bar Admission Course
Shinder Singh Kelley	Bar Admission Course
Dennis John Kish	Bar Admission Course
Stephanie Mah	Bar Admission Course
Michael Samuel Roberts	Bar Admission Course
Cindy-Lynn Clementina Sa	Bar Admission Course
Shabana Shaikh	Bar Admission Course
Sara Margaret Silvestri	Bar Admission Course
Matthew Joel Soloway	Bar Admission Course
Sangeeta Akhil Wagh	Bar Admission Course

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

B.1.4. The following candidates have filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 28th, 2005:

Elissa Fayne Amighetti	Province of British Columbia
Azubuike Kemakolam Ananaba	Province of British Columbia
Amir Attaran	Province of British Columbia
Brett Stewart Baker	Province of Alberta
John Layton Rogers	Province of British Columbia
Randy Craig Sutton	Province of British Columbia

B.1.5. (c) Transfer from another Province - Section 4.1

B.1.6. The following candidates have completed successfully the transfer examinations or the academic phase of the Bar Admission Course, filed the necessary documents, paid the required fee and now apply to be Called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, April 28th, 2005:

Tiffany Lee Bianchi	Province of Quebec
Renée Thériault	Province of Quebec

ALL OF WHICH is respectfully submitted

DATED this the 28th day of April, 2005

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Mr. Bourque presented them to Madam Justice Thea P. Herman to sign the rolls and take the necessary oaths:

Tanis Lorain Bolt	Bar Admission Course
Ravneet Kaur Brar	Bar Admission Course
Teri Renal Burant	Bar Admission Course
Chantal Marie Da Silva	Bar Admission Course
Joseph Paul Louis-Philippe Dubrule	Bar Admission Course
Darilyn Lesley Pamela Haddon	Bar Admission Course
Shinder Singh Kelley	Bar Admission Course
Dennis John Kish	Bar Admission Course
Stephanie Mah	Bar Admission Course
Michael Samuel Roberts	Bar Admission Course
Cindy-Lynn Clementina Sa	Bar Admission Course
Shabana Shaikh	Bar Admission Course
Sara Margaret Silvestri	Bar Admission Course
Matthew Joel Soloway	Bar Admission Course
Sangeeta Akhil Wagh	Bar Admission Course
Tiffany Lee Bianchi	Transfer, Province of Quebec
Renée Thériault	Transfer, Province of Quebec

Elissa Fayne Amighetti	Transfer, Province of British Columbia
Azubuike Kemakolam Ananaba	Transfer, Province of British Columbia
Amir Attaran	Transfer, Province of British Columbia
Brett Stewart Baker	Transfer, Province of Alberta
John Layton Rogers	Transfer, Province of British Columbia
Randy Craig Sutton	Transfer, Province of British Columbia

REPORT OF THE FINANCE & AUDIT COMMITTEE

Mr. Chahbar presented the Report of the Finance & Audit Committee.

Finance and Audit Committee
April 14, 2005

Report to Convocation

All members of the Committee:
Clayton Ruby (c)
Abdul Chahbar (v.c.)
Peter Bourque
Andrew Coffey
Paul Dray
Neil Finkelstein
Allan Gotlib
Holly Harris
Allan Lawrence
Derry Millar
Ross Murray
Laurence Pattillo
Laurie Pawlitza
Alan Silverstein
Gerry Swaye
Beth Symes
Bradley Wright

Purpose of Report: Decision
Information

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

THE REPORT

1. The Finance and Audit Committee ("the Committee") met on April 14, 2005. Committee members in attendance were: Abdul Chahbar (vc.), Andrew Coffey, Paul Dray, Allan Gotlib, Holly Harris, Ross Murray, Lawrence Pattillo, Laurie Pawlitza, Alan Silverstein, Gerry Swaye, Beth Symes and Bradley Wright.

2. Other Benchers attending were Abe Feinstein, Gavin MacKenzie and Judith Potter. Michelle Strom and Young Kim from LawPro attended. Suzan Hebditch from LibraryCo Inc. attended. David Ross and Sam Persaud from Deloittes & Touche LLP attended. Staff attending were Malcolm Heins, Wendy Tysall, Katherine Corrick, Fred Grady, and Andrew Cawse.

3. The Committee is reporting on the following matters as indexed on the following page.

FOR DECISION:

TAB A

GENERAL FUND - AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2004

Mr. David Ross and Mr. Sam Persaud of Deloitte & Touche LLP, will attend to assist Convocation.

The Committee recommends the annual financial statements for the General Fund be approved by Convocation.

Management Discussion and Analysis
General Fund
For the year ended December 31, 2004

The Law Society's General Fund comprises its unrestricted fund, funds restricted by Convocation for special purposes and endowment funds held in trust. The Society's annual membership fee is based on the financial requirements of the restricted and unrestricted funds.

The unrestricted fund is the Society's operating fund representing the bulk of its revenues and expenses. The special purpose funds restricted by Convocation are the Capital Allocation, Invested in Capital Assets, County Libraries, Special Projects, Repayable Allowance, Endowments and the Working Capital Reserve.

BALANCE SHEET

Cash and short-term investments and Portfolio Investments
Cash and short-term investments have decreased by approximately $4.0 million from 2003 to $22.2 million. As approved by Convocation, $10.0 million was transferred to a new long-term portfolio during the year. The short-term investments include government backed securities and money market instruments issued by major Canadian Banks.

Portfolio or long-term investments of $10.1 million at the end of 2004 are invested in high quality fixed income (82%) and equity (18%) products. Fixed income investments comprise a diversified mix of government, provincial and corporate bonds with and investment rating of "BBB" or better. Equity investments comprise a diversified mix of equities listed on the New York and Toronto stock exchanges. The year end market value of the portfolio is $10 million.

Capital Assets
The increase in capital assets from $16.9 million to $18.1 million reflects the start of the North Wing renovation project in September 2004.

Deferred revenue
Deferred revenue of $6.9 million has increased by $5.1 million from 2003. It is predominantly 2005 membership fees received in 2004.

Unclaimed trust funds
Unclaimed trust funds continue to increase reaching $1 million in 2004, an increase of $299,000. These are trust monies turned over to the Society by members who are unable to locate the persons to whom the monies are owed. By statute, the Society administers these funds, in perpetuity, with the net income from the funds transferred to the Law Foundation of Ontario annually.

STATEMENT OF REVENUES AND EXPENSES

The Society's unrestricted fund has generated a surplus of $1.8 million as a result of operations for 2004. This is being used to finance operating expenses and therefore reduce membership fees in 2005. The surplus was achieved largely as a result of greater than anticipated revenues, particularly professional development and competence revenues, corporate revenues such as cost recoveries by the enforcement unit, litigation cost recoveries, Ontario Report royalties and fees for mobility applications. Net expenses for the year varied from budget by less than $50,000.

Membership fees
Membership fees for 2004 are $35.1 million, $1.2 million greater than 2003 largely as a result of total membership increasing by almost 700 to 35,300.

Professional development and competence
Professional Development and Competence ("PD&C") revenues increased from $11.3 million in 2003 to $12.2 million in 2004. The major components of PD&C are the bar admission course (BAC) and post call education programs.

In 2004, the Professional Development and Competence division continued the expansion of Law Society competence products. As well, attendance at post-call education programs continued to increase. Total program revenue increased $500,000 from $3.4 million in 2003 to $3.9 million in 2004.

Total BAC revenues increased by $310,000 to $8.04 million up from $7.73 million in 2003. This was due to an increase in the support provided by the Law Foundation of Ontario and an increase in the number of students, generating an additional $176,000 of tuition revenue. BAC tuition fees at $4,400 have remained unchanged since 2001.

PD&C expenses increased approximately $2.5 million to $17 million. Major increases were attributable to:

- The development and implementation of the new licensing process to replace the current BAC.
- Expenditures for the education administration system redesign.
- Increased numbers of BAC students and increased uptake in CLE events, particularly at remote sites, resulting in higher costs for such major items as materials production, location and instructor costs. Increased revenues for the BAC and post call programs largely offset these increased costs.

Professional Regulation
Professional regulation expenses increased from $9 million in 2003 to $10 million in 2004. The current year saw the continuation of the business process changes, the selection of a vendor to

build a new case management system, the beginning of system development and the full implementation of the Intake and Enforcement units.

A significant factor in the increase in expenditures is the cost of mortgage fraud investigations, particularly in retaining outside counsel and added staff. Costs attributable to these investigations approximate $1,000,000 in 2004 and an additional $1,000,000 will be specifically allocated in 2005.

Investment income
Investment income has decreased to $3.8 million in 2004 from $4 million in 2003. Overall the rate of return on all investments declined to 2.15% in 2004 from 2.87% in 2003 as investment yields declined over most of 2004 in line with interest rates available in the market.

Other revenue
Other revenue of $5 million includes a variety of items such as lawyer referral service fees, Ontario Reports royalties, catering revenues, litigation and enforcement cost recoveries, charges for fee payment plans and other miscellaneous revenues. There were general increases in these categories resulting in other revenue increasing $677,000 from 2003.

RESTRICTED FUNDS

Capital Allocation
The large balance in the Capital Allocation Fund of $8.2 million (2003: $9.4 million) reflects the transfers in prior years to finance the North Wing renovation commenced in 2004.

Invested in Capital Assets
The increase reflects the growth in capital assets from $16.9 million to $18.1 million as a result of the North Wing renovation project commenced in September 2004.

County Libraries
Transfers to LibraryCo Inc for county libraries operations totalled $5.9 million, in line with 2003.

Repayable Allowance
In 2004, the Law Society's Repayable Allowance program provided $285,000 to 85 students (2003: $114,000 to 37 students).

Special Projects
The Fund expenses in 2004 were for the Sole Practitioner and Small Firm Task Force, significantly funded in the prior year, and most of the revenues were to fund the referendum on bencher remuneration in 2005.

Working Capital Reserve
The Working Capital Reserve of $7.9 million is unchanged from 2003 and is funded in compliance with Convocation's policy.

1. Description of Fund

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

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

Separate financial statements have been prepared for the following related entities, which have not been consolidated into the General Fund statements:

Lawyers Fund for Client Compensation

The Society maintains the Lawyers Fund for Client Compensation ("Compensation Fund") pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. Members' annual fees and investment income finance the Compensation Fund. The Compensation Fund reports fees collected by the General Fund as revenues. The Compensation Fund reimburses the General Fund for certain administrative expenses, spot audit expense and a portion of the costs of operating the investigation and discipline functions of the Society. These amounted in 2004 to $3,866,000 (2003- $3,754,000).

Errors & Omissions Insurance Fund and Lawyers' Professional Indemnity Company

The Society provides professional liability insurance to the legal profession through the Errors and Omissions Insurance Fund ("E&O Fund") and the Lawyers' Professional Indemnity Company ("LAWPRO"). The E&O Fund was originally set up in the Society's accounts to record insurance claims and expenses and related levies and their investment. Prior to July 1, 1990 various insurance carriers underwrote the Errors and Omissions Insurance program. LAWPRO took over underwriting the program commencing July 1, 1990. LAWPRO, a wholly owned subsidiary of the Society, was incorporated in 1990 and is licensed to provide lawyer's professional liability and title insurance. On an annual basis the E&O Fund provides the General Fund with income derived from its surplus earnings. This income, reported as Investment Income of the General Fund, amounted in 2004 to $3,000,000 (2003 - $3,000,000). LawPRO provided financial support in the amount of $75,000 (2003 - $0) for the Society's study on the future of small firms and sole practitioners. This funding is reported in the Special Projects Fund.

LibraryCo Inc.

LibraryCo Inc., a wholly owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services across Ontario and to administer funding on behalf of the Society. LibraryCo Inc. was incorporated under the Business Corporations Act of Ontario in 2001. The Corporation issued 100 voting Common Shares to the Society for $100 and 100 Special Shares to the County and District Law President's Association for $100. The holders of the Special Shares are entitled to elect one director.

The Society levies and collects funds for county and district law library purposes and transfers these funds to LibraryCo. Convocation internally restricts these funds for use by county law libraries to carry out their annual operations and any special library projects approved by Convocation.

Law Society Foundation

The Law Society Foundation ("LSF"), a registered charity, was incorporated by Letters Patent in October 1962. The objects of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to law students in Ontario, restore and preserve land and buildings of historical significance to Canada's legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada's legal heritage, to maintain a collection of gifts of books and other written material for use by educational institutions in Canada and to receive donations, and maintain a fund for the relief of poverty by providing meals to persons in need. The Society provides facilities, administration, accounting, security and certain other services at no cost to the LSF.

The Law Foundation of Ontario

The Law Foundation of Ontario ("LFO"), a corporation without share capital established in 1974, was created to receive interest accruing on monies held in lawyers' mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. During 2004, the LFO contributed to the General Fund of the Society $1,300,000 (2003 -$1,023,400) for the operation of the Bar Admission Course, $100,000 (2003 - $100,000) for legal heritage programs and $29,000 (2003 - $127,000) to support an access to justice symposium.

2. Significant Accounting Policies

Basis of presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations published by the Canadian Institute of Chartered Accountants using the restricted fund method of reporting revenues.

Description of Funds

The *Unrestricted* Fund accounts for the Society's program delivery and administrative activities. This fund reports unrestricted resources.

Restricted Funds

The *Capital Allocation Fund* is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital assets. These include buildings and major equipment including computers. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund. As at December 31, 2004 the balance is $8,232,000 (2003 - $9,383,000).

The *Invested in Capital Assets Fund* records transactions related to the Society's capital assets, specifically acquisitions, amortization and disposals. As at December 31, 2004 the balance is $18,121,000 (2003 - $16,965,000)

The *County Libraries Fund* records transactions related to the Society's support of county law libraries. The fund accumulates levies raised by the Society for county library purposes. The Society remits amounts to LibraryCo Inc. on a predetermined basis as approved by Convocation. Amounts collected that exceed the current year requirement are held by the Society in the fund balance. This fund balance is available to reduce the amount levied on the membership in future years. At December 31, 2004 the fund balance was $37,000 (2003 - $230,000).

The *Repayable Allowance Fund* provides students with funding for tuition and living expenses and is based on a student's ability to repay the grant within a specified period of time following the student's non-participation in the Bar Admission Course. At December 31, 2004, the Fund Balance was $147,000 (2003 - $325,000).

The Society administers two *Endowment Funds*, the Law Society Trust and the J. Shirley Denison Fund. The Law Society Trust was established in accordance with the terms of the endowments so that the Society can award prizes, bursaries and gifts to deserving students in the Bar Admission Course. The J. Shirley Denison Fund was established to provide relief and assistance to members and former members who find themselves in difficult financial circumstances. Contributions for endowments are recognized as revenue in the Endowment Funds. For 2004, no funds were contributed for endowment purposes. At December 31, 2004, the Fund Balances totalled $466,000 (2003 - $498,000).

The *Special Projects Fund* is maintained to ensure that financing is available for ongoing special projects. The balance in the Special Projects Fund at December 31, 2004 is $174,000 (2003 - $130,000) primarily to fund the referendum on bencher remuneration.

The *Working Capital Reserve* is maintained to ensure adequate cash reserves for the continuous financing of the Society's operations. The balance is sufficient to provide for the Society's operating expenses for up to two months. As at December 31, 2004 the balance is $7,975,000 (2003 - $7,975,000).

Cash and short term investments

Cash and short term investments are amounts on deposit and invested in short term (less than one year) investment vehicles according to the Society's investment policy and are subject to insignificant risk of a change in value. Investment income, except income earned on resources held for endowment, is retained in and reported by the Unrestricted Fund.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of a diversified portfolio of government bonds, corporate bonds and Canadian and U.S. equities, according to the Society's investment policy. Only if a loss in the value of an investment is other than a temporary decline is the investment written down to recognize the loss.

Capital assets

Assets are capitalized and subject to amortization when they are determined to have a minimum useful life of three years and an acquisition cost of $10,000 for equipment, furniture and computer equipment, $25,000 for computer software and $25,000 for building improvements. Capital Assets are presented at cost net of accumulated amortization and grants. For purposes of calculating the first year's amortization, all capital assets are deemed to be acquired, put into service, or completed on July 1st.

Amortization is charged to expense on a straight line basis over the estimated useful lives of the assets as follows:

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

Revenue recognition

Membership fees are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Accordingly, fees for the next fiscal year received prior to December 31 have been deferred and are recognized as revenue in the next calendar year.

Professional development and competence, investment and other revenues are recognized when receivable if the amount can be reasonably estimated and collection is reasonably assured.

Collections

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

Volunteer services

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

Financial instruments

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

Measurement uncertainty

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

3. Accounts Receivable

Included in accounts receivable are certain amounts receivable from related parties as follows:

	2004	2003
Lawyers Fund for Client Compensation	277,673	164,620
LibraryCo Inc.	-	7,680
The Law Society Foundation	-	11,541
The Law Foundation of Ontario	389,781	320,607
Lawyers' Professional Indemnity Company	93,047	21,223

4. Portfolio Investments

	2004		2003
($000's)	Book Value	Market Value	Book and Market Value
Debt Securities	8,335	8,233	-
Common Shares	1,774	1,755	-
	10,109	9,988	-

5. Capital Assets

	2004			2003
($000's)	Cost	Accumulated Amortization	Net	Net
Land and buildings	27,947	16,654	11,293	11,883

Building improvements	7,247	2,520	4,727	3,932
Building improvements under construction	1,289	-	1,289	136
Furniture, equipment and computer hardware and software	3,447	2,635	812	1,014
	39,930	21,809	18,121	16,965

In 2004 construction commenced on the renovation of Osgoode Hall's north wing. Renovations are expected to be completed in 2006 at a total cost of $9,028,000, funded from balances accumulated in the Capital Allocation Fund. Expenditures relating to this renovation, categorized as building improvements under construction, total $1,289,000. These assets will not be depreciated until the renovation is complete.

6. Unclaimed Trust Funds

Section 59.6 of the Law Society Act permits a member who has held money in trust for or on account of a person for a period of at least two years to apply in accordance with the by-laws for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. Subject to certain provisions in the Act which enable the Society to recover its expenses associated with maintaining these funds, all net income from the money held in trust shall be paid to the *Law Foundation of Ontario*. Unclaimed money held in trust amounts to $1,028,000 (2003 - $729,000).

7. Other Trust Funds

The Society administers client funds for members under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. At December 31, 2004 total funds held in trust amounted to $2,286,000 (2003 - $1,293,000).

8. Other Revenue

Included in other revenue is income from the Ontario Reports, catering, the Lawyer Referral Service, specialist certification and other miscellaneous revenues.

9. Other Expenses

Included in other expenses are payments to the Federation of Law Societies, County and District Law Presidents' Association, insurance, professional fees, governance related disbursements, termination payments, catering and other corporate expenses.

10. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. In prior years, matching employee and employer contributions each ranged from a minimum of 4.5% to a maximum of 6% of earnings. From the beginning of 2004, Law Society employees

could choose matching employee and employer contributions between 1% and 6% of earnings. The Society's pension expense in 2004 amounted to $1,180,000 (2003 - $943,000).

11. Commitments

The Society is committed to monthly lease payments for property and equipment under leases having various terms up to the end of April 2010. Aggregate minimum monthly payments over the next years are as follows:

Year	$000's
2005	345
2006	364
2007	377
2008	399
2009	410
2010	138
Total	2,033

At December 31, 2004 contractual obligations relating to the renovation of Osgoode Hall's north wing totalled $5,223,000 (2003 – nil).

12. Contingent Liabilities

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

13. Guarantees

In the normal course of business the Society has entered into agreements that meet the definition of a guarantee, including indemnities in favour of third parties, such as confidentiality agreements, engagement letters with advisors and consultants, outsourcing agreements, leasing contracts, information technology agreements and service agreements. Under the terms of these agreements, the Society agrees to indemnify the counterparties for various items including, but not limited to, all liabilities, loss, suits, and damages arising during, on or after the term of the agreement. The maximum amount of any potential future payment cannot be reasonably estimated.

The Society has also provided indemnification to all directors and officers of the Society. Under S9 of *The Law Society Act:*

> "No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise

or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power."

Notwithstanding S9, the Society has also purchased errors and omissions insurance for past and present officers, employees, committee members, benchers, agents and volunteers acting on behalf of the Society, its subsidiaries and affiliates, to mitigate the cost of any potential suit or action.

No estimate of the maximum exposure under these indemnifications can be made and historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore no amount has been accrued in the financial statements with respect to these agreements

14. Comparative Figures

Certain of the prior year's comparative figures have been reclassified to conform to the current year's financial statement presentation.

FOR RECOMMENDATION:

TAB B

LAWYERS FUND FOR CLIENT COMPENSATION - AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2004

The Committee recommends the annual financial statements for the Lawyers Fund for Client Compensation be approved by Convocation.

Management Discussion and Analysis
Lawyers Fund for Client Compensation
For the year ended December 31, 2004

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

The Compensation Fund has enjoyed a fourth consecutive year of moderate claims against the Fund. This has contributed to an increase of $2.1 million in the Fund's year-end balance from $17.4 million to $19.5 million.

BALANCE SHEET

Cash and short-term investments
The Compensation Fund's short-term investments are invested in bankers' acceptances, Government of Canada T-bills and cash.

Portfolio investments
Portfolio, or long-term investments ($21.2 million compared to $19.8 million in 2003) are comprised of 82% fixed income and 18% North American equities. Fixed income investments comprise a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments comprise a diversified mix of equities listed on the New York and Toronto stock exchanges. The market value of the portfolio is $21.7 million.

Reserve for unpaid grants
Based upon the actuarial valuation of the grant reserve, the reserve for unpaid grants has decreased by $800,000 to $9.0 million.

STATEMENT OF REVENUES AND EXPENSES AND CHANGE IN FUND BALANCE

Revenues

Membership fees
The Compensation Fund's claim experience in recent years has permitted a decrease in membership fees declining from $280 per member in 2003 to $230 per member in 2004. This decrease was partially offset by approximately 700 more members in 2004, leading to the decrease in total membership fees from $7.8 million to $6.7 million

Investment Income
Investment income has increased to $1.5 million in 2004 from $1.3 million in 2003 as a result of a higher rate of return on the long-term portfolio that included net realized gains of $542,000. Total return on all the Fund's investments was 5.2% in 2004 compared to 4.2% in 2003.

Expenses

Grants
Along with the favorable movement in the actuarial reserve, grants paid during the year decreased from $2.7 million in 2003 to $2 million in line with grant trends over recent years.

Insurance
Insurance premiums of $495,000 and coverage were unchanged between 2003 and 2004.

Other expenses
The Compensation Fund's 2004 operating expenses were generally stable compared to 2003.

Law Society of Upper Canada
Lawyers Fund for Client Compensation
Notes to Financial Statements
For the year ended December 31, 2004

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1. Description of Fund

The Lawyers Fund for Client Compensation (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the *Law Society Act* to relieve or

mitigate loss sustained by any person in consequence of dishonesty on the part of any member in connection with such member's law practice or in connection with any trust of which the member was or is a trustee. The Fund is financed by members' annual fees and investment income.

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

The Fund reimburses the Society's General Fund for certain administrative expenses, spot audit expense and a portion of the costs of operating the investigation and discipline functions of the Society. The charges for the year amount to $3,866,000 (2003 - $3,754,000).

2. Significant Accounting Policies

Basis of presentation

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations published by the Canadian Institute of Chartered Accountants, using the restricted fund method of reporting revenues. The Fund accounts for the program delivery, administration and payment of grants from the Fund. The Fund is restricted in use by the *Law Society Act*.

Cash and short-term investments

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the Society's investment policy and are subject to an insignificant risk of change in value.

Portfolio investments

Portfolio investments are recorded at cost, net of amortization of premiums and discounts. Investments consist of a diversified portfolio of government bonds, corporate bonds and Canadian and U.S. equities, according to the Society's investment policy. Only if a loss in the value of an investment is other than a temporary decline is the investment written down to recognize the loss.

Revenue recognition

Membership fees are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured.

Investment income is recognized when receivable if the amount can be reasonably estimated.

Grants

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

related net grants expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries. In 2004, the Fund maintained insurance for cumulative claims in excess of $15,000,000 to a maximum of $25,000,000. This insurance has been discontinued for the 2005 year.

Financial instruments

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

3. Measurement Uncertainty

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

4. Portfolio Investments

As at December 31 ($000's)	2004		2003	
	Book Value	Market Value	Book Value	Market Value
Debt Securities	17,587	17,788	16,908	17,191
Common Shares	3,647	3,904	2,921	3,171
	21,234	21,692	19,829	20,362

5. Accounts Payable and Accrued Liabilities

Included in accounts payable and accrued liabilities is an amount due to the Society's General Fund of $277,673 (2003 - $164,620).

6. Comparative Figures

Certain of the prior year's comparative figures have been reclassified to conform to the current year's financial statement presentation.

FOR RECOMMENDATION:

ERRORS AND OMISSIONS INSURANCE FUND.
AND ANNUAL FINANCIAL STATEMENTS OF THE LAWYERS
PROFESSIONAL INDEMNITY COMPANY
FOR THE YEAR ENDED DECEMBER 31, 2004

Ms Michelle Strom (CEO) and Mr. Young Kim (CFO) of LawPro will be in attendance.

The Committee recommends that the annual combined financial statements of the Errors & Omissions Insurance Fund be approved by Convocation and the annual financial statements for the Lawyers' Professional Indemnity Company be received for information.

FOR RECOMMENDATION:

TAB D

LAW SOCIETY AND LIBRARYCO AUDITOR

Convocation appoints the Law Society and LibraryCo Inc auditors on the advice of the Finance & Audit Committee. This has been the third year for Deloitte & Touche LLP as auditor of the two organisations.

The Committee recommends to Convocation that Deloitte & Touche LLP be appointed auditors of the Law Society and LibraryCo Inc. for the 2005 financial year.

FOR INFORMATION:

TAB F

LIBRARYCO INC. - AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2004

Ms. Suzan Hebditch, Executive Director of LibraryCo Inc. will be in attendance.

The Committee recommends the annual financial statements for LibraryCo Inc be received by Convocation for information.

<u>Management Discussion and Analysis</u>
<u>LibraryCo Inc.</u>
<u>For the year ended December 31, 2004</u>

LibraryCo Inc. is mandated to carry on the central management of the Ontario County and District Law Library system on a not-for-profit basis in accordance with the objectives of the Blended System framework for the purpose of developing and enhancing skills for the "competent lawyer" in Ontario.

STATEMENT OF REVENUES AND EXPENSES

LibraryCo experienced a deficit of $301,000 in 2004 (2003- $112,000). The annual deficits were part of budget plans to use LibraryCo's Reserve Fund as a source of revenue.

Revenues
The $6.7 million total revenues in 2004 consisted of grants of $5.9 million (2003 - $5.7 million) from the Law Society and $850,000 (2003 - $850,000) from the Law Foundation of Ontario. The 2004 County Library levy collected by the Law Society was $197 per member, supplemented by $220,000 previously collected for County Law Libraries thereby bringing the member rate for 2004 to the equivalent of $204. The 2003 County Library levy collected by the Law Society was $195 per member, supplemented by $323,000 previously collected for County Law Libraries bringing the member rate for 2003 to the equivalent of $207.

Expenses
Expenses required for the operation of the 48 County and District law libraries make up $6.6 million of the total $7.1 million. These expenses are primarily for collections – traditional and electronic, personnel and operations. LibraryCo continues to balance the demand for electronic and other materials from the various libraries and to provide education in the use of these materials.

The mix of expenses is consistent with prior years. $416,000 (2003 - $403,000) was spent on head office operations, the Roving Law Librarians, travel to County and District law libraries and administration of the library system.

BALANCE SHEET

There were no significant changes in balance sheet categories or values during the year. The Reserve Fund of $1.4 million (2003- $1.7 million) is restricted for County and District law library purposes as approved by the Board of Directors.

STATEMENT OF COMPLIANCE – SHORT TERM PORTFOLIO

TAB G

FOR INFORMATION:

TAB H

STATEMENT OF COMPLIANCE – LONG TERM PORTFOLIO

FOR INFORMATION:

TAB I

COMPLIANCE REPORT – COMPENSATION FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION:

TAB J

COMPLIANCE REPORT – GENERAL FUND - FOYSTON, GORDON & PAYNE

FOR INFORMATION:

TAB K

IMPLEMENTATION OF BENCHER REMUNERATION

In October 2004, the framework for bencher remuneration was approved by Convocation and in February 2005 members approved this framework in a referendum.

At the April 2005 meeting, the Committee was requested to approve the definitions, processes, and reporting that will be used for the administration of bencher remuneration. The Committee referred these issues to a working group of the Committee comprising Holly Harris, Laurence Pattillo, Gerry Swaye and Brad Wright. The working group will bring its recommendations back to the Committee.

The working group has requested input from all benchers which should be provided to Wendy Tysall, CFO, by May 13. To assist benchers in considering issues and procedures a copy of the recommendations, definitions and processes originally submitted to the Committee is attached for Convocation's information.

Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation

A summary of recommendations for the Committee's consideration is set out below:

1. *Elected benchers, former treasurers and ex-officio benchers will be remunerated for eligible activities.*

2. *Remuneration at $300 per half day and $500 per full day will be made with an annual inflation adjustment or adjustment after annual review.*

3. *A half day will be work up to 3 hours in a 24 hour period. A full day constitutes work for more than 3 hours in a 24 hour period.*

4. *There will be a deductible of 26 days before benchers can be remunerated for their time. For purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded.*

5. *The remuneration cycle will be based on the calendar year not bencher year.*

6. *Eligible activities will include Convocation, meeting of committees, task forces, and working groups, special convocations, calls to the bar, bencher information sessions, hearing panels, appeal panels, pre-hearing conferences and meetings attended as the Law Society's official representative.*

7. *Time spent as the Law Society's appointed representative to boards of external organizations will not be an eligible activity.*

8. *Time spent as the Law Society's official representative attending meetings at the direction of the Treasurer or Convocation is an eligible activity.*

9. *Attending a meeting by telephone is an eligible activity.*

10. *Questions relating to specific attendance and eligible activity issues can be directed to the Chief Executive Officer. Changes to these guidelines must be approved by the Finance & Audit Committee.*

11. *All benchers must submit monthly attendance sheets on the prescribed form. Benchers will certify this form. Submitted information will not be verified.*

12. *Payment of remuneration will only be made directly to individual benchers or their firm.*

13. *The Finance Department will report on attendance, remuneration and expense reimbursement paid to individual benchers to the Audit Sub-Committee, Finance & Audit Committee and Convocation on a quarterly basis. In addition, remuneration will be reported in total in the Annual Report.*

Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation

DEFINITIONS / ISSUES

The Committee is requested to approve the resolution of the following definitions or issues which were summarized above:

1. *Who qualifies for bencher remuneration?*
   Elected benchers (numbering 40), former treasurers (numbering 10) and ex-officio benchers (numbering 18) (for a current total number of 68) will be eligible for remuneration. The eight appointed benchers will not be eligible for remuneration beyond amounts paid by the province.

2. *How will the rates for remuneration be maintained?*

The current framework sets remuneration at $300 per half day and $500 per full day. It is suggested that an annual review of these rates be conducted or an automatic inflationary increase be incorporated into implementation procedures.

3. *What is half a day and a day for remuneration purposes?*
The definition of half a day is intended to include eligible activity lasting up to 3 hours within a 24 hour period.

3 hours for a half day is similar to other organizations such as Legal Aid pursuant to the remuneration rate authorized by order-in-council, and consistent with Management Board directives on part-time government board appointees. This is also what Convocation appeared to be leaning towards, without concluding on the matter.

The definition of a full day is eligible activity in excess of three hours in a 24 hour period.

4. *How is the deductible calculated?*
The current framework sets a deductible of 26 days before benchers can be remunerated for their time. It is suggested that for purposes of calculating the deductible of 26 days, half days and full days will all count as one day of attendance until the deductible of 26 days is exceeded. This means that 26 half days and not 52 half days will fulfill the 26 attendances required by the deductible.

5. *Is the deductible calculated on a calendar year or bencher year?*
The remuneration framework included in the referendum material specified that the remuneration cycle was based on the calendar year and the Committee is requested to confirm this.

<u>Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation</u>

The calendar year cycle is easiest to administer, will result in better financial records and is intuitively easier to organize. The calendar year cycle may have some adverse effects such as:

- Remuneration is retroactive to May 28, 2004. The calendar year cycle will make it difficult for most benchers to qualify for any remuneration amount in 2004.
- The difference between calendar and bencher years will mean that if a bencher is not re-elected, he or she will likely be excluded from remuneration in the year of election (the remuneration period is limited to June to December) and / or in the final year of office (January to May).

6. *What are eligible activities?*
According to the framework included with the remuneration referendum material, an activity would include attendance at Convocation, meetings of committees, task forces, working groups (including the Ontario Lawyers Gazette Advisory Board), special convocations, calls to the bar, bencher information sessions, hearing panels, appeal panels, pre-hearing conferences and meetings attended as the Law Society's official representative. However some bencher work outside of these specified categories is difficult to classify.

It is suggested that benchers will only be remunerated for attending meetings of committees, task forces and working groups where they are a member of the committee, task force or working group or where they have been formally invited to participate by the relevant chair. Any bencher is able to attend any committee meeting but attendance will only be eligible for remuneration where such attendance is requested by the chair.

It is suggested that eligible activities also include :

- The maximum of one day allowed for writing reasons for a panel's decisions.
- Work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Bencher.

In addition, it is also suggested that meetings between benchers and staff will not be eligible against the deductible or for remuneration. This is because these meetings are typically of the nature of pre- or post- meeting work (i.e. preparation time). The only exception to this would be work integral to the offices of Chairs of the Hearing and Appeal Panels and the Summary Disposition Bencher.

7. *Will a bencher acting as the Law Society's appointed representative be remunerated? (as opposed to the Law Society's official representative – see below).*
It is suggested that the Law Society's appointed representatives, whose appointments to the boards of external organizations have been approved by Convocation, would not be eligible for remuneration for this role from the Law Society.

The Law Society, through Convocation, appoints a significant number of benchers to the boards of subsidiary and related organizations. These organizations are LawPro, LibraryCo, BAR-eX, the Canadian National Exhibition, CanLII, the Federal Judicial Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation Advisory Committee, the Federation of Law Societies, the Judicial Appointments Advisory Committee, Legal Aid, the Law Foundation of Ontario, LINK, OBAP, the Ontario Bar Association Council, the Ontario Centre for Advocacy Training and OJEN.

Benchers are appointed to these other boards because of their role as a bencher. However once benchers have assumed the role of director of the other organization, their role as director comes with fiduciary duties to that other organization. These fiduciary duties may not always be congruent with the interests of the Law Society. Therefore remuneration for these duties as director should not be sourced from the Law Society.

In addition, benchers appointed to these external boards may be eligible for director's fees or other remuneration from these other organizations. It is suggested that benchers eligible for remuneration from these boards receive remuneration from these boards.

8. *What is an official representative of the Law Society? (as opposed to the Law Society's appointed representative – see above).*
It is suggested that where a bencher has been appointed by Convocation or requested by the Treasurer to represent the Law Society at a meeting, occasion or event, then that attendance would be eligible for remuneration as the Law Society's official representative.

It was agreed in Convocation in October 2004 that "only official representatives of the Law Society who attend meetings are compensated."

In certain instances, the Treasurer may request a bencher to attend a meeting, such as a swearing in ceremony, as representative of the Law Society or as a replacement for the Treasurer. Such meetings often require the official Law Society representative to play a role in proceedings. These types of meetings would be eligible for remuneration – whether the meeting takes the form of a business meeting, ceremonial event or swearing-in ceremony.

It is suggested that in the Treasurer's remarks, Convocation be informed either in arrears or in advance, of the events attended by the Law Society's official representatives. This will confirm the bencher's attendance in an official capacity as the Law Society's representative, assist benchers in their attendance reporting, as well as informing Convocation of ongoing events.

9. *What other bencher activities are specifically excluded from remuneration?*
It is suggested that benchers attending meetings of organizations such as the Law Society Foundation, the Osgoode Society or CDLPA where their role may not be as official Law Society representative and has not been requested by the Treasurer or approved by Convocation would not be eligible for remuneration. The Law Society Foundation is illustrative because certain benchers are nominated to be members by the Treasurer, not appointed, with their role as member and trustee later approved by the Law Society Foundation Board of Trustees.

<u>Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation</u>

Attendance at receptions, dinners, symposia and other like events will not be applied to the 26 day deductible nor be remunerated.

Reason writing time in excess of one day, travel time and preparation time will not be applied to the 26 day deductible nor be remunerated.

10. *How will emerging issues and questions on bencher remuneration be resolved?*
Questions relating to whether any specific activity is an eligible activity may be directed to the Chief Executive Officer. Any changes to these guidelines must be approved by the Finance & Audit Committee.

11. *Does attending a meeting by telephone qualify for remuneration?*
It is suggested that attending a meeting by telephone still qualifies as an eligible activity.

Examples of suggested eligible and ineligible activities for bencher remuneration are set out on Appendix D.

PROCESSES FOR RECORDING BENCHER ACTIVITIES

Monthly Attendance Sheets Submitted by All Benchers

It is suggested that all benchers must submit monthly attendance sheets. This is applicable to all benchers, whether opting in or out of remuneration. The monthly attendance sheets are required to maintain accurate statistical information on bencher volunteer time and potential liabilities if the mix of benchers opting for remuneration changes over time. Reliable information is also required to prepare budgets and forecasts.

A draft of the monthly attendance sheet is attached as Appendix B for the Committee's information. The attendance sheets would be certified by benchers as being correct. The attendance sheets, specifying the nature of the attendance and the date, would be reviewed for reasonableness by Law Society administrative staff but would not be checked, verified or audited.

It is suggested that attendance sheets be submitted by the 15th of the following month to allow complete, accurate and prompt reporting and payment of remuneration.

Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation

Required Remuneration Documentation

Benchers receiving remuneration for their services must provide the following:

- Their Social Insurance Number.
- The Canada Revenue Agency Personal Tax Credits Return Forms (TD1 series).
- A bank account number for the electronic funds transfer of remuneration is strongly encouraged.

The SIN and TD1 forms are required for income tax purposes. Benchers will receive a T4 for all remuneration received and, if applicable, taxes and other deductions such as CPP will be withheld by the Law Society and remitted to the Canada Revenue Agency. Withholding tax will depend on the amount of individual remuneration expected to be paid. Annual remuneration under $8,100 will probably not have tax withheld, although all remuneration will require the deduction of "employee / director" CPP and the payment of employer CPP and employer health tax. These "taxes" will approximate $11,000 in total per year if total bencher remuneration in the year approximates $160,000 (CPP: 5%, EHT: 2%)

Payment of Remuneration

Bencher remuneration will be paid on a monthly basis. Benchers eligible for remuneration who submit forms by the middle of the following month, will see payment made by the end of that following month if all required documentation (SIN etc) is in place. For example, for June attendance forms submitted by July 15, payment will be made by July 31.

For financial year end purposes, all attendance sheets for the financial / calendar year must be submitted by January 15 of the following year.

Deferral of remuneration will not be allowed.

Payment of remuneration will only be made directly to individual benchers or their firm. Redirection of remuneration to charities is considered to be unworkable primarily because:

- The bencher must still receive a T4 for the gross amount of remuneration with the associated withholding tax implications.
- Once remuneration has been received by individual benchers, those benchers can redirect the money based on their own objectives and there is no difference in financial implication.
- The designation of numerous charities will be administratively onerous.
- Redirection will complicate reporting of remuneration.
- This redirection appears to defeat the motivating principles for bencher remuneration.

Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation

Retroactive Amounts

The proposal on bencher remuneration presented to members as part of the referendum package stated that remuneration would be effective from May 28, 2004. If we assume that the remuneration cycle stays on the calendar year it appears that a very limited number of benchers would exceed the deductible between May 28 and December 31, 2004. It is suggested that those benchers who believe they have exceeded the deductible in this period and wish to be remunerated should submit attendance records for the period in the required form discussed above. However it does not appear worthwhile to require all benchers to submit attendance forms for this period which is so far in the past, if remuneration will not be paid. All benchers are required to submit attendance forms for the year commencing January 1, 2005.

If the remuneration cycle is changed from the calendar year to the bencher year, a significant amount of retroactive attendance records will be required back to May 28, 2004.

Costs of Remuneration

When combined with bencher expense reimbursements, it is envisaged that the administration of bencher remuneration will require one full time person, particularly in the initial period. Once the process is established it is envisaged that a web-based input application could be developed to reduce administration time and expense.

If the suggestions for the implementation of remuneration as set out in this memo are agreed upon, estimated annual costs of remuneration are set out in Appendix C, providing a range for total remuneration from zero to $520,000 per year, with a probable expense closer to $160,000. These remuneration costs would increase by approximately 7% (say $11,000) for employer CPP and health tax contributions Administration costs at the implementation stage will approximate $100,000 per year.

The 2005 operating budget included funding of $200,000 for bencher remuneration this year. Any excess of actual remuneration paid over budget will be funded from the contingency account in the 2005 operating budget. $1.2 million was provided for this contingency account, of which $399,000 has been allocated to date for 393 University Ave. rental costs, the Laskin

legacy event and tsunami relief. Another amount of approximately $140,000 is being sought to implement the recommendations of the Sole Practitioner and Small Firm Task Force.

Opting Out of Remuneration

Benchers can decide not to accept remuneration for their services as bencher. They would still be required to submit attendance reports to maintain accurate statistical information on bencher volunteer time. Benchers who decide to forego remuneration must communicate this choice in writing to the Chief Financial Officer.

Memorandum submitted to the Finance & Audit Committee on April 13, 2005 reproduced for the information of Convocation

REPORTING

The Finance Department will report on attendance, remuneration and expense reimbursements paid to individual benchers to the Audit Sub-Committee, Finance & Audit Committee and Convocation on a quarterly basis.

In addition remuneration will be reported in total in the Annual Report. Information to support accruals for bencher remuneration will be required for year-end reporting purposes.

Individual benchers will also receive an individual report on their own attendance on a quarterly basis.

Appendix A

Law Society of Upper Canada
Implementation of Bencher Remuneration

The framework for bencher remuneration which was the subject of the referendum, is as follows:

- In each calendar year, the first 26 days on which a bencher works will not be remunerated.
- Benchers will be remunerated for some of the activities undertaken for the Law Society, including attending Convocation and meetings of committees, working groups and task forces, sitting as members of the Law Society's Hearing and Appeal Panels, conducting pre-hearing conferences, and attending meetings of external organizations, such as LAWPRO, as the Law Society's official representative. One per diem amount will be paid to the bencher who writes the reasons for decision following a hearing or appeal.
- Only attendance at business meetings will be remunerated. Attendance at receptions, dinners, symposia and other like events will not be remunerated.
- Elected and ex-officio benchers will be eligible for remuneration.
- Remuneration would be at the rate of $500 per day and $300 per half-day.
- Travel time, preparation time and additional reason writing time will not be remunerated.

Appendix B

The Law Society of Upper Canada
BENCHER ATTENDANCE SHEET

Appendix C

The Law Society of Upper Canada

BENCHER ATTENDANCE SHEET

Law Society of Upper Canada
Implementation of Bencher Remuneration

Estimate of Remuneration
Based on the recommendations to the Finance & Audit Committee in the memo dated March 28, 2005.

		ATTENDANCE (DAYS)		
	EVENT	LOW ESTIMATE	MEDIUM ESTIMATE	HIGH ESTIMATE
	Policy			
	Convocation. Normally 10 regularly scheduled monthly meetings and typically three other Special Convocations or Committees of the Whole for a total of 13.	6	7	10
	Committee meetings. Typically 9 meetings per year (not held in Dec., Jul., Aug.).	5	6	8
	Task force, working group and sub-committee meetings. Typically 4 meetings per year.	2	3	4
	Conduct			
	Hearing Panel, Appeal Panel, Pre-hearing conferences, Hearing Management Tribunal, Proceeding Authorization Committee, Summary Dispositions, Proposal Orders (following practice review), reason preparation time Average of 400 days	5	7	10
	Other			
	Call to the Bar There are typically 4 major calls per year.	1	2	3
	Official Representative of the Law Society At most once a month for the “active” 10 months	4	7	10
	TOTAL FOR THE YEAR	23	32	45
	LESS: DEDUCTIBLE	26	26	26
	ATTENDANCES FOR REMUNERATION	0	6	19
	REMUNERATION FOR INDIVIDUAL BENCHER ATTENDANCE @ $400 (being an average for full day attendance @ $500 and half day attendance @ $300)	$0	$2,400	$7,600

	TOTAL REMUNERATION FOR 68 BENCHERS	$0	$163,000	$520,000

Appendix D

Bencher Remuneration Guidelines
Examples of Eligible and Ineligible Activities

ACTIVITY	ELIGIBLE	REASON
Bencher F attends Convocation or a committee, working group or task force as an appointed member of that group, or sits as a member of a hearing or appeal panel, or conducts a pre-hearing conference.	Yes	Specific inclusions within the framework debated by Convocation.
Bencher G is appointed to the Board of a related organization such as BAR-eX, CNE, CanLII, Federal Judicial Advisory Committee, Federation of Law Societies, Judicial Appointments Advisory Committee, Legal Aid, LibraryCo, Law Foundation of Ontario, LINK, OBAP, Ontario Bar Association Council, Ontario Centre for Advocacy Training, OJEN, or LAWPro by Convocation. Bencher G then attends a board or committee meeting of the related organization.	No	Bencher G is the appointed representative of the Law Society. As discussed above, Bencher G has fiduciary duties to that external organization and will not be eligible for bencher remuneration. Whether the above suggestion is implemented or not, a bencher may not receive remuneration from the Law Society for this attendance AND receive remuneration from the other organization. If remuneration is received from another organization this time also does not count against the deductible.
Bencher H reads the material in preparation for a hearing.	No	Preparation time specifically excluded by Convocation.
Bencher I spends two days writing reasons for a hearing decision.	Partially	According to Convocation a maximum of one day for reason writing per hearing is eligible for remuneration.
Bencher J travels to Ottawa for a Call to the Bar ceremony.	No	Travel time has been specifically excluded by Convocation. However

		attendance at the Call to the Bar ceremony will be eligible.
At the request of the Treasurer, Bencher K represents the Law Society at a function during Gay Pride week.	Yes	The Law Society's official representative at the request of the Treasurer.
Bencher L attends a meeting at the Ontario Bar Association addressing the inclusion of OBA fees in Law Society annual fees.	No	Bencher L's attendance was not requested or approved by Convocation or the Treasurer
Bencher M attends a meeting at Queens Park in her capacity as Chair of the Paralegal Task Force.	Yes	Bencher M's role as Chair was approved by Convocation, the meeting was a necessary fulfillment of her duties and Bencher M was the Law Society's official representative.
Bencher N, Chair of LibraryCo, visits a dozen counties to discuss library funding and service issues	No	Bencher N is representing LibraryCo, not the Law Society.
Bencher O, Chair of the Finance & Audit Committee meets with the CFO to discuss Committee issues	No	This meeting has the nature of preparation time.
Bencher P, in his capacity as Summary Disposition Bencher, spends three hours at his desk approving suspensions.	Yes	There is no committee and this is not a meeting, but is a core part of this function and qualifies under the specific exemption for the Summary Disposition Bencher.
Bencher Q, in her capacity as Chair of the Hearing Panel, meets with the Director of Tribunals to discuss issues.	Yes	There is no committee and this is not a meeting, but is a core part of this function and qualifies under the specific exemption for the Chairs of the Hearing and Appeal Panels.
All benchers are invited to an information session on the new Bar Admission licensing process.	Yes	Equivalent to a Committee-of-the-Whole or Special Convocation.

FOR INFORMATION

TAB L

SOLE PRACTITIONER AND SMALL FIRM TASK FORCE ("the Task Force") - INITIAL IMPLEMENTATION COSTS

Prior to submission of the Task Force's final report to Convocation, the Finance & Audit Committee was requested to assess the financial implications of the Task Force report on the 2005 financial year.

One of the core recommendations of the Task Force report is the establishment of a Sole Practitioner and Small Firm unit within the Professional Development and Competence department. This unit would initially comprise a counsel, and assistant, under the guidance of the Director of Professional Development and Competence. The unit staff will assess how the Task Force recommendations could be incorporated into the existing structure and services already provided by PD&C. There will also be undetermined consultations internally and externally with other legal groups on the Task Force recommendations.

The Task Force expects the assessment process to culminate in a proposed implementation design and business case for submission to the Professional Development, Competence and Admissions Committee and ultimately Convocation. This is expected to take approximately one year from the hiring of the counsel.

The Committee approved funding for the two new positions of counsel and assistant in the Sole Practitioner and Small Firm unit of Professional Development and Competence to commence in 2005 if the recommendations of the Task Force are to be implemented. An estimated budget for 2005 is set out below:

DETAILS	AMOUNT
Salaries and benefits for counsel, administrator and portion of technology support	$200,000
Office and travel expenses	$50,000
Indirect allocation	$75,000
Space - there is no space currently available. Reconfiguration of the new North Wing or 393 University Ave. space may be required	$10,000
TOTAL	$335,000
PRORATED FOR 2005 - It is likely that these positions will only be in place in the last quarter of the year	$84,000
ADD: One-off hiring costs	$32,000
add: Fixtures and fittings	$24,000
TOTAL FOR 2005	$140,000

Funding for this implementation assessment phase of the Task Force Report phase was not included in the 2005 operating budget. Expenditures in the current year, estimated at $140,000

would be funded from the contingency account which has a budget of $1.2 million. $399,000 of this contingency has already been allocated for additional 393 University Avenue rental costs, the Laskin legacy event and tsunami relief. The contingency may also be required to fund bencher remuneration if actual remuneration exceeds the $200,000 provided in the operating budget.

The Task Force has cost $271,000 to date. Implementing the recommendations of the Task Force Report has the potential to require new and significant expenditures by the Law Society in future years. Methods of implementing the report's recommendations are still to be resolved so there is insufficient information to accurately quantify these additional expenditures. However the immediate expenditures in 2005 represent the start of that process.

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

(1) Copy of the General Fund - Audited Financial Statements for the Year ended December 31, 2004.

(Tab A, pages 8 - 21)

(2) Copy of Lawyers Fund for Client Compensation - Audited Financial Statements for the Year ended December 31, 2004.

(Tab B, pages 25 - 28)

(3) Copy of the Annual Combined Financial Statements of the Errors and Omissions Insurance Fund and Annual Financial Statements of the Lawyers Professional Indemnity Company.

(Tab C, pages 33 - 58)

(4) Copy of LibraryCo Inc. - Audited Financial Statements for the Year ended December 31, 2004.

(TAB F, pages 65 - 76)

(5) Copy of the Statement of Compliance - Short Term Portfolio.

(TAB G, pages 77 - 78)

(6) Copy of the Statement of Compliance - Long Term Portfolio.

(Tab H, pages 79 - 80)

(7) Copy of the Compliance Report - Compensation Fund - Foyston, Gordon & Payne.

(Tab I, page 81)

(8) Copy of the Compliance Report - General Fund - Foyston, Gordon & Payne.

(Tab J, page 82)

(9) Copy of the Implementation of Bencher Remuneration.

(Tab K, page 93)

Re: 2004 Audited Financial Statements

It was moved by Mr. Chahbar, seconded by Mr. Murray, that Convocation approve the financial statements for the General Fund, the Lawyers Fund for Client Compensation, the annual combined financial statements of the Errors and Omissions Insurance and the annual

financial statements for the Lawyers Professional Indemnity Company for the year ended December 31, 2004 and that Deloitte & Touche LLP be appointed auditors of the Law Society and LibraryCo Inc. for the 2005 financial year.

Carried

Re: Implementation of Bencher Remuneration - *Information Item*

Mr. Chahbar asked that benchers who have comments on the memo set out in the Report relating to the implementation of bencher remuneration, provide them to any member of the working group studying the issue: Holly Harris, Laurence Pattillo, Gerald Swaye and Bradley Wright.

Items for Information

- LibraryCo Audited Financial Statements
- Statements of Investment Compliance
- Sole Practitioner and Small Firm Task Force Report Financial Implications

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IN PUBLIC

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REPORT OF THE LAW SOCIETY MEDAL COMMITTEE

Mr. Simpson announced the following recipients of the Law Society Medal:

Paul J. J. Cavalluzzo
Gregory D. Goulin
Charles Harnick, Q.C.
Jeffrey Leon
Christine Kates
Brendan O'Brien, Q.C.
Linda Rothstein
David Stockwood, Q.C.

And the recipient of the Lincoln Alexander Award:

Keith M. Landy

GOVERNANCE TASK FORCE REPORT

Professor Krishna presented the Report of the Governance Task Force.

Governance Task Force
April 28, 2005

Report to Convocation

Task Force Members
Clay Ruby, Chair
Andrew Coffey
Sy Eber
Abe Feinstein
Richard Filion
George Hunter
Vern Krishna
Laura Legge
Harvey Strosberg

Purpose of Report: Decision

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

OVERVIEW OF POLICY ISSUE

AMENDMENTS TO BY-LAW 6 (TREASURER)

Request to Convocation

1. Convocation is requested to approve the language of amendments to By-Law 6 based on its decisions on January 27 and March 24, 2005 to amend the By-Law.

Summary of the Issue

2. By-Law 6 (Treasurer) sets out the procedures for the Treasurer's election. Four amendments were approved by Convocation, as follows:

   a. A "run off" vote for candidates tied for last place in an election in which more than two candidates are running;
   b. Re-opening nominations, if in the period after the close of nominations and the election, there are two candidates for Treasurer and one of the candidates is no longer able to become Treasurer (e.g. appointment to the Bench, illness, withdrawal for any reason), and rearranging the date for the election;
   c. A housekeeping amendment to redesignate the day the advanced poll opens; and
   d. A housekeeping amendment to clarify that only one ballot box is to be used for the election.

3. The amendments to By-Law 6 will appear in a motion that will be distributed before or at Convocation.

THE REPORT

4. On January 27 and March 24, 2005, based on reports from the Governance Task Force ("the Task Force"), Convocation approved four amendments to procedures for the Treasurer's election in By-Law 6 (Treasurer).[1] Two of these issues involved substantive amendments to the Treasurer's election process and two were housekeeping matters.

5. A motion to amend the By-Law to add language to give effect to the amendments will be distributed before or at Convocation.

6. The following describes the amendments.

The First Substantive Issue

7. The first amendment approved by Convocation relates to section 13(2) of the By-Law, which provides that in a situation where there is a tie vote, and an additional vote would entitle one or more candidates to remain in the election, the Treasurer shall randomly

[1] The current By-Law appears at Appendix 1.

select the candidate to be removed as a candidate. This would arise when the ballot has more than two candidates, and the candidate who receives the fewest votes is removed from the election.

8. Based on the Task Force's recommendation, Convocation agreed that a fairer process would be a form of "run off" where benchers would choose between the two candidates who are tied for last place. This requires an amendment to section 13(2) of By-Law 6 to create the run off voting procedure.

The Second Substantive Issue

9. The second substantive amendment relates to the situation where, following the close of nominations[2] , there are two candidates for the position of Treasurer. If, prior to voting, one candidate is no longer able to become Treasurer (e.g. appointment to the Bench, illness), the second candidate is acclaimed. If the situation described above arose the day after voting (e.g. the elected Treasurer was appointed to the Bench), a new election would have to be conducted.

10. Convocation agreed that the same situation occurring the day before voting is held should not result in an acclamation, and based on the Task Force's recommendation, approved a process that would allow nominations to be reopened. The following are the new procedures.

11. Where there are two nominated candidates for Treasurer, if, between the close of nominations for Treasurer and the election of the Treasurer, one of the nominated candidates dies, becomes incapacitated, accepts an appointment or position incompatible with being Treasurer, or for any reason withdraws as a candidate for Treasurer, the Secretary shall:

    a. immediately cancel the election on the day described in subsection 1(1) of By-Law 6,
    b. as soon as is reasonably possible but no later than seven days after the event described in paragraph 11 notify all benchers that:

        i. the nominations have been reopened for a period of two weeks from the date of the notice,
        ii. the election day shall be arranged for a date two weeks after the two week period described in (i),
        iii. the sitting Treasurer shall continue in office until the new Treasurer is elected[3] , and

---

[2] Subsections 2 (3) and (4) read:

(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 under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

[3] By-Law 6, s. 14(2) provides that "Subject to any by-laws providing for the removal of a Treasurer from office, the Treasurer shall remain in office until his or her successor takes office."

iv. in the event that some votes were cast in the advance poll, they shall be destroyed without being examined, and all benchers will be asked to vote anew.

12. If, after the close of nominations described in paragraph 11(b)(i), there remains only one candidate nominated for election, the Secretary shall declare that candidate to be elected as Treasurer.

13. If after the close of nominations described in paragraph 11(b)(i), there are two nominated candidates and before the election, one of the nominated candidates dies, becomes incapacitated, accepts an appointment or position incompatible with being Treasurer, or for any reason withdraws as a candidate for Treasurer, the Secretary shall declare the remaining candidate to be elected as Treasurer.

The First Housekeeping Issue

14. Section 9(1) of the By-Law provides that the advance poll for the Treasurer's election begins on the day in June on which standing committees meet. Standing committees no longer meet on the same day each month.

15. For clarity, Convocation agreed that section 9(1) should be amended to change the day to the second Wednesday in June.

The Second Housekeeping Issue

16. Section 11(1) suggests that two ballot boxes may be required, one for the advance poll and one for election day. Two ballot boxes were in fact used in the last Treasurer's election.

17. Convocation agreed that section 11(1) should be amended to clarify that only one ballot box is to be used for the election.

APPENDIX 1

BY-LAW 6

Made: April 30, 1999
Amended:
June 25, 1999
December 10, 1999
May 24, 2001
October 31, 2002

TREASURER

ELECTION OF TREASURER

Time of election
1. (1) There shall be an election of Treasurer every year on the day on which the regular meeting of Convocation is held in June.

First matter of business

(2) Despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.

Nomination of candidates

2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination in writing

(2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

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 under section 3 of By-Law 5, the close of nominations of candidates shall be 5 p.m. on the fourth Friday in May.

Withdrawal of candidates

3. A candidate may withdraw from an election of Treasurer at any time before 5 p.m. on the Friday immediately preceding the first day of the advance poll by giving the Secretary written notice of his or her withdrawal.

Election by acclamation

4. If after the close of nominations, or the time for the withdrawal of candidates from the election has passed, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.

Poll

5. (1) If after the time for the withdrawal of candidates from the election has passed, 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

6. 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 By-Law.

Right to vote

7. Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

Announcement of candidates

8. (1) Subject to subsection (3), if a poll is to be conducted to elect a Treasurer, the Secretary shall, at the regular meeting of Convocation in May, announce the candidates and the benchers who nominated each candidate.

List of candidates to be sent to benchers

(2) Subject to subsection (3), immediately after the regular meeting of Convocation in May, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a list of the candidates.

Announcement of candidates in year in which there is election of benchers

(3) In a year in which there is an election of benchers under section 3 of By-Law 5, the Secretary shall, as soon as practicable after the close of nominations, send to each bencher entitled to vote in an election of Treasurer a list of the candidates that identifies the benchers who nominated each candidate.

Advance poll

9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted beginning at 9 a.m. on the day in June on which standing committees meet and ending at 5 p.m. on the day preceding election day.

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 no 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 a ballot box.

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (3) and (4), the Secretary shall remove the ballot envelope from the return envelope and put the ballot envelope into a 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.

Special procedures: voting by mail

9.1 (1) If a bencher requests a voting package from the Secretary under clause 9 (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 9 (2) (b), the bencher shall,

(a) in accordance with subsection 9 (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

10. (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.

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 at the time of that ballot.

Application of subs. (2) to second and further ballots

(3) Subsection (2) applies, with necessary modifications, to the second ballot and 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

11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer,

(a) open the ballot box used on election day, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate; and

(b) open the ballot box used at the advance poll, remove all the ballots and any ballot envelopes from the ballot box, remove the ballots from any ballot envelopes, 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

12. (1) If on any ballot there are no 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 smallest number of votes and that candidate shall be removed as a candidate in the election.

Casting vote

13. (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 give the casting vote.

Same

(2) 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, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.

TERM OF OFFICE

Taking office

14. (1) In an election of Treasurer under section 1,

(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 by-laws 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 receive honorarium

15. 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

16. 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 1.

ACTING TREASURER

Acting Treasurer
17. 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 16, the chair of the standing committee of Convocation responsible for financial matters, or if he or she for any reason is unable to act, the chair of the standing committee of Convocation responsible for admissions matters, 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 16 or 1.

Motion to Amend By-Law 6 (Treasurer) (distributed under separate cover)

2-aes

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 6
[TREASURER]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 28, 2005

MOVED BY

SECONDED BY

THAT By-Law 6 [Treasurer], made by Convocation on April 30, 1999, and amended by Convocation on June 25, 1999, December 10, 1999, May 24, 2001 and October 31, 2002, be further amended as follows:

1. Subsection 1 (1) of the By-Law is amended by adding “Subject to subsection (2),” at the beginning of the subsection.

2. Subsection 1 (2) of the By-Law is deleted and the following substituted:

Same
(2) If after the close of nominations of candidates under subsection 2 (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.

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, despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the meeting.

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

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 1 (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 3.1.

4. Section 3 of the By-Law is amended by deleting "5 p.m. on the Friday immediately preceding the first day of the advance poll" and substituting "the day of the election of Treasurer".

5. The By-Law is amended by adding the following:

Reduction in number of candidates: notice

3.1 If, after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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.

6. Section 4 of the By-Law is deleted and the following substituted:

Election by acclamation

4. If on the earlier of the time for the close of nominations of candidates and 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.

7. Subsection 5 (1) of the By-Law is amended by deleting “after the time for the withdrawal of candidates from the election has passed” and substituting “on the day on which there shall be an election of Treasurer”.

9. Section 8 of the By-Law is deleted and the following substituted:

Notice of candidates to benchers

8. If after the close of nominations of candidates, there are two or more candidates, the Secretary shall, as soon as practicable after the close of nominations of candidates, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

10. Subsection 9 (1) of the By-Law is deleted and the following substituted:

Advance poll

9. (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 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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 2 (5) and ending at 5 p.m. on the day preceding election day.

11. Subsection 9 (6) of the By-Law is amended by deleting “a ballot box” and substituting “the ballot box”.

12. Subsection 9 (7) of the By-Law is deleted and the following substituted:

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (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.

13. Section 9 of the By-Law is amended by adding the following:

Ballots to be discarded

(9) If after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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 2 (3) or (4).

14. Subsection 10 (1) of the By-law is amended by adding “for election as Treasurer” at the end of the subsection.

15. Subsection 10 (2) of the By-Law is amended by adding “of Treasurer” after “in the election”.

16. Subsection 11 (1) of the By-Law is deleted and the following substituted:

Counting votes
11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined 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.

17. Section 13 of the By-Law is deleted and the following substituted:

Casting vote
13. 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 give the casting vote.

Equal number of votes
13.1 (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
(2) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

Ballot
(3) 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
(4) 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
(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
(6) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined 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

(7) Immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation.

Same

(8) 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

(9) 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.

BY-LAW 6

Made: April 30, 1999
Amended:
June 25, 1999
December 10, 1999
May 24, 2001
October 31, 2002

TREASURER

ELECTION OF TREASURER

Time of election

1. (1) ~~There~~ 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.

~~First matter of business~~

~~(2) Despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the regular meeting of Convocation in June.~~

Same

(2) If after the close of nominations of candidates under subsection 2 (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.

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, despite subsection 6 (1) of By-Law 8, the election of Treasurer shall be the first matter of business at the meeting.

Nomination of candidates
2. (1) A candidate for election as Treasurer shall be nominated by two benchers who are entitled to vote in Convocation.

Nomination in writing
(2) The nomination of a candidate shall be in writing and signed by the candidate, to indicate his or her consent to the nomination, and the two benchers nominating the candidate.

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 under section 3 of By-Law 5, 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 1 (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 3.1.

Withdrawal of candidates
3. A candidate may withdraw from an election of Treasurer at any time before ~~5 p.m. on the Friday immediately preceding the first day of the advance poll~~ the day of the election of Treasurer by giving the Secretary written notice of his or her withdrawal.

Reduction in number of candidates: notice
3.1 If, after the close of nominations of candidates under subsection 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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.

~~Election by acclamation~~
~~4. If after the close of nominations, or the time for the withdrawal of candidates from the election has passed, there is only one candidate, the Secretary shall declare that candidate to be elected as Treasurer.~~

Election by acclamation
4. If on the earlier of the time for the close of nominations of candidates and 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
5. (1) If ~~after the time for the withdrawal of candidates from the election has passed~~ on the day on which there shall be an election of Treasurer, 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
6. 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 By-Law.

Right to vote
7. Every bencher entitled to vote in Convocation is entitled to vote in an election of Treasurer.

~~Announcement of candidates~~
~~8. (1) Subject to subsection (3), if a poll is to be conducted to elect a Treasurer, the Secretary shall, at the regular meeting of Convocation in May, announce the candidates and the benchers who nominated each candidate.~~

~~List of candidates to be sent to benchers~~
~~(2) Subject to subsection (3), immediately after the regular meeting of Convocation in May, the Secretary shall send to each bencher entitled to vote in an election of Treasurer a list of the candidates.~~

~~Announcement of candidates in year in which there is election of benchers~~
~~(3) In a year in which there is an election of benchers under section 3 of By-Law 5, the Secretary shall, as soon as practicable after the close of nominations, send to each bencher entitled to vote in an election of Treasurer a list of the candidates that identifies the benchers who nominated each candidate.~~

Notice of candidates to benchers
8. If after the close of nominations of candidates, there are two or more candidates, the Secretary shall, as soon as practicable after the close of nominations of candidates, notify each bencher entitled to vote in an election of Treasurer of the candidates and of the benchers who nominated each candidate.

~~Advance poll~~

~~9. (1) For the purpose of receiving the votes of benchers entitled to vote in an election of Treasurer who expect to be unable to vote on election day, an advance poll shall be conducted beginning at 9 a.m. on the day in June on which standing committees meet and ending at 5 p.m. on the day preceding election day.~~

Advance poll

9. (1) An advance poll shall be conducted,

(a) beginning at 9 a.m. on the day 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 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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 2 (5) and ending at 5 p.m. on the day preceding election day.

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 no 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 a ballot box the ballot box.

~~Same~~

~~(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (3) and (4), the Secretary shall remove the ballot envelope from the return envelope and put the ballot envelope into a ballot box.~~

Same

(7) If a bencher is voting at the advance poll under clause (2) (b), after complying with subsections 9.1 (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 2 (3) or (4), there are two or more candidates, and if before the day of the election of Treasurer under subsection 1 (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 2 (3) or (4).

Special procedures: voting by mail

9.1 (1) If a bencher requests a voting package from the Secretary under clause 9 (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 9 (2) (b), the bencher shall,

(a) in accordance with subsection 9 (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

10. (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, with necessary modifications, to the second ballot and 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~~

~~11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined on a ballot, the Secretary shall, in the absence of all persons but in the presence of the Treasurer,~~

~~(a) open the ballot box used on election day, remove all the ballots from the ballot box, open the ballots and count the votes cast for each candidate; and~~

~~(b) open the ballot box used at the advance poll, remove all the ballots and any ballot envelopes from the ballot box, remove the ballots from any ballot envelopes, open the ballots and count the votes cast for each candidate.~~

Counting votes

11. (1) On election day, after all benchers entitled to vote in an election of Treasurer have voted or declined 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

12. (1) If on any ballot there are no 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 smallest number of votes and that candidate shall be removed as a candidate in the election.

~~Casting vote~~

~~13. (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 give the casting vote.~~

~~Same~~

~~(2) 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, the Treasurer shall randomly select the candidate to be removed as a candidate from the election.~~

Casting vote

13. 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 give the casting vote.

Equal number of votes

13.1 (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

(2) Each bencher entitled to vote in an election of Treasurer is entitled to vote in a poll conducted under subsection (1).

Ballot

(3) 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

(4) 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

(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

(6) After all benchers entitled to vote in a poll conducted under subsection (1) have voted or declined 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

(7) Immediately after counting the votes cast for each candidate, the Secretary shall report the results to Convocation.

Same

(8) 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

(9) 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

14. (1) In an election of Treasurer under section 1,

(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 by-laws 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 receive honorarium

15. 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

16. 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 1.

ACTING TREASURER

Acting Treasurer

17. 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 16, the chair of the standing committee of Convocation responsible for financial matters, or if he or she for any reason is unable to act, the chair of the standing committee of Convocation responsible for admissions matters, 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 16 or 1.

It was moved by Professor Krishna, seconded by Mr. Wright, that Convocation approve the amendments to By-Law 6 as set out in the motion distributed under separate cover.

Carried

SOLE PRACTITIONER/SMALL FIRM TASK FORCE REPORT

Ms. Potter and Mr. Feinstein presented the Report of the Sole Practitioner/Small Firm Task Force and thanked Joyce Kaplan and Sophia Sperdakos for their work and assistance.

March 24, 2005

Final Report of the Sole Practitioner and Small Firm Task Force

Task Force Members
Abe Feinstein, Q.C. (Co-chair)
Judith Potter (Co-chair)
Carole Curtis
Alan Gold
Gary Lloyd Gottlieb, Q.C.
Thomas Heintzman, O.C, Q.C.
Laura Legge, Q.C.
Dan Murphy, Q.C.
Ross Murray, Q.C.
Alan Silverstein

Purposes of Report: For Decision

Prepared by the Policy Secretariat
416-947-5209

TABLE OF CONTENTS

DEFINITIONS

A number of terms (in bold print, here) are used throughout this report. To assist the reader they are defined here as follows:

Equality-seekers: Those lawyers who consider themselves to be a member of one, or more than one, equality-seeking community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation or gender.

Geographic regional areas for the research:

Toronto: Composed of firms with 416 area codes closer to the Toronto city centre.

Rest of the GTA: Composed of the remaining firms with 416 area codes, all firms with 905 area codes and some of the firms with 705 area codes (depending on distance from Toronto, the outside boundaries being north to Orillia, east to Port Hope and west to Burlington).

Other Urban areas: Composed of most other municipalities with populations over 50,000.

Non-Urban areas: Composed of some municipalities with populations over 50,000 that are located in more remote locations (such as Northern Ontario), and all other less populated and rural regions.

Legal organizations: Legal organizations that serve the profession and regularly provide input to the Law Society on policies its develops. Many of these legal organizations are listed in Appendix 5.

Target group: Lawyers in Ontario practising as sole practitioners or in firms of five or fewer lawyers. The target group is broken down into the following subgroups:

- sole practitioners alone: Sole practitioners who practise alone without other lawyers in the same office space;
- sole practitioners sharing space: Sole practitioners who share office space with other lawyers;
- Sole proprietors: Sole practitioners who employ up to four lawyers;

Partners:	Partners practising in firms of five or fewer lawyers;
Employees or associates:	Lawyers who are employees/associates in firms of five or fewer lawyers.

Non-target group: Lawyers practising in firms of more than five lawyers.

EXECUTIVE SUMMARY

Overview

Lawyers practising as sole practitioners or in firms of five or fewer (the "target group") are essential to the provision of lawyer services to the public of Ontario. Ontario has had an independent legal profession for over two hundred years. The large law firm practice structure is a relatively recent phenomenon. Sole and small firm practice has been the traditional backbone of the profession. Target group lawyers continue to be at the forefront of the delivery of lawyer services in Ontario, particularly to individuals. The Sole Practitioner and Small Firm Task Force's mandate has been to examine the nature of sole and small firm practice in Ontario, including the challenges and pressures lawyers in those practices face and the implications for the public's access to justice and lawyer services, and to make recommendations to address issues its examination reveals. It included within its methodology specific attention to the experience of target group lawyers who consider themselves to be members of equality-seeking communities.

To address its mandate the Task Force conducted a detailed telephone survey of target group lawyers and, for comparison purposes, lawyers in larger firms (the "non-target group"). It has obtained additional information about the target group through interviews and focus groups.

The Research Findings

The research findings tell a compelling story about what it is to be a sole or small firm practitioner in Ontario; about balancing professional and personal values with the requirements of operating a small practice; and about the factors and challenges that influence a target group lawyer's success, ability to service clients and overall sense of satisfaction.

Target group lawyers make up approximately 52% of the lawyers in private practice in Ontario and 94% of all the firms in the province. When individual citizens in Ontario require the services of a lawyer to handle a wide range of legal matters such as real estate transactions, will preparation, estates work, representation in matrimonial, other civil disputes or criminal proceedings, advice for small businesses, and appearances before administrative tribunals, overwhelmingly they retain sole and small firm practitioners.

Target group lawyers are located throughout Ontario, in small and large communities, in urban and rural locations. They provide the vast majority of lawyer services in the Rest of the GTA outside of Toronto and in the Non-Urban areas of Ontario; legal aid services throughout

the province; and virtually all lawyer services available in languages other than English, French or Italian. They are the most likely group to include lawyers from diverse backgrounds able to address the cultural, linguistic and community needs of Ontario's diverse population.

At the same time, however, target group lawyers are somewhat older than the non-target group overall. Younger lawyers are not entering target group practice as frequently as they are non-target group practice. Outside of urban areas, where there are fewer non-target group firms, the absence of younger lawyers appears more prevalent. Finally, there is a lower percentage of women in the target group than in the non-target group. These realities raise questions about whether the target group is renewing itself, particularly in less populated parts of the province and in certain practice areas, and whether pressures and challenges the target group faces make it more difficult to attract lawyers to target group practice structures.

The research findings illustrate that lawyers choose sole or small firm practice for a variety of reasons. In many cases they desire a kind of independence they perceive is less available in a larger firm environment. They are prepared to make certain trade-offs, including to some degree lower income, for the life-work balance they hope this practice structure affords. In some cases lawyers choose this practice structure because they have not been able to find work in other settings.

Although target group lawyers generally express optimism about the financial viability of their practices and their ongoing ability to provide lawyer services to the public, it is also true that a significant proportion of these lawyers are concerned about the future. Many identify pressures that exist precisely because of the nature of their practice structures, prospective client base and practice areas. They are faced with ever-rising overhead costs and practice management challenges and limited financial ability to weather these. They spend a significant proportion of their time on administrative work. Although technology is important to their ability to survive, many feel unable to make the necessary investment. In some cases their practice areas are not growing or they are under severe pressure to reduce fees below the point of what is necessary to sustain their practices.

Sole practitioners alone report the highest degree of dissatisfaction and the presence of the highest number of factors that can lead to financial instability. Isolation from other lawyers distinguishes the experience of many of these lawyers from the rest of the target group and, for some, threatens the viability of their practices.

Difficulty in financing practices is a challenge unique to target group lawyers and is linked to the nature of their client base. Individual clients generally have less ability to pay than do corporate, government or institutional clients. This affects not only the amount of money clients have available for or are willing to commit to lawyer services, but the timing of their payment. The result is that target group lawyers are often left to finance a client's litigation, delay receipt of payment until a matter is completed, or reduce or forgive fees to satisfy client demand. To exacerbate this reality, target group lawyers also report greater difficulty in securing financing and lines of credit from financial institutions. Rising overheads and general market pressures to reduce fees that affect all lawyers have a greater impact on many target group lawyers because of the narrower margins of financial viability they face.

Target group lawyers identified a number of "shortages" of lawyer services in their communities. The term was used to canvass both supply of and demand for these services. Lawyers identified geographic areas, areas of practice or demographic communities that have too few lawyers to service the need. In some cases, the undersupply of lawyers is linked to

inability of the client base to purchase the services at a rate that will sustain sole and small firm practices.

On the other side of the equation lawyers also identified an issue of clients who can afford to pay reasonable fees for lawyer services, but are unwilling to do so because they do not appreciate the added value lawyers bring to legal matters.

The research also reveals the problems that an increasingly complex justice system creates and the effect this has on affordable legal services. It speaks as well to limitations in the legal aid system, which does not cover all those who need legal aid and offers inadequate payment to lawyers who represent the legally aided client.

Finally, the research reveals that although target group lawyers from equality seeking groups have many of the same experiences as the target group as a whole, in a number of ways their experience is unique and needs further consideration.

The Recommendations

For the large majority of Ontario's public, ongoing access to lawyer services is dependent upon current target group lawyers maintaining viable practices and additional lawyers choosing to work as sole and small firm practitioners.

The Task Force's recommendations have been developed to shed light on the importance of sole and small firm lawyers, facilitate those lawyers' ability to continue to provide their unique and valuable service to the public of Ontario and draw attention to systemic issues that affect the public's access to justice and to lawyer services.

The Task Force's recommendations focus on the actions it considers essential to address the issues the research has revealed, namely,

- providing more tools and resources for the benefit and use of sole and small firm practitioners, including a Law Society unit within the Professional Development and Competence department dedicated to the target group;
- providing accurate information on the nature of sole and small firm practice and the particular challenges of practising in isolation from other lawyers, as well as providing a self-assessment questionnaire that will afford lawyers an opportunity to consider their suitability for target group practice;
- addressing systemic issues that affect the public's access to justice and to lawyer services;
- continuing to educate the public on the valuable role lawyers play in ensuring that the public's legal needs are met;
- examining further the research on equality-seekers to determine whether there are additional recommendations that can or should address issues unique to this subgroup within the target group;

- encouraging all legal organizations to continue to work on assisting and speaking up for target group lawyers on issues related to financing practices and obtaining collective and affordable health, dental and other insurance coverage; and

- continuing to gather information on the target group, periodically, to update the current findings.

Recommendation 1

The Law Society should establish within the Professional Development and Competence department a unit dedicated to sole and small firm practitioners.

A sole/small firm practice management and technology advisor with high visibility as a resource person should lead the unit.

The unit should focus on active assistance through practice management advisory services, continued development of supportive tools and communication of available practice resources.

The Law Society should immediately advertise for and hire a full-time counsel charged with the responsibility for working with the Director of Professional Development and Competence to investigate and analyse the best way to implement the unit design and to produce appropriate proposals for that design and a business case. The counsel will consult on effective tools for assisting those in the target group.

Without limiting the direction the design of the unit will take, the Task Force recommends that the counsel investigate the following possible approaches:

- *A hot-line whose staff is dedicated to practice management advice for the target group;*

- *Ongoing development of practice management templates that can be downloaded for use;*

- *Enhancement of the current Law Society webpage dedicated to sole and small firm practitioners;*

- *More mentoring designed for target group practices, which might include lawyers being connected to mentors from similar practice structures;*

- *Further development of topic-specific practical tips such as changing practice areas;*

- *The creation of a self-assessment questionnaire that lawyers may use to assess whether they have the personal competencies to be a sole practitioner, particularly one who practises alone; and*

- *Regularly timed e-mails to target group lawyers.*

The investigation of resources for the unit should also include technology resource support (not maintenance and repair support), which could include conferences directed at target group lawyers addressing topics of general interest and additional sessions customized to practice

areas. To the extent that LAWPRO, the Law Society and other legal organizations can liaise on this component, such interaction should be encouraged.

Recommendation 2

In the investigation of the ongoing development of practical tools and supports the counsel should also focus on tools that address key success factors for target group lawyers, in particular,

- *planning and launching the practice (business and marketing plans);*
- *developing strategies for*
  - *client development and retention;*
  - *use of technology;*
  - *finances, resource and staff management;*
- *choosing practice location; and*
- *determining the number of practice areas (specialist versus general practice).*

Recommendation 3

The counsel should also investigate active and passive "matching" to connect target group lawyers with others in the target group and with other potential groups and individuals (including non-lawyers) with whom they might share resources, provide coverage for temporary work absences, network, etc.

Without limiting the direction of the design of the matching program, the Task Force recommends that the counsel consider the following:

- *A listserv of target group lawyers to connect them with one another;*
- *The possible linking of sole and small firms with other firms for mentoring;*
- *Exploring the feasibility of free of charge advertising on the Law Society website, in the Ontario Reports or Ontario Lawyers Gazette for target group lawyers to seek shared staff, services, resources, articling students, short-term coverage, etc;*
- *Connecting CLE target group participants for networking lunches;*
- *The role legal organizations might play in this initiative, including coordinating mentoring and other programs.*

Recommendation 4

All lawyers intending to practise as sole practitioners (Law Society member status Category A) should be required to take a mandatory Law Society start-up workshop. Category A lawyers are those lawyers who practice alone, practice alone but share office space, practice under their own name but have employed lawyers or practice in association with other lawyers. Category A lawyers are responsible for the books and records of the practice.

The current workshop structure should be examined to consider additional components, including those directed at sole practitioners alone.

Without limiting the design of the program the Task Force recommends that counsel should investigate and provide options on the following:

- *Nature of the program, including whether it should be free or not;*
- *The advantages and disadvantages of a live or videotaped program;*
- *Length of program (one or two days; module based);*
- *Timing of the program (e.g. within one year of entering practice);*
- *Provision of downloadable templates for practice;*
- *Whether there should be any exceptions for participation in the mandatory program;*
- *Consequences of non-attendance.*

The start-up workshop should also continue to be offered to all interested lawyers who are not otherwise required to attend and their participation should be encouraged.

Implementation: For recommendations 1-4, the counsel and administrative staff proposed in paragraph 154 should be hired immediately. There should be a report to the Professional Development, Competence and Admissions Committee on a proposed implementation design and business case within one year from hire.

Recommendation 5

The Law Society should develop an ongoing communications strategy to inform and educate lawyers, law students and articling students on the opportunities, challenges, and key success factors of sole and small firm practice.

The communication strategy should raise awareness of the challenges of practising as a sole practitioner alone, the skills required to succeed and the alternatives to this practice structure.

The strategy should include communicating the benefits of working in communities around the province.

Without limiting the development of the communications strategy, the following components should be considered:

- *Providing information to any lawyer who notifies the Law Society of a change in practice status to sole or small firm practice, in particular sole practitioner alone status;*
- *Where relevant, continuing legal education programs and start-up workshops should address sole and small firm practice considerations;*
- *Developing regular opportunities to speak on the issues at law schools and during the course of the licensing program;*
- *Enlisting legal organizations and successful sole and small firm practitioners to speak about the opportunities and educate about the challenges of sole and small firm practice;*
- *Developing a strategy for keeping benchers informed on the challenges and opportunities of sole and small firm practice so they are able and encouraged to speak with practitioners within the legal community on these issues.*

Implementation: The Professional Development, Competence and Admissions Committee to provide a communications strategy proposal to Convocation – January 2006.

Recommendation 6

The Law Society should continue to pursue initiatives designed to enhance the public's access to lawyer services both independently and where appropriate with other legal organizations. Without seeking to limit the nature of those initiatives the Task Force recommends that,

- *the Law Society continue to advocate, through its Government Relations Committee, its Access to Justice Committee and the Legal Aid Coalition on Tariff Reform, for increased availability of legal aid to individuals in Ontario, for enhancements to the Legal Aid tariff and for increased administrative efficiencies;*

- *Legal Aid Ontario be encouraged to engage in discussions that recognize the target group's overwhelming representation on the legal aid panel and the access to justice and to lawyer services issues identified in the Strategic Communications Inc. reports;*

- *legal organizations be encouraged to initiate discussions for the expansion of income tax deductibility for legal fees incurred by individuals;*

- *the Law Society, through its Access to Justice Committee, consider ways in which to address systemic barriers existing within the legal system, including those related to costs, time delays and the complexity of court structures;*

- *the Law Society, through the Government Relations Committee, encourage greater and more direct liaison between the Ontario government and the Law Society to address issues concerning the cost and accessibility of the legal system to individuals in Ontario. Specifically, the goal would be to ensure that the Law Society is consulted and given an opportunity to provide input on changes and developments in the legal system that affect the public's access to justice and to lawyer services prior to their adoption.*

Implementation: The Government Relations Committee and the Access to Justice Committee should report on possible approaches to implement these recommendations in September 2005.

Recommendation 7

The Law Society, through the Access to Justice Committee and in conjunction with relevant legal organizations, should continue to investigate the issues of shortages of lawyer services and options for addressing any such shortages. In particular, the investigation should consider whether there are shortages of lawyers in certain geographic communities, demographic and cultural communities or practice areas, and if so, address the causes and possible solutions.

Without seeking to limit the direction of the investigation or the possible solutions, the Task Force recommends that the following be considered:

- *A statistical study of the issues;*
- *Enhanced communication of regional opportunities to establish practices; and*

- *Possible incentives to practise in under-serviced regions or practice areas.*

To achieve solutions it is essential that the Law Society have the cooperation of legal organizations in this investigation and in crafting possible solutions.

Implementation: The Access to Justice Committee should report on possible approaches to implementing these recommendations in September 2005.

Recommendation 8

The Law Society, through the Access to Justice Committee and the Law Society's Communications department, should continue to educate the public about the integral and valuable role lawyers play in ensuring that the public's needs are met. The Law Society should continue to endorse, where appropriate, the efforts of other legal organizations to do the same.

Implementation: The Access to Justice Committee and the Communications department should report on possible approaches to implementing these recommendations in June 2005.

Recommendation 9

The Task Force recommends that the Equity and Aboriginal Issues Committee (EAIC) consider the Report on Sole Practitioners and Employee/Associates from Equality Seeking Communities in the context of its mandate and make recommendations to Convocation it considers appropriate. The Task Force further recommends that in considering the report and possible recommendations, EAIC first liaise with those other standing committees that are responsible for other recommendations within this report.

Recommendation 10

The Law Society should involve other legal organizations in Ontario by sending them this report. It should draw their attention to this recommendation and to those aspects of the survey report and focus group reports that discuss the issues of financing practices and maintaining affordable health, dental and other coverage. It should encourage those organizations to continue their efforts to assist lawyers.

Recommendation 11

The Law Society should continue to track target group demographics and experience in the following ways:

- *Conduct follow-up surveys of the target group every two years for the sole and small firm practitioners unit's use;*

- *Track the impact of each of the previous 10 recommendations;*

- *Undertake a project to adopt consistent terminology, within the Law Society and with LAWPRO, for identifying membership status according to practice description (structure) and firm size. The terminology should differentiate between a sole practitioner who practises alone without other lawyers in the same office space; a sole practitioner who practises with other lawyers he or she employs (sole proprietor); a sole practitioner who practises "in association" with*

other sole practitioner(s) or a law firm; a sole practitioner who shares office space with other lawyers, but is not practising "in association" with them; a partner in a law firm; an employee in a law firm; or an associate in a law firm;

- *Investigate collecting information from members on indicia of isolation, number of practice areas, and on other practice management factors that would be useful in designing and offering the tools, supports and matching referred to in Recommendations 1,2 and 3; and*

- *Refine the capability to collect and provide information according to practice description (structure) and firm size on and through the Law Society database.*

Implementation: The Professional Development, Competence and Admissions Committee should provide a proposed design for the follow-up survey in February 2006.

THE REPORT

INTRODUCTION

1. Lawyers practising as sole practitioners or in firms of five or fewer make up approximately 52% of the lawyers in private practice in Ontario and 94% of all the firms in the province ("the target group"). When individual citizens in Ontario require the services of a lawyer to handle a wide range of legal matters such as real estate transactions, will preparation, estates work, representation in matrimonial, other civil disputes or criminal proceedings, advice for small businesses, and appearances before administrative tribunals, overwhelmingly they retain lawyers in the target group. Target group lawyers report that 77% of the clients they represent are individuals.[1]

2. Target group lawyers are located throughout the province, in small and large communities, in urban and rural locations. They offer services in a range of languages, constitute the greatest percentage of lawyers who do legal aid work and do significant amounts of pro bono work. The target group has proven to be the most likely to include lawyers from diverse backgrounds able to address the cultural, linguistic and community needs of Ontario's diverse population. For the large majority of Ontario's public, it is target group lawyers who provide them with access to the justice system.

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[1] The statistical findings cited herein, unless otherwise indicated, are from the research the Task Force commissioned and are found in three reports of Strategic Communications Inc., all set out as Appendices to this report: Appendix 1: *Sole Practitioners and Lawyers in Small Firms: Distinctive Characteristics, Satisfaction and Financial Viability, Perceptions of Shortages of Legal Services, April 7, 2004* (the "survey report"); Appendix 2: *Sole Practitioners and Employees/Associates in Small Firms: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment, August 23, 2004* (the "focus group report"); and Appendix 3: *Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment, October 6, 2004* (the "equality-seekers report"). The Task Force report draws implications and conclusions about the whole of the target group and the non-target group from the survey samples in this research. The margin of error for the target group is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

3. In recent years, pressures on the target group have been increasing, with potentially severe implications for the future delivery of lawyer services and inevitably, the public's access to justice. In March 2003, Convocation established a Task Force to examine the issues that affect the viability of sole and small firm practitioners and the implications for access to justice and to lawyer services, and to develop recommendations to address those issues. It was to include within its methodology and report specific attention to the experience of target group lawyers who consider themselves to be members of equality-seeking communities.

4. The Task Force members are: Abe Feinstein, Q.C. (co-chair), Judith Potter (co-chair), Carole Curtis, Alan Gold, Gary Lloyd Gottlieb, Q.C., Thomas Heintzman, O.C., Q.C., Laura Legge, Q.C., Dan Murphy, Q.C., Ross Murray, Q.C., and Alan Silverstein. Michelle Strom, President of LawPRO and bencher Brad Wright also participated in the meetings. A consultant, Joyce Kaplan, assisted the Task Force with research, planning and advice. Sophia Sperdakos is staff to the Task Force.

5. The Task Force has had a unique opportunity to go beyond anecdotal information and formally study the target group's experiences. It has surveyed target group lawyers and, for comparison, "non-target group" lawyers (from firms of more than five); conducted additional in-depth follow-up interviews with target group lawyers; and conducted focus groups of target group lawyers, including equality-seekers.

6. The Law Society has not previously conducted extensive research on the target group. The information the research reveals is both complex and illuminating. The findings tell a compelling story about what it is to be a sole or small firm practitioner in Ontario; about balancing professional and personal values with the requirements of operating a small practice; and about the factors and challenges that influence a practitioner's success, ability to service clients and overall sense of satisfaction.

7. The legal profession in Ontario plays a vital role in protecting the values on which our society is based. The service barristers and solicitors provide advances these values on a daily basis. For most of Ontario's public, target group lawyers are the face of the legal profession. The role is a demanding one, made all the more so by the increasingly complex environment in which lawyers must practise. All lawyers face challenges in practising their profession and managing their practices. That said, the research demonstrates that a unique 'clustering' of factors affects target group lawyers specifically and that other factors may affect them more intensely than they would lawyers in larger firms.

8. The Law Society has an essential role to play in supporting the target group so that individual citizens of Ontario continue to have access to lawyer services that are an essential component of the justice system. The Task Force intends its report and recommendations to shed light on the importance of target group lawyers, to facilitate the group's ability to continue to provide its unique and valuable service to the public of Ontario and to draw attention to systemic issues that affect the public's access to justice and to lawyer services.

RESEARCH ON SOLE PRACTITIONERS AND SMALL FIRM LAWYERS

9. What is the nature of sole and small firm practice in Ontario? The Task Force set out to learn as much as it could to answer this question, so that any recommendations it would ultimately make would be grounded in the actual experience of the group it is studying.

10. As with any study of this nature the information answers some questions and leads to others. It provides a foundation on which additional research can be undertaken. It may prove to be a valuable resource for other projects or initiatives.

11. In this part of its report the Task Force discusses those key statistical findings of the research that have led to its recommendations. It does not seek to replicate the in-depth and valuable reports that Strategic Communications Inc. has prepared, set out at Appendices 1, 2 and 3, nor to provide a detailed analysis of the research findings. The Task Force considers the Strategic Communications Inc. reports essential reading for anyone interested in the legal profession in Ontario, and indeed in Canada.

12. In highlighting the statistical findings that have influenced its recommendations, however, the Task Force seeks to place those recommendations in context for Convocation's consideration.

13. The statistics are more than just numbers. Through them a story unfolds that clearly identifies who the members of the target group are, how their experiences compare with those of lawyers outside the target group and what considerations affect both target group practices and the Ontario public's access to justice and to lawyer services.

THE NATURE OF THE RESEARCH

14. The Law Society retained Strategic Communications Inc. in November 2003 to conduct quantitative and qualitative research to explore,

- comparisons between lawyers in sole practices and small firms of five or fewer (the "target group"), and lawyers in larger firms (the "non-target group");
- perceived shortages of lawyer services in smaller communities in Ontario;
- financial viability of the target group; and
- the population of "equality-seekers" who are part of the target group. [2]

15. The research looked at five different sub-groups within the target group, according to their "practice context" (structure):[3]

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[2] See definition section at the beginning of this report.

[3] The Law Society assigns a member status code to each lawyer according to how that lawyer identifies his or her practice context. Currently the only options for members in private practice in Ontario to select from, and corresponding member status codes, are: Sole Practitioner - "A", Partner in Law Firm member - "B", Employee in Law Firm - "C", or Associate in Law Firm - "D". The research was designed to explore differences based on firm size (target and non-target group lawyers) and also differences within the target group, including among sole practitioners. Therefore, three categories of sole practitioner practice contexts were defined, to explore differences between lawyers who practice alone, as compared to those who practice with other lawyers who are their employees or associates, or with whom they share space.

- Sole practitioners who practise alone without other lawyers in the same office space ("sole practitioners alone");
- Sole practitioners who share office space with other lawyers ("sole practitioners sharing space");
- Sole practitioners who employ up to four lawyers ("sole proprietors");
- Partners practising in firms of five or fewer lawyers ("partners"); and
- Lawyers who are employees/associates in firms of five or fewer lawyers ("employees" or "associates").

16. The research consisted of,

- a telephone opinion survey of lawyers in private practice that the consultants and a Law Society working group of benchers and staff developed (the Survey Questionnaire is attached to the survey report);

- follow-up long interviews with a number of lawyers in the target group (the Long Interview Guide is attached to the survey report); and

- nine focus group discussions (one Moderator's Guide is attached to the focus group report and a second Moderator's Guide is attached to the equality-seekers report).[4]

17. Specifically, Strategic Communications Inc. administered the survey to 553 target group lawyers and 171 non-target group lawyers used as the control group. It also interviewed an additional 8 target group lawyers who practise in geographic communities defined for the purposes of the survey as "at risk" of losing access to lawyer services, because there are two or fewer lawyers in the areas, and both are over the age of 55. It conducted an additional 29 follow-up in-depth interviews of target group lawyers who had identified access, financial viability or satisfaction concerns. To illustrate the nature of practice within the target group, the survey report compares target group results with those of the non-target group.

18. Building on the survey findings, the focus group research explored within the target group similar themes as those listed in paragraph 14 above, including,

- reasons for choosing a specific practice context;
- individuals' perceptions of the benefits and drawbacks of their chosen practice context;
- perceptions of the financial viability of their chosen practice context;
- the future of the target group; and
- possible policy initiatives.

[4] The research was designed to reveal, and accordingly the information reported from the findings reflects, the perceptions and opinions of the lawyers surveyed, interviewed or who participated in the focus groups. Moreover, it is important to recognize that individual respondents may interpret the meaning of questions differently. Reference to the text of the Survey Questionnaire, Long Interview Guides and Moderator's Guides may be helpful in reviewing the Strategic Communications Inc. reports.

RESEARCH HIGHLIGHTS

19. In this section of the report the Task Force highlights 5 key areas of the research, as follows:

    a. Who is in the target group;
    b. The target group's practice profile:

        - Where the members practise;
        - Who their clients are;
        - What type of law they practise;
        - Practice stability;
        - How much legal aid work they accept;
        - Income and other aspects of the practice;

    c. Overall, how satisfied target group members are with their practices and how financially viable their practices are, with particular attention to the benefits and drawbacks of working in sole practice and small firms;

    d. What factors contribute to practice survival and success;

    e. What systemic issues affect the public's access to justice and to lawyer services.

20. The target group is not a single uniform entity. In fact, the research demonstrates that although there are many common themes affecting the entire target group, there are also distinctions among the sub-groups described in paragraph 15 above, in particular respecting sole practitioners alone. This will be highlighted below and in the recommendations.

a. WHO IS IN THE TARGET GROUP?

21. Overall, the target group is older, has a lower proportion of women, is slightly more racially diverse and exhibits greater linguistic diversity than the non-target group.

Age

22. The average age of target group lawyers is 49 years compared with 42 years in the non-target group. Within the target group, sole practitioners alone have the highest average age, at 51 years, followed by sole practitioners sharing space, at 50 years. It is worth noting that only 12% of respondents in the target group are under the age of 35, compared with 36% in the non-target group.

23. On average men and women in equality-seeking groups are slightly younger and more recently called to the bar than their counterparts in the rest of the target group.

Gender

24. Twenty-one percent (21%) of the target group is made up of women, compared with 33% of the non-target group. Within the target group women are more likely to be associates or employees of small firms (33%) and less likely to be partners in small firms (13%). This trend is repeated in the non-target group where 33% percent of all

respondents are women, but 47% of all employees/associates are women and only 13% are partners.

25. Within the target group, women comprise a higher percentage of equality-seekers than they do of the target group as a whole, 37% compared with 21%. Women respondents in the target group were less likely to consider themselves equality-seekers by virtue of their gender than were women in the non-target group.

Diversity

26. The target group is slightly more racially diverse than the non-target group. Nineteen percent (19%) of the target group identifies itself as other than "white", as compared with 16% in the non-target group.[5]

27. Eighty percent (80%) of target group members and 91% of the non-target group list English among their first language. Thirty percent (30%) of the target group compared with 20% of the non-target group mentioned one or more other languages as a first language.

28. To the extent that non-target group lawyers mentioned speaking another language, it was most commonly French (9%) or Italian (3%), with 8% citing other non-English languages. By contrast, in the target group 5% mentioned French, 4% mentioned Italian and 21% cited the other top non-English language(s), which included Italian, Cantonese, German, Polish, Punjabi, Greek, Urdu, Portuguese and Spanish. Sole practitioners alone and sole practitioners sharing space reported the lowest percentage of English as a first language and a high percentage of first languages other than English.

29. Respondents were also asked in what languages they offer services. Thirty-four percent (34%) of the target group is able to offer lawyer services in a language other than English. This compares with 22% of the non-target group. There is variation within the target group:

    a. More women than men in the target group offer services in languages other than English, 42% compared with 32% of men;

    b. Thirty-seven percent (37%) of sole practitioners alone offer services in languages other than English; and

    c. Target group services in a language other than English drops to 24% among the target group in Non-Urban areas.[6]

[5] This is based on responses to a survey question about membership in certain demographic communities, as Canada Census defines them. The survey asked respondents which applied to them from the following: Aboriginal (Native American, Status/Non-status Indian, Metis or Inuit), White, Chinese, South Asian (eg. East Indian, Pakistani, Sri Lankan, etc.) Black (African-Canadian/African-American, African-Caribbean, Continental African), Filipino, Latin American, Southeast Asian (eg. Cambodian, Indonesian, Laotian, Vietnamese, etc), Arab, West Asian (e.g. Afghan, Iranian, etc.) Japanese, Korean, Other. This was a separate survey question from one that asked whether respondents considered themselves to be equality seekers by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation or gender.

30. Of those in the target group who offer their services in a language other than English, 46% mentioned French or Italian, while 54% mentioned all other languages. To the extent that non-target group lawyers are servicing clients in a language other than English, 81% mentioned French or Italian; only 19% mentioned all other languages.

31. Twenty-six percent (26%) of the target group and 28% of the non-target group identified themselves as equality-seekers. Twenty-eight percent (28%) of target group respondents who indicated they were members of equality-seeking groups cited gender as a reason for so identifying themselves as compared with 58% of the non-target group who so identified. All respondents who cited gender as a reason were women.

32. Forty-seven percent (47%) of equality-seekers in the target group mentioned ethnicity compared to 42% in the non-target group. Thirty-seven percent (37%) of equality-seekers in the target group cited race, as compared to 19% in the non-target group.

Demographic-related Implications

33. The Strategic Communications Inc. survey report notes certain key findings that emerge from identifying target group demographics and comparing them with the non-target group. While only the main points have been set out here, the survey report goes into greater detail about age, gender, and diversity. The Task Force has noted in particular the following points, which are important to its conclusions and recommendations:

    a. Given that the target group is older than the non-target group and that the age is even higher among

        i. sole practitioners alone [7],
        ii. sole practitioners sharing space,[8] and
        iii. target group lawyers outside of Toronto and the area defined as the "Rest of the GTA" (Greater Toronto Area),[9]

        there are ramifications for the ongoing renewal of the target group generally, particularly in less populated parts of the province, and for those in certain sizes of practice.

    b. Younger lawyers appear to be going into non-target group practice more frequently than into target group practice. This trend is more noticeable outside the urban areas.[10]

    c. Although women enter the legal profession in greater numbers each year, they are under-represented in the target group and in both groups are over-

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[6] See definition section at the beginning of this report.
[7] Only six percent (6%) of sole practitioners alone are under the age of 35.
[8] Only eight percent (8%) of sole practitioners sharing space are under the age of 35.
[9] See definition section at the beginning of this report. In Non-Urban (average age is 50) and Other Urban areas (average age is 48) 9% of the target group is under 35, compared with 13% in Toronto (average age is 46) and the Rest of GTA (average age is 47).
[10] Twelve percent (12%) of the target group is under 35, compared to 36% of non-target group. See also footnotes 7 and 8.

represented as associates or employees and under-represented as partners. If this pattern continues it too may have implications for the renewal of the target group.

d. To the extent that lawyer services in Ontario are being offered in languages other than English, French and Italian, target group lawyers provide those services almost exclusively. Access to lawyer services for those members of the population who do not speak English is largely dependent upon there being a healthy target group to service them.

b. THE TARGET GROUP'S PRACTICE PROFILE

Where the members practise

34. The target group is more evenly spread throughout Ontario than the non-target group, which is located almost exclusively in Toronto or Other Urban areas.[11] Thirty-seven percent (37%) of the target group compared with 66% of the non-target group is located in Toronto. Twenty-one percent (21%) of the target group compared with just over 4% of the non-target group is located in the Rest of GTA. Twenty-eight percent (28%) of the target group compared with 26% of the non-target group is located in Other Urban areas. Finally, 15% of the target group is located in Non-Urban areas, compared with only 4% of the non-target group.

35. The survey findings indicate that more than 80% of all lawyers in the Rest of GTA and in Non-Urban Ontario (i.e. outside of Toronto and the Other Urban areas) belong to the target group. The implications of this are significant. Without a vibrant and healthy target group, a large percentage of the public living in the enumerated areas would have very limited access to lawyer services.

Who their clients are

36. One of the greatest differences between the target group and the non-target group is in the identity of their clients. Many of the issues that affect target group lawyers stem from this difference.

37. Target group respondents indicated that 77% of their clients are individuals, as compared with only 30% for the non-target group. Women in the target group reported that 85% of their clients are individuals. Not surprisingly, the target group indicated that only 26% of its clients are businesses, organizations or government while the non-target group estimated that 70% of all of its clients come from those groups.

What type of law they practise

38. The identity of their clients explains the differences in the types of practice areas on which target and non-target group lawyers concentrate, the former devoting most of their practices to practice areas in which individuals most need service.

39. In order of magnitude, target group lawyers reported the following main areas of practice: real estate (46%), civil litigation (39%), wills, estates, trusts (35%), corporate

[11] See definition section at the beginning of this report.

and commercial (33%) and family (26%). Non-target group lawyers reported civil litigation (44%), corporate commercial (37%), real estate (20%), wills, estates, trusts (8%) and family (6%).

40. Given that target group lawyers represent mostly individuals and non-target group lawyers represent institutional clients, it is not surprising to see that 61% of the target group practises in the areas of family law and estates, wills and trusts, while only 14% of the non-target group does.

41. In comparison with sole practitioners sharing space, more sole practitioners alone reported working in real estate (55% compared with 38%) and wills, estates and trusts (41% compared with 36%). A similar percentage in both groups work in corporate commercial and in civil litigation. A higher percentage of sole practitioners sharing space than sole practitioners alone offer services in family law (31% compared with 26%) and criminal (32% compared with 11%).

42. A much higher percentage of employees/associates reported working in civil litigation (56%) than did sole practitioners alone (31%) or sole practitioners sharing space with others (32%).

43. Twice as many women practice family law as men (44% compared with 22%). Men practise significantly more real estate (50% compared with 29%), civil litigation (41% compared with 30%), wills, estates and trusts (37% compared with 29%) and corporate commercial (37% compared with 17%) than women.

44. Older lawyers practise more real estate than younger lawyers, 58% of those over 55 compared with 42% of those between the ages of 35 and 54 and 31% of those between the ages of 18 and 34. The same pattern is true of estates, will and trusts.

45. In comparison with others in the target group, equality-seekers reported practising family law (35% compared with 23%) and criminal law (22% compared with 16%) more frequently; and reported practising wills, estates and trusts (29% compared with 37%), civil litigation (34% compared with 40%) or real estate (40% compared with 48%) less frequently.

Practice Stability

46. The majority of the target group members reported a fairly positive view of their practice's stability. However, this was an area in which there were differences among the subgroups, particularly in the case of sole practitioners alone.

47. Respondents were asked to indicate whether the areas in which they practise are growing, stable or decreasing. Forty-six percent (46%) of the target group indicated their main practice areas are growing as compared with 60% of the non-target group. Both groups reported similar experiences with decreasing practices (10% for the target group; 9% for the non-target group).

48. Sole practitioners alone have the lowest percentage of growing areas of practice (42%) and are the only subgroup to report a lower percentage of growing versus stable areas of practice.

49. Women reported that 57% of their main practice areas are growing, 34% are stable and 10% are decreasing. Men reported 44% growing, 45% stable and 11% decreasing. Younger lawyers reported a higher percentage of growing areas and lower percentage of decreasing ones than did older lawyers.

50. By areas of practice, 56% of those who cited family law as their first area of practice said their practice is growing, followed by real estate (55%), civil litigation (49%), wills, estates and trusts (44%), and corporate commercial (41%).

How much legal aid they do

51. The target group pointed to serious challenges in being able to provide legal aid services. Significantly, it is overwhelmingly members of the target group who provide this service. Their concerns are worth noting as they have implications for the public's access to justice and to lawyer services.

52. Given the percentage of the target group's clients who are individuals compared with the non-target group, it is not surprising to see that 37% of target group lawyers report doing some legal aid work compared with only 7% of the non-target group. Within the target group, 53% of equality-seekers reported doing legal aid work.

53. For 19% of target group lawyers, legal aid represents more than 25% of their billable work. For those equality-seekers who do legal aid work, on average it constitutes 47% of their work. For women equality-seekers, almost three fifths of who reported doing some legal aid work, it constitutes 62%. This dependence is significant when considering the financial viability of practices.

54. By practice contexts, and by gender, the percentages of those respondents in the target group who reported accepting legal aid work, and the corresponding average percentages of their work that is legal aid, are,

    a. 45% of sole practitioners sharing space, 43% of their work;
    b. 43% of employees/associates, 62% of their work;
    c. 33% of sole proprietors, 39% of their work;
    d. 33% of sole practitioners alone, 29% of their work;
    e. 29% of partners, 31% of their work;
    f. 47% of women, 55% of their work; and
    g. 34% of men, 34% of their work.

Income and other aspects of the practice

55. Lawyers place different emphasis on income in their individual evaluations of satisfaction and viability. However, incomes that fall below a certain level cannot help but reveal pressures on the viability of practices.

56. Overall, 59% of target group respondents reported an annual before tax income from their law practice in 2002 of under $100,000, compared with 30% in the non-target group. Within the target group, 75% of equality-seekers reported earning less than $100,000, compared with 55% of the rest of the target group. In contrast, 70% of non-target group respondents reported income over $100,000 compared with 40% in the target group.

57. Within the target group, however, there are some significant ranges of income. One quarter (25%) of sole practitioners alone reported earning less than $50,000 annually.[12] Twenty-eight percent (28%) of equality-seekers compared with 15% of non-equality-seekers in the target group reported earning less than $50,000 annually. About three fifths of both sole practitioners alone and sole practitioners sharing space reported earning less than $100,000 annually.

58. Partners in small firms were the opposite, with more than three fifths earning over $100,000 annually. Almost two thirds of target group lawyers in Non-Urban areas reported earning less than $100,000. When asked to consider their income level over the past five years, 22% of sole practitioners alone, 15% of sole practitioners sharing space and 28% of employees/associates reported that they believed their income has fallen behind the average for lawyers in their practice areas, with similar experience, practising in similar communities.

59. There also appears to be a correlation between practice areas and income. Twenty-seven percent (27%) of those who mentioned wills, estates and trusts as their first area of practice reported an annual income of less than $50,000 and an additional 54% reported earning more than $50,000 but less than $100,000. Seventy-five percent of those who mentioned family law as their first practice area reported income of under $100,000.

60. The survey report reveals a strong connection between income and four other factors:

    a. Gender: all other factors being equal men are more likely to earn more than women. Women in the equality-seekers focus groups reported more serious concerns over low income than did men;

    b. Equality-seekers: non-equality-seekers are more likely to earn more than equality-seekers;

    c. Practice stability: incomes are more likely to be higher for those who report their main practice area(s) as growing than those who report their main practice area(s) decreasing; and

    d. Legal aid: lawyers who do not take legal aid are more likely to earn higher incomes than those who do.

61. Other income related issues follow a similar pattern of differences between target and non-target group lawyers:

    a. A lower percentage of billable work (68% compared with 79%);

    b. Higher percentage of non-billable time spent on administration, client development and marketing (20% compared with 16%);

[12] It is worth noting that while 6% of target group lawyers overall reported working part-time in the previous year, a higher percentage (11.2%) of sole practitioners alone reported doing so.

c. A higher percentage of legal aid work as a percentage of all billable time among those who accept legal aid certificates (39% as compared with 25%);

d. A higher percentage of pro bono work among those who do pro bono (12% as compared with 8%); and

e. A slightly shorter average week worked (48 hours as compared with 51 hours).

62. Sole practitioners alone reported the lowest percentage of billable work and the highest percentage of non-billable work. They also reported working the fewest hours per week (46 hours), although the fact that this group reported the highest percentage of part-time practice may explain this, in part.

Practice Profile Related Implications

63. The Strategic Communications Inc. survey report notes certain key findings that emerge from examining the target group's practice profile and comparing it with the non-target group. While only the main points have been set out here, the survey report goes into greater detail about practice profile, demonstrating the target group's essential role in the delivery of lawyer services to the individual in Ontario. The Task Force has noted the following points in particular, which are critical to its conclusions and recommendations:

a. There is a direct link between the health and renewal of the target group and the public's access to justice and to lawyer services. This is because target group lawyers provide the vast majority of lawyer services to individual Ontarians. This becomes even more pronounced when one looks at members of the public who require legal aid certificates or who live outside urban centres;

b. Target group lawyers report less billable time, and of that time, more on legal aid work, compared with non-target group lawyers, affecting the potential of their billings to keep pace with costs;

c. Given the differences within the target group, comparisons to the non-target group can be viewed as a continuum. Sole practitioners, particularly those practising alone tend to be the most different from non-target group lawyers. Small firm partners tend to be the most similar to the non-target group;

d. Given that women in the target group represent even more individual clients than men and undertake the highest percentage of legal aid work, their ongoing participation in the target group is essential;

e. The legal aid system is dependent upon target group lawyers. Those lawyers report significant problems with both the tariff and the eligibility criteria for applicants and with the administrative requirements for processing legal aid work;

f. Sole practitioners alone report,

i. the lowest percentage of billable time;
ii. the highest percentage of non-billable time: administration, client development and marketing;
iii. the highest percentage of pro bono work;

iv. the lowest percentage of legal aid, as seen in paragraph 54; and
v. the shortest hours of work in the average week, in part a reflection of the comparatively higher proportion of part-time practices.[13]

As a subgroup, sole practitioners alone had the highest percentage of lawyers working in practice areas with the greatest instability and subject to the strongest market pressure (real estate and wills, estates and trusts).

c. SATISFACTION AND FINANCIAL VIABILITY

Overview

64. Overall satisfaction (professional and personal) and practices that are financially viable are critical indicators of the health of the target group. Lawyers graduate from law school with enormous pride in their accomplishment and for many this continues throughout their careers. But continued pride is interwoven with lawyers' ability to earn a reasonable living, find interesting and meaningful work and provide effective service to the public they serve.

65. Satisfaction and financial viability are to some degree subjective considerations that depend on the goals and values of the individual lawyer. Each lawyer's career is made up of a lifetime of choices, decisions and circumstances that affect the kind of practice he or she has and the way in which he or she will evaluate success or satisfaction. It is also true that there is a great deal of fluidity within the profession that allows lawyers to move through a range of practice settings, both in and out of the target group, to meet their own sense of career progression and lifestyle requirements.

66. At the same time, however, the survey and focus groups reveal the existence of a number of objective factors that result in greater or lesser degrees of satisfaction and financial viability. They illustrate how a 'clustering' of factors can result in isolation and struggle for certain members of the target group.

67. To be successful, sole or small firm practitioners must not only be competent lawyers, keeping abreast of rapidly changing law in their practice areas and the ethics that govern the profession, but must also operate and manage their practice. While employees and associates in the target group will have the least responsibility in this regard, even they are likely to be more involved in the day to day operation of the office than are non-management lawyers in the non-target group. The burden on individual lawyers to make the practice successful becomes increasingly greater as the number of lawyers in the practice decreases.

68. The survey and focus groups demonstrated that there are varying degrees of success and financial viability within the target group. The majority of its members are optimistic about their practices and their future. At the same time, however, the challenges to their success continue to increase. Indeed, some of the members of the target group are facing serious pressures that may make it impossible for their practices to survive or thrive.

[13] See paragraph 62 and footnote 12.

69. Within the target group, partners in small firms and sole proprietors (who employ up to four lawyers), have sufficient staff and greater resources upon which to draw in developing the practice and are most similar to the non-target group.

70. The sole practitioner alone, however, particularly one with only part-time or no staff support, has the greatest challenge to meet and is least like lawyers in the non-target group.

71. In determining its recommendations, the Task Force has focused on the needs of the target group as a whole, but also on the needs and challenges facing certain subgroups within the whole, in particular the sole practitioner alone.

Context

Reasons for entering sole or small firm practice

72. While the reasons for which a lawyer becomes a sole or small firm practitioner may not always determine his or her satisfaction in that career, the survey and focus groups have illustrated some connections. Among the reasons focus group participants cited for practising as a sole or small firm lawyer were the following:

    a. Desire for independence

        i. Setting own work hours;
        ii. Determining practice area;
        iii. Quality of life issues;
        iv. Wishing to work part-time;
        v. Preferring to work alone, not with a team;
        vi. Not accountable to others; and
        vii. Commitment to serve a demographic community. [14]

    b. Necessity

        i. Other employment not available for a variety of reasons;
        ii. Living in small town where sole/small firm practice the only option.

Benefits and Drawbacks of Sole and Small Firm Practice

General

73. Questions about overall satisfaction revealed differences within the sub-groups that make up the target group, with sole practitioners alone at the lowest end of the satisfaction scale.

74. Overall, respondents in both the target and non-target groups reported a high degree of satisfaction with their practices, 75% and 88% respectively.[15] Within the target group,

[14] 18% of equality-seekers identified their equality-seeking status as the most important reason for choosing their practice context and an additional 25% described it as *important.*
[15] Using a scale of 1-7, respondents were asked to rank their overall level of satisfaction with their practice, from very dissatisfied to very satisfied.

however, although still relatively high, overall satisfaction was lowest among sole practitioners alone, at 66%. Seventy percent (70%) of equality-seekers reported that they were satisfied. Ten percent of the target group and 2% of the non-target group reported overall dissatisfaction with their practice.

75. Within the target group sole proprietors are the most positive about their practice's viability, with 67% being of the view that maintaining the financial viability of their practice is not a serious problem.[16] Employee/associates in small firms are the least positive with 44% describing maintaining financial viability as a challenge.[17] A higher percentage of sole practitioners alone (38%) and sole practitioners sharing space (36%) describe maintaining financial viability as a challenge than do partners (30%).

76. The disparity between the target and non-target groups was greater on some issues:
    a. 52% of target group respondents were satisfied with their income compared with 80% of the non-target group;

    b. 20% of target group respondents were dissatisfied with their current mix of practice areas compared with 9% of the non-target group; and

    c. 36% of target group respondents reported some degree of challenge in maintaining the financial viability of their practices compared with 29% of the non-target group.

77. Despite a relatively high level of optimism, 17% of lawyers within the target group described maintaining financial viability as a *serious or very serious* challenge, compared with 11% in the non-target group. Slightly more than 10% of respondents in both groups are of the view that maintaining financial viability will be *much more* difficult five years from now. Significantly, however, 41% of the target group and 28% of the non-target group consider it will be *somewhat or much less difficult*.

78. Twenty-eight percent (28%) of target group lawyers reported that upon retirement they would refer their clients to other lawyers and 14% indicated they would close their doors. In contrast, 78% of non-target group lawyers reported that other lawyers in their firm would continue the practice.

Independence

79. A number of factors affect lawyers' views of the benefits and drawbacks of sole and small firm practice. Generally speaking, the most important benefit cited is the ability to control one's practice environment. Lawyers expressed satisfaction with a professional environment in which they can choose their areas of practice, their clients and the number of hours they work and in which they can develop a work-life balance that suits

[16] Using a scale of one to seven, where 1 is "not a problem" and 7 is "a very serious problem", respondents were asked how they would rank the issue of maintaining the financial viability of their practice.

[17] In considering the answers of employees/associates it is important to note their different position in comparison with other subgroups within the target group. As employees they have less direct control over the practice. Their perceptions of viability depend in some part on whether they believe they will continue to be employed.

their needs. They contrasted their flexibility and freedom with what they perceive to be a much more regimented and onerous life style in the larger firm environment.

80. Within equality-seeker focus groups, the participants, particularly men, identified the benefits of being able to serve a particular demographic community, create networks within that community and fill a previous void that existed when there were no lawyers able to address specific cultural or linguistic needs.

Satisfaction and viability factors

81. The four main factors contributing to satisfaction in the sole and small firm environment are earning a good income, having interesting and challenging work, pursuing career objectives, and maintaining a good work-life balance. Earning a good income and having interesting and challenging work were more important and more statistically significant issues for the target group than for the non-target group. Some lawyers in the focus groups suggested that there are trade-offs they are prepared to make for being able to define their practices for themselves, including accepting *some* degree of lower income.

82. At the same time, when asked about areas of dissatisfaction in sole and small firm practice some respondents noted lower income than expected as a key factor. The other most prevalent factors were dissatisfaction with areas of practice; lack of freedom to make decisions[18] and too much time spent on administration. Thirty percent (30%) of the target group spends more than 20% of its work time on non-billable administrative activities. Lower income than expected and too much time spent on administration were more important and more statistically significant issues for the target group than for the non-target group.

83. In the case of financial viability, the three most significant factors affecting the practice's stability are increased difficulty or risk of financing the practice, increased overhead costs, and pressure to keep fees low. The non-target group expressed the same concerns about increased overhead and fees pressures, but not the difficulty with financing practices, which is unique to the target group and the single strongest driver of financial uncertainty for respondents in the target group.

84. Many target group lawyers experience difficulty in obtaining suitable financing for their practices from institutional lenders. As has been discussed earlier, the client population the target group serves tends to have less money for lawyer services than do clients of larger firms. In addition, unlike many corporate clients individuals pay for lawyer services from after tax dollars. These client financial issues affect not only the target group's revenue, but also the timing of payment. Many clients cannot pay their lawyers except from, and only after, a court proceeding (often on contingency) or transaction is completed, leaving the lawyer to fund both general practice overheads as well as expenses of the particular file. This has important implications for young lawyers considering what form of practice to undertake. Capital is required to set up a practice. Many young lawyers enter practice carrying a large student debt.

[18] Given that target group respondents often cite the freedom to control one's practice as a reason for choosing target group practice, it is noteworthy that for some this benefit has not been realized.

85. For target group lawyers, competition from a wide range of non-traditional sources has exacerbated the financial pressures on their practices. In certain practice areas, in particular, clients are unwilling to pay what services are worth and do not appreciate the skill and value lawyers bring to legal services. In varying degrees, target group lawyers are caught between the upward pressure on all their costs (rent, equipment, staff, research materials) and the downward pressure on revenues (low legal aid rates, clients who cannot afford to pay for services or pay on a timely basis, clients who are unwilling to pay). This is coupled with difficulty in obtaining financing for the capital and cash flow requirements of running a practice. The lawyer may not be able to afford office resources that could potentially reduce costs.

86. This cluster of challenges - the practical concerns of financing the practice, dealing with increased overheads and lower than expected incomes - are the main drivers determining both dissatisfaction and reduced financial viability in the target group. The explanation for this clustering may lie in the very nature of the services provided and the characteristics of the clients the target group serves.

87. Purchasing and maintaining information technology represents one of the greatest dilemmas for the sole and small firm practitioner. The Task Force believes technology is a key factor to successful and competent law practice. Target group lawyers reported that the Internet and computer research are among the most important resources for their offices, yet the cost of purchasing and maintaining computers and programs are prohibitive for some. Some lawyers are deciding not to purchase equipment. Although understandable in the short-term interest of controlling expenses this decision may render their practices less financially viable in the long run.

88. The greater the number of areas of dissatisfaction or financial challenges a target group lawyer identified, the less their practice actually allows for the independence, control and work-life balance that drew them to sole or small firm practice. Nowhere is this more apparent than in the case of sole practitioners alone.

Isolation of Sole Practitioners Alone

89. Not all “sole practices” are alike. As explained above,[19] the research was designed to explore differences among sole practitioners based on the extent to which they are isolated from, or connected with, other lawyers. The research explored three categories of sole practitioners.

90. The Task Force recognizes that employing, being in association with, or sharing space with other lawyers are not the only ways in which to minimize the effects of isolation and maximize the benefits of professional connectedness. They are, however, the most obvious ways to allow for easy and quick access to ongoing professional and emotional support. Personal networks (mentors, law school and other colleagues a lawyer can call upon), active membership in legal associations and full use of Law Society and LAWPRO resources are other ways to be connected. Yet the research illustrates the extent to which survey respondents who identified themselves as “sole practitioners who practise alone without other lawyers in the same office space” report that isolation affects their sense of satisfaction and practice viability.

[19] See footnote 3.

91. Isolation from other lawyers is a significant complaint of sole practitioners alone.[20] The key factors or forces undermining the viability of lawyers in the small firm environment appear to converge on many sole practitioners alone who practise without other lawyers in the same office space. This fact appears to render their practices less viable than other practice contexts within the target group.

92. The members of this subgroup earn less, are less satisfied with their practices overall and perceive greater challenges to future financial viability. The isolation from other lawyers, which distinguishes their experience, is associated with problems of work-life balance, managing the business side of the law practice, financing the law practice, and adapting to technological change and knowledge specialization. These lawyers are less able to take time away from their practices because there is no one to cover for them in their absence. Illness, accidents, and old age present the potential for greater hardship than for those in firms of more than one. Some of those lawyers perceive dental plans, extended health care coverage and disability insurance to be costs they cannot afford. Lack of insurance leaves them less able to handle unplanned events.

93. This subgroup is older than the rest of the target group. It does the highest percentage of real estate and estates, wills and trusts work, in which the pressure on fees is significant and practice instability greater. Of those lawyers in the target group reporting problems with financial viability, 56% mentioned real estate and 43% mentioned wills, estates and trusts as being among their main practice areas. Sole practitioners alone reported the lowest percentage of growing practice areas (42%).

94. In the survey findings, 40% of sole practitioners alone agreed they were isolated compared with 19% of sole practitioners sharing space and 14% of employees/associates. Those who agreed they were isolated were more likely to indicate that their income was below expectations and had fallen behind others in comparable practice environments. Members of this subgroup were also more likely to state that they spent too much time on administration, needed to make a change in their current mix of practice areas and overall were dissatisfied with practice. Interestingly, the members of this subgroup were slightly less concerned about rising overhead costs than sole practitioners sharing space with others and employee/associates, but this may in fact reflect that they have cut back on essential resources and staff, leading in the long run to less satisfaction and viability.

95. These lawyers tend to be most likely to have a general practice, offering services in three or four areas of law, possibly more. Yet the pressure to specialize continues to grow as law becomes more complex and the ability to competently stay abreast of numerous practice areas becomes more challenging. Typically, however, particularly for lawyers in smaller communities, there is insufficient work (client need) to justify specializing, as clients want lawyers who can address a broader range of subjects.

96. The challenges of the small firm environment seem to be most difficult for certain sole practitioners alone to meet. As can be seen above, the degree to which practice viability is compromised rises with each additional dissatisfaction factor that is present, and the very practice context itself of being a sole practitioner alone appears to heighten financial and personal challenges. With enough of these challenges bundled together, the sole practitioner alone may face an insurmountable barrier to success.

[20] 38.8% of target group respondents identified themselves as sole practitioners alone.

Indicators of Increased Pressures

97. In its analysis, Strategic Communications Inc. isolated the following indicators of financial and other pressures that, particularly if existing together, might undermine a lawyer's capacity to sustain a viable practice:

- Annual before tax income earned from the practice in 2002 of less than $50,000;
- Income falling behind past 5 years;
- More than 20% of time spent on non-billable work;
- Isolated from other lawyers;
- Dissatisfied (somewhat/very); and
- Serious challenges to financial viability.

98. Analyzing according to the six indicators above, pressures are more serious for these subgroups within the target group, in descending order: sole practitioners alone; women (in comparison to men); equality-seekers; general practitioners reporting three or more areas of practice; lawyers over 55 years of age; and lawyers who take some legal aid clients. For lawyers falling within several of these subgroups, the challenge intensifies.

d. SURVIVAL AND SUCCESS

99. There is little doubt that the practice of law has become increasingly complex and challenging and will continue to be so. The target group has identified the issues that pose challenges to it. While the target group remains generally positive that it will continue to play a vital role in the delivery of lawyer services to the public, there is little doubt that sole and small firm practices are operating under stressful conditions, which for a minority of the group are approaching unsustainable levels.

100. In considering what approaches lend themselves to successful practice, or at least to one in which the lawyers feel confident to continue, the following are important:

a. A conscious approach to establishing and maintaining the practice. This means that however a lawyer has come to the decision to enter sole or small firm practice, he or she does so with a strategic vision for the future and a business plan of action that includes choice of practice structure, location and area(s)of law, marketing and client relations plans;

b. Creating a financially viable infrastructure for the practice. Shared space, resources and staff, through formal models, such as a chambers type arrangement, or more temporary alliances, such as working jointly on a specific matter;

c. Sufficient interaction with other lawyers, resource people, and mentors to avoid the professional and emotional vulnerability that comes with being isolated. This appears to be one of the most important factors that affects success. Life-work balance, so important to sole and small firm practitioners, is severely undermined in situations in which the lawyer is isolated;

d. Careful choice of practice areas, without overly heavy reliance on practice areas that are most vulnerable to downturn or excessive pressure on fees. This does not mean that lawyers should avoid these practice areas altogether, but rather avoid too heavy reliance on them for their livelihood;

e. Careful practice management to keep administrative burdens under control; and

f. Effective use of technology, continuing legal education and other professional resources to level the playing field with larger firms.

101. There are factors, however, that may be beyond the individual lawyer's ability to control. The survey and focus groups identified a number of issues that have an effect on both the lawyers in the target group and the clients who require access to justice and to lawyer services.

e. SYSTEMIC ISSUES AFFECTING ACCESS TO JUSTICE AND TO LAWYER SERVICES

102. The survey asked lawyers specifically about whether they think there are currently or likely in the foreseeable future to be "shortage of any kinds of legal services in whatever community you serve". Although shortages is the word the survey uses, the discussion actually encompasses a number of issues, as follows:

a. Not enough lawyers serving a geographic area, practice area or demographic community;

b. Clients who are unable to pay for lawyer services. This may be because they require legal aid, but there are too few certificates or too few lawyers willing or financially able to accept legal aid certificates. It may also be because the justice system is too complex, making the costs too expensive for many Ontarians. Some clients may be unwilling to pay for lawyer services because they perceive the fees to be too high.

Target group lawyers (35%) were almost twice as likely as non-target group lawyers (18%) to report shortages of lawyer services.

103. Generally speaking, the extent to which lawyers identified "shortages" rose the further away from Toronto the lawyers practise (24% in Toronto, 28% in the Rest of the GTA, 34% in Other Urban areas and 64% in Non-Urban areas). These shortages spanned all the categories described above, including not enough lawyers working in particular practice areas and/or in smaller communities.

Shortages of lawyers to serve a geographic or practice area or demographic community

104. Determining the cause of shortages is not a simple task. Each community is a complex entity with different economic realities, service needs, demographics, and available lawyer services. In a number of instances the issue may be one of mismatch between the demand for services and the nature of services lawyers are offering. For example, a geographic area may have enough lawyers in general to service the population, but too few practising in a particular area of law. Another community may have sufficient lawyers

for its English or French speaking population, but not for its other citizens who need services in other languages. A third may have too few lawyers to meet client needs and too few clients who can afford the services lawyers provide.

105. Some respondents suggested that in some communities there are too few lawyers because the profession has not responded to a demand for lawyer services in expanding local economies. This may be a result of lawyers not wanting to leave large urban areas or not having relevant information on available opportunities. This is in contrast with other communities where there is insufficient demand for the type of services lawyers in the community are willing to provide; for example communities where potential clients require legal aid, but in which there are too few lawyers who accept legal aid certificates.[21]

106. The pressure to specialize may also be contributing to shortages. Sole and small firm lawyers have traditionally offered services in a wide range of areas. It would not be unusual to find a single lawyer over a number of years preparing a particular client's will, handling his or her real estate transactions, minor criminal or highway traffic matters, small business incorporations, powers of attorney and even divorce. A lawyer might act for several generations of the same family. As the practice of law becomes more specialized, it is becoming less and less feasible for a lawyer to practise as a general practitioner, yet there may be insufficient work in any single practice area to justify specializing.

107. While lawyers identified a number of practice areas for which there are, or may in the future be, too few lawyers, family law was the most often identified area of shortage.[22] Twenty-two percent (22%) of the respondents who identified shortages of any kind mentioned family law. This figure rose to 38% in the Non-Urban regions. Given that 56% of those practitioners who cited family law as their first practice area said their practice was growing, it appears there is more work in family law than there are lawyers to do it. Respondents identified a number of possible reasons for the shortage of family law lawyers including,

    a. a disproportionate number of individuals requiring legal aid funding for their family matter and legal aid rates that are too low to allow for competent legal service;

    b. an increasingly complex court system, including a case management system that has made family law very expensive for the public, more of whom are choosing to represent themselves. Too often this is coupled with an unwillingness to pay for what the lawyers' services are worth;

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[21] Information from 2003 revealed that approximately 93% of articling students were hired within Toronto and other large urban centres. This has implications for the renewal of the bar as current practitioners age and retire. Assuming articling students would be available, a lawyer's decision not to hire articling students may be because of inability to afford to pay the additional costs. Anecdotally, there is the suggestion that in some communities it may also reflect a concern that, once called to the bar, an articling student will return to the community and affect the viability of currently established practices.

[22] Other practice areas where respondents identified shortages were immigration and refugee law, criminal and quasi-criminal law, civil litigation, workplace safety and insurance compensation claims, and representation for small businesses.

c. the emotional burden on lawyers of handling too many family law matters, particularly custody and child protection, resulting in them limiting the number of cases they will undertake.

108. Forty-eight percent (48%) of all respondents who described themselves as equality-seekers reported shortages of legal services. Women were the highest percentage (53%) reporting shortages.[23]

109. Among equality-seekers, the most common shortages reported were for clients needing services in a language other than English, clients who need family law services and clients needing legal aid.

Clients unable to pay for lawyer services

110. Respondents noted that financial eligibility for legal aid is set too high, while too few lawyers accept legal aid certificates. The result is members of the public who cannot afford to pay lawyers on private retainer, but are ineligible for legal aid, and lawyers who believe that their rising overhead costs make it impossible for them to accept legal aid certificates or make it necessary for them to limit the number they accept. The need for lawyer services exists, but there is insufficient capacity to pay for them.

111. Focus group participants raised a number of concerns about the legal aid tariff and the scope of eligibility for legal aid, citing that the "threshold" for eligibility had failed to keep pace with the client population in need.

112. Given that equality-seekers are the most likely to represent clients on legal aid certificates (53% of them reported taking some legal aid work, compared to 37% of the target group as a whole), members of the public in their communities are at risk of being denied access to justice. To the extent that lawyers' practices rely on legal aid certificates for a substantial proportion of billings, the financial viability of these practices is at risk.

113. The issue of inability to pay is not limited only to those clients who require legal aid. Lawyers pointed as well to a legal system that has become so complex and inherently costly, that the ordinary person's access to justice and to lawyer services is being undermined. Given that clients must pay for lawyers services out of after tax dollars, the more complex the system the less clients can afford legal services. The concerns respondents expressed spanned all areas of law, but in particular focused on court proceedings in family, civil litigation and criminal law.

The Implications

114. The survey and focus group discussions raised the issue of shortages of lawyer services in certain geographic and practice areas and demographic communities. They also raised issues about client ability to pay for lawyer services. They point to the close interaction between the financial viability and professional satisfaction of the target

[23] Given that women provide most of the family law services, it is not surprising that they are more likely to identify shortages.

group, on the one hand, and the capacity of individuals to pay for the lawyer services they need on the other.

115. Lawyers in the target group offer services to individuals whose access to justice and to lawyer services is affected by their ability to pay for it. To pursue their legal remedies in courts, incorporate and obtain advice on their small businesses, prepare their wills and purchase their homes, address custody and access issues, pursue refugee and immigration claims, and address a wide range of other issues, clients must be able to afford representation. Yet, increasingly, they are having difficulty in doing so. This leads to two situations:

a. Lawyers withdraw from certain practice areas or do not work in certain communities because they are unable to financially sustain their practices, creating shortages of lawyers;

b. Lawyers continue to provide services at lower rates than are realistic to sustain their practices. This then leads to problems with both financial sustainability and with overall satisfaction.

116. In making its recommendations, the Task Force cannot ignore these societal factors, even though they may go beyond the Law Society's direct ability to resolve. They require cooperation among a number of parties, including the Law Society, legal organizations, government and target group lawyers, if the ability of the public to have meaningful access to justice and to lawyer services is to continue.

CONSIDERATIONS UNDERLYING THE TASK FORCE'S RECOMMENDATIONS

The Importance of Sole Practitioners and Small Firm Lawyers

117. Target group lawyers perform an essential and unique service within the legal community. The survey demonstrated that, overwhelmingly, individuals rather than businesses, government and institutions retain the services of lawyers in sole and small firm practice. Focused as they are on corporate, government and other institutional clients, large firms are not structured to handle the kinds of issues that most individuals encounter. Moreover, the cost of operating a large firm precludes devoting a significant part of the practice to individual clients, particularly those with limited financial resources.

118. Ontario's legal profession profile is not unique. Traditionally, the legal profession around the world, and certainly in North America, has been a profession of sole and small firm lawyers integrated within the life of their communities and neighbourhoods. In Ontario, where the profession is over two hundred years old, the large law firm phenomenon is relatively recent. Sole and small firm practitioners have traditionally been the backbone of the profession and continue to be at the forefront of delivery of legal services to the public, particularly individuals.

119. Whether target group lawyers specialize in one or two areas of law or have more general practices that encompass three or four areas of law, their continuation and renewal is essential to ensure that the public of Ontario has meaningful access to the justice system and to lawyer services and that the legal profession as a whole continues to play a central role in the society whose citizens the profession is meant to serve. The profession as a whole can only be as strong and as effective as its constituent parts.

120. To this end, the Task Force considers it essential that the Law Society and all legal organizations continue to communicate to the Ontario public the valuable service lawyers provide. In an increasingly diverse population, it cannot be assumed that all individuals understand the importance of lawyers and their central role in a democratic society. Communicating this is essential.

Concern about Entry into Sole and Small Firm Practices

121. Despite the relatively high level of satisfaction with practice and optimism about the viability of sole and small firm practice that the target group demonstrates, the survey, interviews and focus groups have shown that there are increasing pressures on it.

122. Although there is not yet sufficient evidence to be certain, target group demographics suggest that at least in the early years of practice, fewer recently called and young practitioners are choosing sole and small firm practice as compared with larger firm practice. It is possible that some lawyers are entering sole and small firm practice later in their careers, once they have gained experience in other forms of practice. The research suggests that there may be geographic regions in the province that have fewer lawyers than the population needs and this tends to be in non-urban communities. Although the survey did not canvass the effect of rising law school tuitions, it appears possible that the rising cost of law school and corresponding higher debt loads may affect lawyer decisions about when, or if, to enter sole or small firm practice.

123. As more lawyers in the target group retire, the implications of any trend away from sole and small firm practice may become more and more pronounced. To the extent lawyers do enter the target group, they may be avoiding certain practice areas, as discussed in the previous section. Thus, certain members of the public, such as those requiring legal aid certificates or those needing family law advice, may encounter more and more difficulty in finding assistance. The issue of whether practice in sole and small firms is declining or the point in their careers at which lawyers choose this practice structure is simply changing should be explored further.

Viability of the Target Group

124. The pressures on the target group continue to grow, as the previous section of the report demonstrates. Eroding profitability, and product and price competition are ever-present realities in operating a small practice.[24] These and other pressures affect individual lawyers within the target group differently, some more so than others. It is clear, however, that the greater the number of pressures on a practice the more likely that the viability may be compromised.

125. Challenges to viability include,

    a. insufficient resources available, including staff, purchasing, maintaining and upgrading technological resources, and professional development;

[24] It is important to note that these pressures are relevant to running a small business generally, not just practicing law in a sole or small firm environment.

b. insufficient planning to establish and maintain the practice, including insufficient marketing;

c. rising overhead costs;

d. difficulty securing financing for the practice;

e. increased competition;

f. pressure to keep fees so low as to make it increasingly difficult to maintain a viable practice;

g. insufficient connections with other practitioners, mentors, and the legal community at large;

h. a client pool that is increasingly unable or unwilling to pay for lawyer services, particularly as law becomes more specialized and procedures more complex;

i. isolation, most common and most serious among sole practitioners alone;

j. choice of area of law or concentration of practice in certain areas of law;

k. the increasing pressure to specialize, despite client need for general practitioners; and

l. excessive time spent on administration.

126. Lawyers enter sole and small firm practice for different reasons, some intentionally with careful forethought, others because other options do not exist. Some become members of the target group immediately upon call to the bar and others after they have gained experience in other practice environments. What is clear, however, is that regardless of the reasons and timing behind the choice, satisfaction and viability are much more likely to exist where the lawyer articulates goals, investigates options before choosing a practice structure, develops a business plan, interacts with other lawyers and mentors, stays current on both substantive law and practice management matters and adapts throughout his or her career to the changing legal landscape. The more conscious of goals and deliberate the lawyer is when developing the practice and the more able he or she is to become part of a legal community, the greater the opportunity for success.

127. Nonetheless, it is true that the nature of a practice's client base and the lawyer's practice area(s), an increasingly complex justice system and increasing overhead costs can negatively affect even the most efficient practice. Lawyers with less flexibility in their practice arrangements will be more vulnerable to these factors. As stresses increase, there is greater potential for lawyers to withdraw from those practice areas that create the greatest difficulty, or leave practice altogether.

128. The most vulnerable practice structure appears to be sole practice alone, as has been described in detail above. The Task Force is convinced that lawyers should consider alternatives to sole practice alone, where this is feasible. Lawyers who decide to enter

this practice structure should only do so with careful planning and attention and after having received some training to prepare them for this type of practice.

Systemic Issues affecting Access to Justice and to Lawyer Services

129. There are systemic factors that affect the viability of the target group. Many of these are linked with the public's inability to pay for lawyer services. Others are linked to a failure within the profession to attract lawyers to certain communities and practice areas.

130. These systemic factors will not disappear on their own. In fact they may well become more marked as time goes by unless greater effort is made to address them.

The Role of the Law Society

131. Access to and delivery of competent lawyer services are hallmarks of the rule of law in a parliamentary system of democracy. They are also central to the administration of justice, the independence of the bar and self-regulation of the legal profession.

132. Over the past twenty-five years, the profession and the environment in which lawyers work have undergone many changes. As change continues to occur and the environment becomes more complex, new strategies are needed so that in the 21st century lawyer services continue to be available to the public throughout Ontario.

133. The Law Society is and must continue to be concerned for the survival and renewal of the target group. The Law Society's mandate is,

> to govern the legal profession in the public interest by ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence and professional conduct…for the purpose of advancing the cause of justice and the rule of law.

134. It is integral to the mandate's fulfillment that there be sufficient lawyers to provide meaningful service to members of the public with all their diverse needs. So although lawyers accept primary responsibility for their competence, their ethics and their practices, the Law Society can and does play an important role in supporting lawyers' efforts to meet the public's needs. It must commit the resources necessary to fulfill that role.

135. In recent years, the Law Society has taken a proactive role in developing a competence model that would support its members in their efforts to maintain their competence and provide quality service, thereby benefiting the public who lawyers serve. Over the past three years, the Professional Development and Competence department has developed numerous tools to assist the profession with its practice management and substantive law needs. The majority of lawyers who use these tools are in the target group. Appendix 4 contains a summary of the tools and services the Professional Development and Competence department currently provides.

136. At the same time, however, focus group meetings demonstrated that some lawyers in the target group feel the Law Society does not communicate with them effectively or support them sufficiently. This was particularly true for sole practitioners alone. In some cases, the participants demonstrated lack of knowledge of the Law Society's role as

regulator of the legal profession in the public interest. Other lawyers, while recognizing the nature of the Law Society's mandate, suggested that the Law Society could better communicate to the public the valuable service lawyers provide.

137. The Task Force's work has provided the Law Society with an unique opportunity to better understand the role of the target group in the delivery of lawyer services to the public and what will support their ability to continue to serve the public. This is critical information for the Law Society as it develops additional tools that will build upon the target group's commitment to provide that essential service. This opportunity must not be lost. The public interest is at stake.

The Role of Other Legal Organizations

138. Target group lawyers practise in all areas of law. Many of these lawyers belong to numerous legal organizations ("legal organizations"), all of which take an active interest in the work they do, the services they provide, and the pressures and challenges they face. These memberships and the connection they allow sole and small firm practitioners to make with others in the legal community have proven to be significant contributors to practice success. Appendix 5 contains a list of many of the legal organizations that serve the profession and regularly provide input to the Law Society on policies it develops.

139. If, as the Task Force believes, there is a crucial link between the target group and access to justice and to lawyer services, then all legal organizations, not just the Law Society, should be interested in and must be committed to enhancing the target group's ability to serve the public of Ontario.

Periodic Research

140. The Task Force research has provided a snapshot of the target group at a moment in time. It has provided the basis upon which the Task Force's recommendations are based.

141. The true value of that research, however, is as a first step; a base line from which to build and compare. Periodic study of the target group, including attention to the issues the survey report and focus groups have raised, is essential.

THE RECOMMENDATIONS

Nature of Recommendations

142. The Task Force has developed recommendations in six areas:

- A Sole and Small Firm Practitioners' Unit
- Communication and Information
- Systemic Issues Affecting Access to Justice and to Lawyer Services
- Equality-seekers Issues
- Involvement of Legal Organizations
- Periodic Research and Information-Gathering

143. The implementation of most of the recommendations will fall to a number of Law Society standing committees, in particular the Professional Development, Competence and Admissions Committee, and to staff. In a number of recommendations the Task Force leaves the design of the implementation to the relevant standing committee, which will seek Convocation's consideration and approval of those designs. In some instances the recommendations are a call to action for third parties, such as legal organizations or government. The Task Force sincerely hopes they will heed the call.

144. Within each area of recommendations there are specific directions as well as suggestions for ways in which the implementation might unfold. The Task Force recommends that the relevant standing committees consider these suggestions as they develop proposals for Convocation's consideration.

145. If Convocation approves these recommendations in principle, the Task Force proposes that where required they be referred to the appropriate department or standing committee *immediately* as a priority. While recognizing that committees are already engaged in many activities, as are the departments that implement policy, the Task Force has attached proposed timelines for most recommendations, which it believes should at least guide the committees' and departments' reporting and implementation.

146. It is appropriate that specific budgetary implications and business cases be developed as part of the implementation design the committees undertake under each recommendation and be provided to Convocation at that time.

A SOLE AND SMALL FIRM PRACTIONERS' UNIT

147. In March 2001 Convocation approved a professional development competence model with five components. To implement the model, the Law Society created a Professional Development and Competence department whose purpose is to implement the model and continue to develop tools and supports to assist the profession in maintaining its competence.

148. The Task Force has been impressed with the ongoing development of this department and the increasing number of tools it provides, as set out at Appendix 4.

149. Focus group discussions revealed that many sole and small firm practitioners might not yet be sufficiently aware of the Law Society's activities and tools. Moreover, the survey and focus groups have pointed to the potentially harmful effects of isolation on a practitioner's ability to survive and thrive and the need for there to be contact people to provide guidance.

150. The Task Force has concluded that the unique needs of the target group require that there be a unit within the Professional Development and Competence department dedicated to sole practitioners and small firm lawyers. Given the information the survey and focus groups have provided, it is clear that the focus of the unit should be on practice management and broad technology advice.

151. Through the development of a sole practice and small firm unit within the Professional Development and Competence department, the Law Society can refine its tools and create new ones that address the specific needs the lawyers surveyed have identified and the Task Force has considered.

152. The Professional Development, Competence and Admissions Committee and the Professional Development and Competence department should be primarily responsible for designing how this unit would be structured and its budget, for Convocation's future consideration. However, the Task Force has identified possible tools and suggestions that should be investigated as part of the implementation design. These potential tools and suggestions reflect what the survey and focus groups revealed.

153. The best way to ensure that this is done accurately and with the input of those for whom the tools will be developed and fine-tuned is to establish the unit immediately. Counsel, with an administrative assistant, should be hired to undertake, with the Director of Professional Development and Competence, the investigation and analysis of the possible tools the Task Force identifies in the recommendations set out below and develop a cost analysis. To do this properly, the counsel will consult on effective tools for assisting the target group and accomplishing the unit's goals.

154. The Task Force expects that the process, which will culminate in a proposed implementation design and business case to the Professional Development, Competence and Admissions Committee and ultimately Convocation, will take approximately one year from the hiring of the counsel. The expected budget for 2005-2006 would be:

Staff salaries and benefits:(counsel, administrative assistant,	
portion of technology support)	$200,000
office and travel expenses	$ 50,000
Indirect allocation	$ 75,000
Total	$325,000[25]

155. The Task Force recognizes that the potential resource implications are significant. In its view, they are both reasonable and essential if the issues raised in this report are to be addressed. By approving the Task Force's recommendations Convocation recognizes the need to devote sufficient resources to the target group.

156. The Task Force has identified a number of tools the counsel should investigate, which are set out in the recommendations that follow. The Task Force notes, in particular, the start-up workshop. The Law Society currently offers a voluntary start-up workshop open to anyone who is setting up sole or small firm practice, whether they are newly-called lawyers or experienced lawyers moving into this practice structure. It provides important information on establishing and managing a sole or small firm practice.

157. The Task Force believes that all lawyers moving into the target group, regardless of how long they have been members of the bar should be encouraged to take the workshop. In addition, however, given what the Task Force has learned about the particular

[25] There is no funding in the 2005 budget for this expenditure. However, only part of the funding would be required in 2005. It would be necessary to allocate the 2005 portion of the funding from the contingency fund. The balance would be included in the 2006 budget.

challenges and pressures associated with sole practice, particularly in isolation, the Task Force is convinced that lawyers entering the sole practitioner practice status (known as "Category A") must be *required* to take the start-up workshop. Category A lawyers are those lawyers who practice alone, practice alone but share office space, practice under their own name but have employed lawyers or practice in association with other lawyers. Category A lawyers are responsible for their individual books and records.

RECOMMENDATION 1

The Law Society should establish within the Professional Development and Competence department a unit dedicated to sole and small firm practitioners.

A sole/small firm practice management and technology advisor with high visibility as a resource person should lead the unit.

The unit should focus on active assistance through practice management advisory services, continued development of supportive tools and communication of available practice resources.

The Law Society should immediately advertise for and hire a full-time counsel charged with the responsibility for working with the Director of Professional Development and Competence to investigate and analyse the best way to implement the unit design and to produce appropriate proposals for that design and a business case. The counsel will consult on effective tools for assisting those in the target group.

Without limiting the direction the design of the unit will take, the Task Force recommends that the counsel investigate the following possible approaches:

- *A hot-line whose staff is dedicated to practice management advice for the target group;*
- *Ongoing development of practice management templates that can be downloaded for use;*
- *Enhancement of the current Law Society webpage dedicated to sole and small firm practitioners;*
- *More mentoring designed for target group practices, which might include lawyers being connected to mentors from similar practice structures;*
- *Further development of topic-specific practical tips such as changing practice areas;*
- *The creation of a self-assessment questionnaire that lawyers may use to assess whether they have the personal competencies to be a sole practitioner, particularly one who practises alone; and*
- *Regularly timed e-mails to target group lawyers.*

The investigation of resources for the unit should also include technology resource support (not maintenance and repair support), which could include conferences directed at target group

lawyers addressing topics of general interest and additional sessions customized to practice areas. To the extent that LAWPRO, the Law Society and other legal organizations can liaise on this component, such interaction should be encouraged.

RECOMMENDATION 2

In the investigation of the ongoing development of practical tools and supports the counsel should also focus on tools that address key success factors for target group lawyers, in particular,

- *planning and launching the practice (business and marketing plans);*
- *developing strategies for*
  - *client development and retention;*
  - *use of technology;*
  - *finances, resource and staff management;*
- *choosing practice location; and*
- *determining the number of practice areas (specialist versus general practice).*

RECOMMENDATION 3

The counsel should also investigate active and passive "matching" to connect target group lawyers with others in the target group and with other potential groups and individuals (including non-lawyers) with whom they might share resources, provide coverage for temporary work absences, network, etc.

Without limiting the direction of the design of the matching program, the Task Force recommends that the counsel consider the following:

- *A listserv[26] of target group lawyers to connect them with one another;*
- *The possible linking of sole and small firms with other firms for mentoring;*
- *Exploring the feasibility of free of charge advertising on the Law Society website, in the Ontario Reports or Ontario Lawyers Gazette for target group lawyers to seek shared staff, services, resources, articling students, short-term coverage, etc;*
- *Connecting CLE target group participants for networking lunches;*
- *The role legal organizations might play in this initiative, including coordinating mentoring and other programs.*

RECOMMENDATION 4

All lawyers intending to practise as sole practitioners (Law Society member status Category A) should be required to take a mandatory Law Society start-up workshop. Category A lawyers are

[26] A collection of email addresses from subscribers with common interests through which messages (sharing or seeking information) from one subscriber are automatically redistributed to all the other subscribers. Recipients may reply, choosing redistribution to all subscribers or only to the originator of the message. Protocols may apply.

those lawyers who practice alone, practice alone but share office space, practice under their own name but have employed lawyers or practice in association with other lawyers. Category A lawyers are responsible for the books and records of the practice.

The current workshop structure should be examined to consider additional components, including those directed at sole practitioners alone.

Without limiting the design of the program the Task Force recommends that counsel should investigate and provide options on the following:

- *Nature of the program, including whether it should be free or not;*
- *The advantages and disadvantages of a live or videotaped program;*
- *Length of program (one or two days; module based);*
- *Timing of the program (e.g. within one year of entering practice);*
- *Provision of downloadable templates for practice;*
- *Whether there should be any exceptions for participation in the mandatory program;*
- *Consequences of non-attendance.*

The start-up workshop should also continue to be offered to all interested lawyers who are not otherwise required to attend and their participation should be encouraged.

Implementation: For recommendations 1-4, the counsel and administrative staff proposed in paragraph 154 should be hired immediately. There should be a report to the Professional Development, Competence and Admissions Committee on a proposed implementation design and business case within one year from hire.

COMMUNICATION AND INFORMATION

158. Lawyers, law students and articling students need to be better informed about the opportunities and challenges of sole and small firm practice, so that they can enter these practice structures with the best chance for success. The Task Force believes that little is done to encourage practice in smaller centres and even less is done to prepare lawyers for the role of sole and small firm practitioner.

159. Nowhere is the challenge more evident than for sole practitioners alone. The survey and focus groups clearly illustrate that those in this practice structure have the highest number of pressures and the lowest satisfaction. Although this practice structure may be viable for some, and in some cases where there are too few lawyers in a community may be the only practical choice, its challenges should be clearly identified and where feasible, alternatives presented. In the Task Force's view, given the information it has learned about sole practice alone, lawyers should be encouraged to consider alternatives to this practice structure. The communications strategy should include an inventory of alternatives.

160. The Professional Development, Competence and Admissions Committee and the Professional Development and Competence department should be primarily responsible for developing this strategy, in conjunction with the Communications department, where appropriate.

RECOMMENDATION 5

The Law Society should develop an ongoing communications strategy to inform and educate lawyers, law students and articling students on the opportunities, challenges, and key success factors of sole and small firm practice.

The communication strategy should raise awareness of the challenges of practising as a sole practitioner alone, the skills required to succeed and the alternatives to this practice structure.

The strategy should include communicating the benefits of working in communities around the province.

Without limiting the development of the communications strategy, the following components should be considered:

- *Providing information to any lawyer who notifies the Law Society of a change in practice status to sole or small firm practice, in particular sole practitioner alone status;*
- *Where relevant, continuing legal education programs and start-up workshops should address sole and small firm practice considerations;*
- *Developing regular opportunities to speak on the issues at law schools and during the course of the licensing program;*
- *Enlisting legal organizations and successful sole and small firm practitioners to speak about the opportunities and educate about the challenges of sole and small firm practice;*
- *Developing a strategy for keeping benchers informed on the challenges and opportunities of sole and small firm practice so they are able and encouraged to speak with practitioners within the legal community on these issues.*

Implementation: The Professional Development, Competence and Admissions Committee to provide a communications strategy proposal to Convocation – January 2006.

SYSTEMIC ISSUES AFFECTING ACCESS TO JUSTICE AND TO LAWYER SERVICES

161. In considering the factors that affect the target group's ability to serve the public the Task Force has noted a number of systemic issues. There is a link between the financial viability and professional satisfaction of the target group and the capacity and willingness of individuals to pay for the lawyer services they need.

162. While the Law Society may not be in a position to change some of the societal factors that affect target group lawyers, the Task Force believes that it can and must draw attention to what they are and, where possible, recommend further study. The Law Society should liaise with other legal organizations and the government to consider what steps are possible to ensure that the public's access to justice and to lawyer services is not irrevocably compromised.

163. The areas ripe for further consideration include,

- the public's understanding of lawyer services and their value;
- ways in which to improve the public's ability to afford lawyer services;
- greater accessibility of legal aid;
- addressing the increasing complexity and cost of the justice system; and
- shortages of lawyer services in geographic and demographic communities and in certain practice areas.

164. While the survey and focus groups satisfied the Task Force that geographic, demographic and practice area shortages may in fact be issues, it is of the view that more concentrated study is necessary and beyond the scope of this Task Force to complete.

165. The Task Force has also concluded from the survey and focus groups that the public is not always aware of what lawyers do and how the work of a lawyer can be contrasted with what non-lawyers seek to provide. It is important to ensure that the public is aware of the "value-added" service that the profession provides.

166. The Government Relations Committee and the Access to Justice Committee are best suited to address the recommendations on systemic issues and to report to Convocation on how best to implement the recommendations set out below. In certain instances the Task Force recommends that other legal organizations become involved.

RECOMMENDATION 6

The Law Society should continue to pursue initiatives designed to enhance the public's access to lawyer services both independently and where appropriate with other legal organizations. Without seeking to limit the nature of those initiatives the Task Force recommends that,

- *the Law Society continue to advocate, through its Government Relations Committee, its Access to Justice Committee and the Legal Aid Coalition on Tariff Reform, for increased availability of legal aid to individuals in Ontario, for enhancements to the Legal Aid tariff and for increased administrative efficiencies;*
- *Legal Aid Ontario be encouraged to engage in discussions that recognize the target group's overwhelming representation on the legal aid panel and the access to justice and to lawyer services issues identified in the Strategic Communications Inc. reports;*
- *legal organizations be encouraged to initiate discussions for the expansion of income tax deductibility for legal fees incurred by individuals;*
- *the Law Society, through its Access to Justice Committee, consider ways in which to address systemic barriers existing within the legal system, including those related to costs, time delays and the complexity of court structures;*

- *the Law Society, through the Government Relations Committee, encourage greater and more direct liaison between the Ontario government and the Law Society to address issues concerning the cost and accessibility of the legal system to individuals in Ontario. Specifically, the goal would be to ensure that the Law Society is consulted and given an opportunity to provide input on changes and developments in the legal system that affect the public's access to justice and to lawyer services prior to their adoption.*

Implementation: The Government Relations Committee and the Access to Justice Committee should report on possible approaches to implement these recommendations in September 2005.

RECOMMENDATION 7

The Law Society, through the Access to Justice Committee and in conjunction with relevant legal organizations, should continue to investigate the issues of shortages of lawyer services and options for addressing any such shortages. In particular, the investigation should consider whether there are shortages of lawyers in certain geographic communities, demographic and cultural communities or practice areas, and if so, address the causes and possible solutions.

Without seeking to limit the direction of the investigation or the possible solutions, the Task Force recommends that the following be considered:

- *A statistical study of the issues;*
- *Enhanced communication of regional opportunities to establish practices; and*
- *Possible incentives to practise in under-serviced regions or practice areas.*

To achieve solutions it is essential that the Law Society have the cooperation of legal organizations in this investigation and in crafting possible solutions.

Implementation: The Access to Justice Committee should report on possible approaches to implementing these recommendations in September 2005.

RECOMMENDATION 8

The Law Society, through the Access to Justice Committee and the Law Society's Communications department, should continue to educate the public about the integral and valuable role lawyers play in ensuring that the public's needs are met. The Law Society should continue to endorse, where appropriate, the efforts of other legal organizations to do the same.

Implementation: The Access to Justice Committee and the Communications department should report on possible approaches to implementing these recommendations in June 2005.

EQUALITY-SEEKERS ISSUES

167. The Task Force commissioned a separate report on equality-seekers within the target group, with a view to exploring whether the issues affecting equality seekers are the same as or different from those affecting the rest of the target group. Appendix 3

contains the detailed report, entitled *Report on Sole Practitioners and Employee/Associates from Equality Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment, October 6, 2004.*

168. In many ways the experiences are similar. In a number of ways, however, the experiences are quite different. Some of the differences have been highlighted elsewhere in this report.

169. The Task Force is of the view that a full analysis of the equality-seekers' experiences is beyond the Task Force's ability and better addressed in the Equity and Aboriginal Issues Committee (EAIC).

170. At the same time, however, it believes that any work that EAIC undertakes should not be done in isolation from the general work that will result from the Task Force's overall recommendations.

RECOMMENDATION 9

The Task Force recommends that the Equity and Aboriginal Issues Committee (EAIC) consider the Report on Sole Practitioners and Employee/Associates from Equality Seeking Communities in the context of its mandate and make recommendations to Convocation it considers appropriate. The Task Force further recommends that in considering the report and possible recommendations, EAIC first liaise with those other standing committees that are responsible for other recommendations within this report.

Implementation: Given the development of a unit to support sole and small firm practitioners, it would be premature for EIAC to have to report until that design work is completed and approved. The Task Force suggests that any EAIC report follow the completion of the design for the unit.

INVOLVEMENT OF LEGAL ORGANIZATIONS

171. Legal organizations play an important role in Ontario for all lawyers, regardless of the size of their practices. They speak on issues that affect the public and the profession. They provide continuing legal education and other practice information. As the representatives of the bar or certain constituencies within the bar, they often investigate and develop programs, such as collective extended health coverage and group credit card rates, that assist lawyers in sole and small practice who benefit from improved rates.

172. The survey report and focus groups demonstrated that many target group lawyers are less able to,

    a. purchase health, dental, investment and retirement options; and
    b. obtain reasonable and secure financing for their practices.

173. The Task Force urges legal organizations to continue to work on,

    a. educating financial institutions on the value lawyers bring to all communities and the importance of supporting these small practices; and

b. continuing to develop affordably priced forms of health, dental, investment and retirement coverage that sole and small firm lawyers can purchase.

RECOMMENDATION 10

The Law Society should involve other legal organizations in Ontario by sending them this report. It should draw their attention to this recommendation and to those aspects of the survey report and focus group reports that discuss the issues of financing practices and maintaining affordable health, dental and other coverage. It should encourage those organizations to continue their efforts to assist lawyers.

PERIODIC RESEARCH AND INFORMATION GATHERING

174. It is essential that the snapshot the survey has provided continues to be updated. Only with such regular updating of information can the Law Society determine whether the issues currently affecting the target group and the public it serves continue to exist, improve or worsen and what other issues arise.

175. To facilitate the gathering of information, the Law Society should also change the way in which it collects information so that it is easier to identify and track target group information.

176. The follow-up surveys do not need to be as detailed as the one prepared for this study, but should track the major issues. A follow-up survey should be conducted every two years, to ensure that issues are properly tracked.

177. The Director of Professional Development and Competence and the Director of Member Services should take primary responsibility for implementing this recommendation. The Professional Development, Competence and Admissions Committee should develop the proposal respecting follow-up surveys.

RECOMMENDATION 11

The Law Society should continue to track target group demographics and experience in the following ways:

- *Conduct follow-up surveys of the target group every two years for the sole and small firm practitioners unit's use;*
- *Track the impact of each of the previous 10 recommendations;*
- *Undertake a project to adopt consistent terminology, within the Law Society and with LAWPRO, for identifying membership status according to practice description (structure) and firm size. The terminology should differentiate between a sole practitioner who practises alone without other lawyers in the same office space; a sole practitioner who practises with other lawyers he or she employs (sole proprietor); a sole practitioner who practises "in association" with other sole practitioner(s) or a law firm; a sole practitioner who shares office space*

with other lawyers, but is not practising "in association" with them; a partner in a law firm; an employee in a law firm; or an associate in a law firm;

- *Investigate collecting information from members on indicia of isolation, number of practice areas, and on other practice management factors that would be useful in designing and offering the tools, supports and matching referred to in Recommendations 1,2 and 3; and*

- *Refine the capability to collect and provide information according to practice description (structure) and firm size on and through the Law Society database.*

Implementation: The Professional Development, Competence and Admissions Committee should provide a proposed design for the follow-up survey in February 2006.

CONCLUSION

178. The recommendations set out in this report seek to address a number of issues that the surveys, interviews and focus groups brought to the Task Force's attention as follows:

a. The importance of the target group to the public's access to justice and to lawyer services and the need for the public to have more information on the target group's role;

b. The need for lawyers to know more about the opportunities and challenges of target group practice;

c. The importance of dedicating resources, attention and guidance to the target group to enhance its ability to survive and thrive and serve the public of Ontario;

d. The need to investigate issues related to possible shortages of lawyer services;

e. The need to address issues related to the individual's ability to pay for lawyer services;

f. The importance of further investigating issues affecting equality-seekers within the target group; and

g. The importance of continuing to gather information on the target group.

179. Target group lawyers, like lawyers in the profession generally, are dedicated to serving their clients and contributing to the rule of law in Ontario society. Target group lawyers face unique challenges in maintaining their practices. The Sole Practitioner and Small Firm Task Force has brought the issues into bold relief. It hopes the recommendations it has made can assist in ensuring that in the 21st century lawyer services continue to be available to the public throughout Ontario.

REQUEST TO CONVOCATION

180. Convocation is requested to consider recommendations 1-11, also set out in the Executive Summary, and if appropriate, approve them.

181. If Convocation approves the report and recommendations the report will be made available to legal organizations and the profession for their comments and suggestions on implementing the recommendations. In addition, counsel will seek additional input from those for whom the tools will be designed on ways in which the unit might best accomplish its goals.

182. As the relevant standing committees develop implementation plans and business cases they will return to Convocation for specific approval.

Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms

Sole Practitioners and Lawyers in Small Firms: Distinctive Characteristics, Satisfaction and Financial Viability, Perceptions of Shortages of Legal Services

April 7, 2004

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Executive Summary

Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in November 2003, to conduct quantitative and qualitative research to explore:

- Comparisons between lawyers in sole practices and small firms, and lawyers in larger firms;
- Perceived shortages of legal services in smaller communities and elsewhere in Ontario;
- The financial viability of sole practices and small firms;
- The population of lawyers from equality-seeking communities who are sole practitioners or with small firms.

This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research findings.

Methodology

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;
- Follow-up long interviews with sole practitioners and lawyers in small firms.

Quantitative Research: The Survey Questionnaire

The survey questionnaire (Appendix 1) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;
- Access to Legal Services;
- Members of Equality-Seeking Communities;
- Demographics.

The scope of the survey instrument and the extensive use of open-ended questions reflected the broad, exploratory nature of the research project.

The survey was administered to 734 lawyers in private practice in Ontario (Table 1), including:

- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as "at risk" of losing access to legal services, because there were two or fewer lawyers in the area and they were over the age of 55.

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003.

The margin of error for the target group sample is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

Qualitative Research: Long Interviews

All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

Subsequent long interviews explored two areas:

- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individuals' practice.

An interview guide (Appendix 2), exploring these themes and comprised of 20 questions, provided the basis for a semi-structured, open-ended conversation with 29 lawyers from the target group.

Comparing the Target and Non-Target Groups

Comparison between the target group of sole practitioners and lawyers and the non-target group of lawyers in firms with more than five lawyers revealed differences in demographic characteristics, income, areas of practice, type of services provided and the clientele served.

What emerges from these comparisons is the extent to which sole practitioners and small firms serve a distinct client population and provide a unique configuration of services:

- It would appear that a large majority of all individuals seeking legal services, obtain them from lawyers in the target group, particularly in the areas of Real Estate, Wills, Estates and Trusts, and Family Law, all of which are dominated by sole practitioners and small firms.
- A large majority of all legal services provided in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario are provided by sole practitioners and small firms.
- This group also provides the vast majority of all Legal Aid services delivered in Ontario.
- Finally, and of particular note in light of the rapidly changing ethnic and linguistic composition of Ontario, the target group provides virtually all the legal services available in languages other than English, French or Italian.

Comparisons within the Target Group

Differences within the target group on language/ethnic diversity, income and related aspects of practice profile and stability (*growing, stable* or *decreasing* areas of practice), are not as clearly defined as those between the target and non-target groups. However they do illustrate that comparisons between the target and the non-target groups can also be viewed as a continuum. Sole practitioners, particularly those practising alone without other lawyers in the same office, tend to be most different from non-target group respondents. In contrast partners in small firms tend to be the most similar to respondents in the non-target group. Other factors - region, gender, equality-seeking status and whether lawyers accept Legal Aid clients - may provide equally or more salient parameters for defining sub-groups within the target group of sole practitioners and small firms.

Satisfaction and Financial Viability

Two insights emerged from our analysis of satisfaction/dissatisfaction, and perceptions of financial viability among survey respondents:

- Target group respondents reported somewhat less overall satisfaction with their practice, less satisfaction with the annual income from their practice and perceived greater challenges to their financial viability. However, despite substantive differences between the two groups, both groups registered relatively high degrees of satisfaction and a similar assessment of their future and future financial viability.
- A cluster of issues - notably the practical financial/utilitarian concerns of financing the practice, dealing with increased overhead costs and lower than expected incomes – are the main drivers determining both dissatisfaction and reduced financial viability in the target group.

More than one sixth of the target group, almost three times the proportion of the non-target group reported they were *somewhat* or *very dissatisfied* with their annual income. A similar proportion of target group respondents reported that maintaining financial viability was a *serious* or *very serious challenge* compared to less than one tenth of the non-target group.

But notwithstanding the differences between the target and non-target groups, including evidence of a small, but measurable, subset of the target group whose viability may be threatened, it is nevertheless important not to overstate the differences between the two groups. Three quarters of the target group report overall satisfaction with their practice, four fifths are satisfied with their current mix of practice areas, and those who are satisfied with their income outnumber those that are dissatisfied by a ratio of almost two to one. Perceptions of current and future financial viability, particularly the latter, are similar in broad outline to the perceptions of lawyers in the non-target group. All of this suggests that as group, sole practitioners and lawyers in small firms have a generally high level of overall satisfaction, are reasonably satisfied with their income, and reasonably optimistic about the financial viability of their practice.

As a whole, the target group is stable and financially viable. At the same time this group includes a smaller subset of dissatisfied lawyers who are facing a variety of financial challenges, which in some instances are converging to threaten the overall viability of individual practices.

Although the practice environment for lawyers in the target and non-target groups undoubtedly has many common characteristics, statistical analysis isolated a unique configuration of drivers of satisfaction/dissatisfaction and threats to financial viability for the target group. As noted in Section 5.5 the most important of these are problems associated with the increased difficulties and/or risks of financing law practices, followed by the increased overhead costs of running a law practice.

How do we explain the different configuration of key drivers affecting the dissatisfaction and financial viability of the target group compared to the non-target group? One explanation lies in the characteristics of the client market that is served by sole practitioners and small firms. As detailed throughout Section 3 of this report, the target group is comparatively more numerous in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario. It serves a higher proportion of individuals than businesses, the overwhelming proportion of individuals using Legal Aid, and virtually all individuals seeking services in languages other than English, French or Italian.

It is reasonable to suggest that problems of financing law practices as well as those of managing rising overhead costs, have begun to surface in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services. This is the core explanation for the problems of financial viability facing many target group respondents - particularly sole practitioners - which we heard from individuals who participated in the long interviews.

Shortages of Legal Services

Analysis of survey data and long-interview transcripts revealed five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid and Legal Aid lawyers;
- Shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups, and communities of interest;
- Shortages due to legal process and administration.

Survey research and the real-world descriptions provided by the individuals we interviewed highlighted the extent to which shortages of legal services are rooted in problems of affordability. Of target group respondents who identified shortages, close to two fifths mentioned either problems of access to Legal Aid and Legal Aid lawyers, or problems of affordability of legal services. In the comparable group of equality-seekers this proportion rose to almost half who cited Legal Aid or affordability problems. But beyond these direct references to shortages rooted in the limited means of potential users of legal services, many of the specific descriptions of shortages in regions and areas of law cited the same underlying problem. Limitations or absences of services in such areas as Family Law, Child Protection and Workplace Safety and Insurance Board claims, were often explained by reference to clients' limited ability to pay or their general reliance on Legal Aid.

Viewed from this angle, we conclude that the issue of shortages must first be seen from the general point of view of the supply and demand of legal services. The problem of shortages of legal services is rooted in under-funded demand. Many potential users of legal services are not able to access those services because of their limited ability to pay. Conversely, the supply of legal services - lawyers working in specific regions, areas of law and communities - is limited by the inability of individuals and communities to purchase services at rates that will sustain sole practitioners and small firms. By definition our research is a snapshot of conditions at this time. Still, comments from many interviewees suggest there may be a growing proportion of the population who need legal services but are unable to adequately access those services due to financial constraints.

Although we have stressed the overarching importance of understanding shortages as a matter of affordability and restricted access to legal services, there are clearly other, more specific shortage issues which are relevant to regions, areas of practice and specific communities. In some parts of Ontario, a shortage of clients of sufficient means to sustain a healthy local community of lawyers may be complicated by a failure or lag in the legal community's response to changing demand. There may be several areas in Ontario, particularly the Non-Urban region and the Rest of GTA outside of Toronto, where attractive opportunities to practice may have gone unnoticed.

This research also identified, and in a preliminary way explored the issues of shortages in specific areas of practice. There are a host of issues that may be unique to each area of practice.

Finally, this section of the report explored the extent to which equality-seekers identified shortages of legal services, and the nature of the shortages they reported. It should be noted that whereas just over one third (35%) of the target group as a whole reported shortages of legal services in the community they served, this figure rose to 52% among equality-seekers within the target group.

Conclusion

The findings of this research suggest that the issues of dissatisfaction and financial viability, and shortages of legal services, may be closely linked through the character of the client market that is served by sole practitioners and lawyers in small firms. The problems experienced by some sole practitioners and small firms in financing their practices are rooted in the growing incapacity of potential clients to pay for those services. As we heard directly from several interviewees, some lawyers find themselves on the horns of a dilemma. Many potential clients cannot pay adequately or in a timely fashion for the legal services they need. Yet, in many instances lawyers are obliged to take on these cases both for financial and professional reasons, with the consequences that they assume an increased burden in financing their practice, and inevitably earn a lower income.

The same situation also accounts for the absence of legal services, and perhaps also a trend toward growing shortages in some regions, areas of practice or cultural communities. As a matter of both choice and necessity, lawyers may be forced to restrict the Legal Aid clients they accept, as well as clients of limited means who do not qualify for Legal Aid. Regions, areas of practice or cultural communities where the potential client population has a limited capacity to pay for services, are inevitably subject to growing shortages as the underlying economic realities force lawyers to seek out other more viable markets for their legal services.

This report provides:

- Detailed comparisons between the target and non-target groups;
- Detailed comparisons within the five sub-groups comprising the target group;
- Analysis of the key drivers of satisfaction, dissatisfaction, and financial viability within the target group;
- An exploration of the extent and characteristics of shortages of legal services as they were perceived by respondents in the target group.

In the analysis and interpretation of the research findings, this report has developed a general framework for analyzing these issues that can inform further research.

1.0 Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in November 2003, to conduct quantitative and qualitative research to explore:

- Comparisons between lawyers in sole practices and small firms, and

lawyers in larger firms;
- Perceived shortages of legal services in smaller communities and elsewhere in Ontario;
- The financial viability of sole practices and small firms;
- The population of lawyers from equality-seeking communities who are sole practitioners or with small firms.

This report presents the combined results of survey research and long interviews with lawyers in private practice in Ontario. Beyond the specific results reported herein, these findings are intended to inform further targeted research in specific areas and provide baseline information, which can be used for comparisons with future research.

2.0 Methodology

2.1 Research Design

The research project was comprised of three components, which were carried out sequentially in the period from November 2003 to February 2004:

- Key informant interviews and instrument design;
- Opinion survey of lawyers in private practice;
- Follow-up long interviews with sole practitioners and lawyers in small firms.

2.1.1 Key informant interviews and research

Under the direction of Law Society staff and the Consultant to the Task Force, ten key informants were interviewed between November 11 and November 21, 2003. This group included seven lawyers in private practice, the Director of Policy and Legal Affairs, the Consultant to the Task Force and the Equity Advisor.

All interviews explored some common themes including the sustainability of sole practitioners and small firms, the challenges and rewards of practising in specific practice environments, access to legal services and in some cases, equity issues. The interviews were structured as informal conversations and evolved with the parallel process of drafting the questionnaire. The interviews gave context to the research process, provided insights into how to structure the survey questionnaire, identified specific issues that should be addressed and appropriate terminology to incorporate into the survey questions.

2.2.2 Quantitative Research: The Survey Questionnaire

The survey questionnaire (Appendix 1) was comprised of 120 questions, including 13 open-ended questions. It was made up of the following sections:

- Practice Profile;
- Satisfaction with Practice;
- Financial Viability;
- Access to Legal Services;
- Members of Equality-Seeking Communities;
- Demographics.

The scope of the survey instrument and the extensive use of open-ended questions reflected the broad, exploratory nature of the research project.

The survey was administered to 734 lawyers in private practice in Ontario (Table 1), including:

- 553 individuals in the *target group*, comprised of sole practitioners, sole proprietors (sole practitioners who employ lawyers), and lawyers practising in firms with five or fewer lawyers;
- 171 individuals in the *non-target group*, comprised of lawyers practising in firms with more than five lawyers (the control group);
- 10 individuals practising in communities previously defined as "at risk" of losing access to legal services, because there were two or fewer lawyers in the areas and they we over the age of 55.[1]

The survey, which took an average of 27 minutes to complete, was fielded by trained telephone interviewers at Strategic Communications, between December 3 and December 18, 2003. The margin of error for the target group sample is 3.9% and for the non-target group is 7.4%, 19 times out of 20.

2.2.3 Qualitative Research: Long Interviews

All survey respondents were asked if they would be willing to participate in a follow-up long interview and/or a focus group. 50% of the target group and 39% of the non-target group indicated they were willing to participate in one or both forms of follow-up research.

Subsequent long interviews explored two areas:

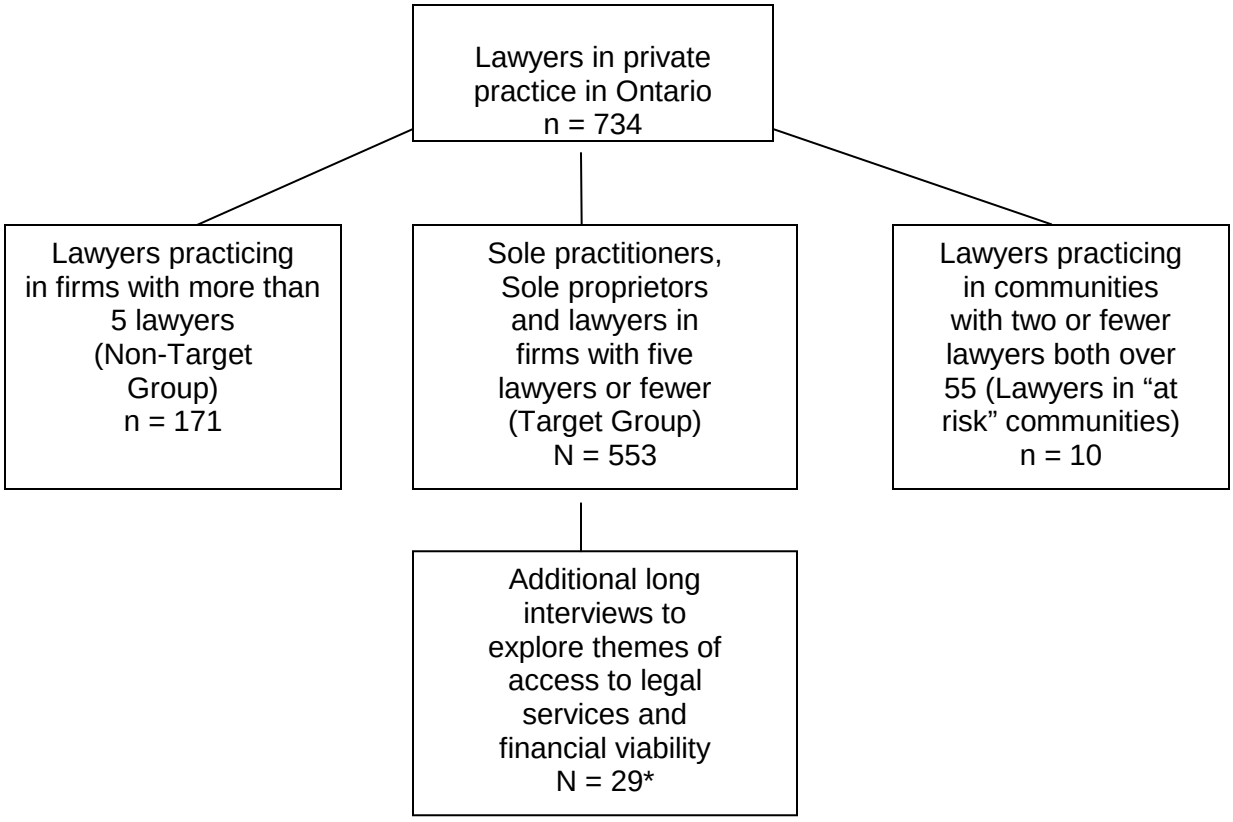
- Limits to access, or shortages of legal services;
- Dissatisfaction and/or challenges to the financial viability of individual's practice.

An interview guide (Appendix 2), exploring these themes and comprised of 20 questions, provided the basis for a semi-structured, open-ended conversation with 29 lawyers from the target group. Sixteen lawyers were selected to explore access to legal services, while thirteen were selected to explore financial viability and satisfaction with their practice. Interviews were conducted between January 21, 2004 and February 16, 2004. They ranged in length from 17 minutes to 96 minutes, averaging of 47 minutes.

The long interviews permitted a smaller group of survey respondents to frame the issues and describe the problems in their own words. The stories of individuals provided context and meaning to quantitative results. Their in-depth comments added qualitative 'flesh' to the quantitative 'bones' of the survey data that had already been collected. This combination of data sources has been particularly valuable to our interpretation of how multiple factors may intersect to affect the issues of financial viability and access to legal services.

TABLE 1 - SURVEY RESPONDENTS AND LONG INTERVIEWS

[1] This report presents and interprets the results of the target and non-target survey sub-samples. Its does not report on the "at risk" sub-sample which is too small to permit reliable generalization. This sub-sample could not be incorporated into the target group sub-sample because it was not randomly generated.



**Two individuals who completed long interviews were not part of original survey sample of 553. These interviews were conducted to broaden geographical representation.*

2.2.4 Regional Comparisons

Throughout this report - most importantly in Section 6, Shortages of Legal Services - we have used four regional categories for comparative purposes: Toronto, Rest of GTA, Other Urban Areas and Non-Urban Areas. These regional designations were present in the initial data set received from the Law Society.

Following discussion with Law Society staff, one change was made to improve the validity of the regional designations. Municipalities in Southern Ontario with a population of over 50,000 – including for example, Windsor and St. Catharines - were moved from the Non-Urban Area category to the Other Urban Area category. This change was consistent with the original intent of the regional designations; to compare the profile and experience of lawyers practising law in distinct urban and non-urban milieu. In this case moving some mid-sized cities in Southern Ontario from the Non-Urban Areas designation to the Other Urban Area designation, increased the accuracy of both categories. This change resulted in a somewhat narrower definition of the Non-Urban Area and a somewhat wider definition of the Other Urban Area, while having no effect on the definition of the Toronto and the Rest of GTA regions. These changes should be kept in mind when making comparisons between regional findings presented in this report and existing regional information, since the four regional categories being used in

each case may not be strictly comparable.

2.2.5 Target and Non-target Groups: Definitions

Throughout this report we have used the terms target and non-target groups. Survey respondents for both of these groups were randomly selected from an up-to-date list of lawyers in private practice in Ontario. The non-target group refers to those lawyers who reported being a partner or employee/associate in a firm with six or more lawyers. The target group refers to lawyers who work in firms with five or fewer lawyers.

The report also discusses similarities and differences between five sub-groups within the target group. These are:

- Sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Sole proprietors;
- Partners in firms with five or fewer lawyers;
- Employees/associates in firms with five or fewer lawyers.

3.0 Comparing the Target and Non-Target Groups

3.1. Key findings

Comparison between the target group and the non-target group revealed differences in demographic characteristics, income, areas of practice, type of services provided and the clientele served.

The target group is older, has a lower proportion of women, and reports lower annual income than the non-target group. The target group is slightly more racially diverse, and exhibits greater linguistic diversity.

Roughly equal percentages of both groups indicated they were members of equality-seeking communities. Among the equality-seekers in the non-target group, a much higher percentage cited gender as at least one of the reasons for their equality-seeking status. Among equality seekers in the target group, a higher percentage of respondents cited ethnicity, race or language as at least one of the reasons for their equality-seeking status.

The differences in the reasons cited for equality-seeking status between the target and non-target group respondents, can be accounted for in part by the differences in the gender, race, ethnic and linguistic composition of the two groups. However, closer comparisons demonstrated that a higher percentage of women in the non-target group identified themselves as equality-seekers, and were significantly more likely to mention gender first among the reasons for their equality-seeking status. Although it is more difficult to compare reporting differences based on race, ethnicity and language, the higher percentage of target group respondents who cited race may indicate a greater propensity among racialized sub-groups in the target group to identify race as an equality-seeking issue.

A higher percentage of non-target respondents cited English or French as their first language, whereas a higher percentage of target group respondents cited one or more of all other

languages as their first language. A higher proportion of the target group reported offering services to clients in other languages. To the extent that legal services in Ontario are being offered in languages other than English, French or Italian, they are provided almost exclusively by lawyers in the target group.

A much higher percentage of non-target respondents were located in Toronto, roughly equal percentages of the two groups were located in Other Urban Areas, and a much higher proportion of target group respondents were located in the Rest of GTA and Non-Urban Areas.

Target group respondents estimated over three-quarters of all clients were individuals, whereas non-target group respondents estimated three tenths of all clients were individuals. Conversely, the target group estimated just over one quarter of clients were businesses, organizations or government, while the non-target group estimated these groups comprised seven tenths of all their clients.

More than one third of the target group respondents reported doing some Legal Aid work compared to less than one tenth of the non-target group. For those doing Legal Aid in the target group, the work comprised an average of just under two-fifths of all billable work. In contrast, for those in the non-target group who reported doing such work, a quarter of all billable time was comprised of Legal Aid.

The top five areas of practice reported by the target group were: Real Estate; Civil Litigation; Family and Matrimonial; Corporate Commercial; and Wills, Estates and Trusts. Compared to the non-target group, a much higher percentage of target group respondents cited Real Estate; Wills, Estates and Trusts and Family and Matrimonial Law as their main areas of practice.

Of all main areas of practice mentioned by target group respondents, less than half were described as *growing*. Non-target group respondents described three-fifths of all their main areas of practice as *growing*.

Compared to the non-target group, the target group reported a lower percentage of billable legal work, a higher percentage of time spent on non-billable administration, client development and marketing, a higher percentage of pro bono work and somewhat shorter average hours of work per week.

3.2 Demographics

In comparison with the non-target group, the target group:

- Has a lower proportion of women;
- Is older;
- Reports lower annual incomes.

3.2.1 Gender

CHART 1 - GENDER

(see chart in Convocation Report)

As Chart 1 shows, women comprise 21% of the target group compared to 33% of the non-target group.

Within the target group as a whole 21% of respondents were women. However, women were more likely to be associates or employees of small firms, comprising 33% of that sub-group, and less likely to be partners in those firms, comprising 13% of that sub-group. In the other sub-groups, sole practitioners and sole proprietors, the percentage of women was closer to the average presented in Chart 1. A similar pattern was evident within the non-target group, where 33% of all respondents were women but 47% of all associates/ employees were women and 13% of all partners were women. In both the target and non-target groups, women are less likely to be partners and more likely to be associates or employees in law firms.

3.2.2 Age

The target group of sole practitioners and lawyers in small firms is older, with an average age of 49 compared to 42 in the non-target group. Within the target group sole practitioners alone had the highest average age at 51, followed by sole practitioners sharing office space with other lawyers, at 50. Employees/associates in small firms reported the lowest average age at 41. As Chart 2 shows, the target group has a much lower percentage of respondents under the age of 35, 12% compared to 36% in the non-target group.

CHART 2 - AGE

(see chart in Convocation Report)

Within the target group just 6% of sole practitioners practising alone without other lawyers in the same space, and 8% of sole practitioners sharing space with other lawyers, were under the age of 35. In Toronto and the Rest of GTA, 13% of the target group were under 35, compared to 9% in Other Urban and Non-Urban Areas. Target group respondents in Toronto and the Rest of GTA also had the lowest average age at 46 and 47 respectively, compared to an average of 48 and 50 respectively in the Other Urban and Non-Urban regions.

3.2.3 Income

Comparisons reveal substantial differences in the reported income levels of the two groups. As Chart 3 shows, almost twice the percentage of target group respondents, 59% compared to 30% in the non-target group, reported an annual before-tax income of less than $100,000. And almost twice the percentage of non-target respondents reported income over $100,000, 70% compared to 40% in the target group.

CHART 3 - ANNUAL INCOME EARNED FROM YOUR PRACTICE IN 2002*

(see chart in Convocation Report)

Income within the target group is discussed at greater length in Section 5.3.

3.3 Diversity

Compared to the target group, the non-target group:

- Is more linguistically diverse;
- Has a (slightly) higher proportion of visible minorities;
- Has almost the same percentage of individuals who identify themselves as members of an equality-seeking community;
- Has a higher percentage of equality-seekers who site race, ethnicity and language as a reason for their membership in an equality-seeking community;
- Has a lower percentage of equality-seekers who site gender as a reason for their membership in an equality-seeking community.

3.3.1 Visible Minorities

Survey respondents were asked if they belonged to one or more of 12 racialized categories. All responses were recorded.

As Chart 4 shows, the target group is slightly more racially diverse than the non-target group. A lower proportion of respondents identified themselves as *White* (84% compared to 88% in the non-target group), and a higher proportion cited one or more other categories (19% compared to 16% in the non-target group).

CHART 4 - DIVERSITY (ALL MENTIONS)*

(see chart in Convocation Report)

In the target group, 3.4% of respondents identified themselves as *South Asian* compared to 0.6% from the non-target group, 3.3% identified themselves as *Black* compared to 2.3% in the non-target group, and 2.9% identified themselves as *Chinese* compared to 2.3% in the non-target group.

3.3.2 Linguistic Diversity

Respondents were asked, “What language or languages did you first learn at home in childhood and still understand?” Here again, all mentions were recorded.

CHART 5 - FIRST LANGUAGE (ALL MENTIONS)*

(see chart in Convocation Report)

As Chart 5 shows, 80% of the target group compared to 91% of the non-target group listed *English* among their first languages, while 30% of target group respondents compared to 20% of the non-target group respondents mentioned one or more other languages. Among languages other than *English, French* was cited more frequently by respondents in the non-target group. In contrast, the remaining top 10 non-English mentions - *Italian, Cantonese, German, Polish, Punjabi, Greek, Urdu, Portuguese* and *Spanish* - were all cited more frequently by target group

respondents. In other words, a higher percentage of non-target group respondents cited *English* or *French* as their first language whereas a higher percentage of target group respondents cited all other languages.

Respondents were also asked: "In what languages are you able to offer your services to clients?" Chart 6 shows that 34% of the target group compared to 22% of the non-target group cited a language other than *English*. Within the target group, 40% of the respondents based in Toronto reported offering services in a language or languages other than *English*. This figure dropped to 24% among target group respondents in the Non-Urban Areas.

Chart 6 takes a closer look at the non-*English* languages in which lawyers reported offering services to their clients. It compares the frequency of non- English language mentions between the target and non-target groups.

CHART 6 - IN WHAT LANGUAGES ARE YOU ABLE TO OFFER YOUR SERVICES?

(see chart in Convocation Report)

CHART 7 - "OTHER" LANGUAGES OF SERVICE (ALL MENTIONS)

(see chart in Convocation Report)

Interestingly, 73% of non-target respondents cited *French* as a language in which they offer service to clients, compared to just 39% of the target group respondents. Non-target respondents were also slightly more likely to mentioned *Italian*, 19% compared to 15%. In contrast, target group respondents cited a higher percentage of all the other languages that received frequent mentions.

The sub-sample of non-target participants who mentioned offering their services in languages other than *English* was small (n=37) and for that reason the results should be interpreted cautiously. Nevertheless, the findings reported in Charts 5, 6 and 7, suggest distinct patterns of linguistic diversity in the target and non-target groups.

Respondents in the non-target group are more likely to offer their services in *English* only, and to the extent that they offer services in other languages, those languages are overwhelming *French* or *Italian*. Of the non-target group respondents who reported offering services in a language other than English, 81% mentioned *French* and/or *Italian*, while just 19% mentioned all other languages. Within the non-target group just seven individuals - 4% of the group - offered services to their clients in languages other than *English, French* or *Italian*. Moreover, all seven of these individuals were located in Toronto. In other words, there were no non-target respondents located outside of Toronto who reported offering services to clients in languages other than *English, French* or *Italian.*

In comparison to the non-target group, target group respondents were more likely to report offering their services in a language other than *English.* However a comparatively lower 46% of this group offer their services in French and/or Italian, whereas 54% mentioned all other languages. Within the target group as a whole, 18% of respondents reported offering services in languages other than *English, French* or *Italian*. In the Toronto region this figure was 27%, in the Rest of GTA 21%, in Other Urban Areas 12%, and in the Non-Urban Areas 4%.

These findings suggest that the linguistic and ethnic profile of the communities served by the target and non-target groups is quite different. Whereas the non-target group of lawyers are more likely to serve an *English*-speaking clientele or the more institutionally established language communities of *French* and *Italian* speakers, the target group is comprised of a much higher proportion of lawyers who are serving other - comparatively newer and less institutionally established - language communities. The findings summarized in Charts 4,5,6, and 7 suggest that to the extent that language communities other than *English, French* or *Italian,* are seeking the services of lawyers in their own language, those services are being provided almost exclusively by sole practitioners and small firms with fewer than five lawyers.

3.4 Members of Equality-Seeking Communities

Respondents were asked the following question:

> The Law Society has defined members of equality-seeking communities as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, a disability, language, sexual orientation or gender. Do you consider yourself a member of an equality-seeking community?

As Chart 8 shows, 26% of the target group and 28% of the non-target group, identified themselves as equality-seekers. For all respondents who identified themselves as equality-seekers, a follow-up question repeated the list of factors that define equality-seeking status and asked individuals to indicate one or more of the reasons for their membership in an equality-seeking community. Chart 9 compares the reasons cited by respondents in the target and non-target groups.

CHART 8 - ARE YOU A MEMBER OF AN EQUALITY-SEEKING COMMUNITY?

(see chart in Convocation Report)

CHART 9 - MAIN REASONS FOR MEMBERSHIP IN AN EQUALITY-SEEKING COMMUNITY (MULTIPLE MENTIONS)

(see chart in Convocation Report)

In the non-target group 58% of equality-seeking respondents compared to 28% of target group respondents cited gender as a reason for their equality-seeking status. (In both groups all the individuals who cited gender were women). 47% of equality-seekers in the target group mentioned ethnicity compared to 42% of respondents in the non-target group. And 37% of equality-seekers in the target group cited race, compared to 19% in the non-target group.

The differences illustrated in Chart 9 can be explained partly by the differences in the gender, ethnic, racial and linguistic composition of the target and non-target groups. For example, as Chart 1 showed, there is a substantially higher percentage of women in the non-target group than there is in the target group (33% compared to 21%). Other factors being equal, it would be reasonable to expect that this difference would be reflected in a correspondingly higher percentage of women in the non-target sub-sample of equality-seekers, as well as a

correspondingly higher percentage citing gender as one of their reasons for equality-seeking status. For the same reason, given the greater racial and linguistic diversity of the target group, it was not surprising to see these differences reflected in higher percentages of target group respondents citing ethnicity, race and language as reasons for their equality-seeking status.

However, the differences illustrated in Chart 9 cannot be explained entirely in terms of the different composition of the two groups. For example, a closer look at women in the two groups of equality-seekers reveals some relevant differences. First, although women in both groups were much more likely than men to identify themselves as equality-seekers, 54% of the women in the non-target group, compared to 44% of the women in the target group, indicated they were equality-seekers. Combined with the initially higher percentage of women in the non-target group as a whole, this resulted in women comprising 70% of all non-target group equality-seekers. In contrast, women comprised 37% of equality-seekers from the target group. Second, women in the non-target group were also slightly more likely to mention gender as a reason for their status as equality-seekers: 83% compared to 77% of women in the target group. And finally, it is interesting to note that women equality-seekers in the non-target group were significantly more likely to cite gender as their first mention of reasons for their equality-seeking status: 60% in the non-target group compared to 45% in the target group.

These comparisons demonstrate that women in the non-target group were somewhat more likely to identify themselves as equality-seekers, and significantly more likely to mention gender as their first reason for equality-seeking status. One possible explanation for these differences is that within the work environment of the non-target group where racial, ethnic and linguistic differences may be somewhat less pronounced than within the work environment of the target group, gender issues assume relatively greater importance. Conversely it might be the case that for some women in the target group the relative importance of gender as a reason for their equality-seeking status is mediated by other concerns such as race, ethnicity and language.

When it comes to examining race or ethnicity as a reason for equality-seeking status, there is no benchmark equivalent to gender that could be easily used to compare reporting differences between the target and non-target group. On the contrary, it is likely that respondents applied a variety of overlapping definitions when it came to specifying ethnicity, race, language and even religion as reasons for belonging to an equality- seeking community. Still, the comparatively higher percentage of target group respondents who cited race – 37% compared to 19% in the non-target group - may indicate a greater propensity among racialized sub-groups in the target group to identify race as an equality-seeking issue.

3.5 Practice Profile

3.5.1 Regional Distribution of the Target and Non-Target Group

As Chart 10 shows, just over one third of target group respondents (37%) compared to almost two thirds of non-target group respondents (66%), were located in Toronto. The two groups were represented in almost equal proportions in Other Urban Areas, 28% in the target group compared to 26% of the non-target group. 21% of target group lawyers were located in the Rest of GTA, compared to just 4% of non-target group lawyers, while 15% of the target group compared to 4% the non-target group are situated in the Non-Urban Areas.

CHART 10 - SURVEY SAMPLE: DISTRIBUTION BY REGION*

(see chart in Convocation Report)

Sole practitioners, sole proprietors and small firms comprise more than half of all the lawyers in private practice in Ontario. Given this fact, the information summarised in Chart 10 highlights the extent to which more than four fifths of all the lawyers in the Rest of GTA outside of Toronto and in Non-Urban Ontario, belong to the target group. It may be that both regions, particularly the GTA outside of Toronto, are served to some extent by firms based in Toronto and Other Urban centres. However, the preponderance of target group lawyers suggests that the market for legal services is served overwhelmingly by sole practitioners and small firms in these two regions.

3.5.2 Clients Served: Individuals and Businesses

Respondents were asked to estimate the percentage of "your clients that are businesses, organizations or government" and the "percentage of your clients that are individuals." As Chart 11 illustrates the estimates of the target and non-target group respondents, present mirror images. Whereas the target group respondents estimated 77% of all clients were individuals, the non-target group estimated just 30% of clients were individuals. Conversely, the target group estimated 26% of clients were businesses, organizations or government while the non-target group estimated these groups comprised 70% of all clients.

CHART 11 - PERCENTAGE OF CLIENTS WHO ARE INDIVIDUALS AND BUSINESSES

(see chart in Convocation Report)

3.5.3 Areas of Practice

Chart 12 compares main areas of practice between the target and non-target group. As expected, a higher percentage of the target group reported Real Estate (46%); Wills, Estates and Trusts (35%); and Family-Matrimonial (26%) as their main areas of practice than did lawyers in the non-target group.

CHART 12 - MAIN AREA OF PRACTICE (ALL MENTIONS)*

(see chart in Convocation Report)

Respondents were not asked if their practice as a whole was growing, stable or decreasing. However, as respondents listed their main areas of practice they were asked after each mention if that particular area of practice was, "growing, stable or decreasing." Chart 13 summarizes all responses for all the areas of practice. Whereas 60% of the non-target group described their main practice areas as *growing*, just 46% of the target group reported growth in their main practice areas. Interestingly the total percentage of practice areas described as decreasing was similar for both groups, 9% for the non-target group and 10% for the target group.

CHART 13 - IS YOUR PRACTICE GROWING, STABLE OR DECREASING? *

(see chart in Convocation Report)

3.5.4 Legal Aid

Whereas just 7% of the non-target group reported doing any Legal Aid whatsoever, a much higher percentage (37%) of the target group reported doing some Legal Aid work. And as Chart 14 shows, for 19% of the target group Legal Aid comprises more than one quarter of their billable time. By contrast a negligible 2% of the respondents in the non-target group report that Legal Aid comprises more than one quarter of their billable time.

CHART 14 - WHAT PERCENTAGE OF YOUR WORK IS LEGAL-AID WORK?

(see chart in Convocation Report)

The comparisons in Chart 14 illustrate another key difference in the type of legal services and the client population served by lawyers in the target and non-target groups. As a group, sole practitioners, sole proprietors and small firms deliver an overwhelming proportion of all Legal Aid services in Ontario. And for the same reason, income from Legal Aid may be an important source of revenue for one fifth or more of the lawyers in the target group (see Table 2 following). In contrast a very small percentage of lawyers in the non-target group do any Legal Aid work whatsoever, and income from Legal Aid constitutes an important revenue source for an even smaller percentage of that group.

3.5.5 Other Aspects of Practice Profile

In comparison with the non-target group, the target group reported:

- A lower percentage of billable legal work;
- A higher percentage of time spent on non-billable administration, client development and marketing;
- A higher percentage of pro bono work among those who report offering pro bono;
- Somewhat) shorter hours of work in an average week;
- higher percentage of Legal Aid work as a percentage of all billable time among those who report taking Legal Aid clients.

Table 2 summarizes these differences.

TABLE 2 - SUMMARY OF MEANS (AVERAGES)*

	Target Group (%)	Non-Target Group (%)
Billable legal work	68	79
Non-billable work	20	16
Legal aid*	39	25
Pro bono	12	8
Average week worked	48hrs	51hrs

**Refers only to respondents who reported taking Legal Aid clients (Chart 14).*

3.6 Discussion: Comparing the Target and Non-Target Groups

The extensive comparisons in this section reveal consistent differences in the demographic characteristics, practice profile and the client population served.

What emerges from these comparisons is the extent to which sole practitioners and small firms serve a distinct client population and provide a unique configuration of services. It would appear that a large majority of all individuals seeking legal services obtain them from lawyers in the target group, particularly in the areas of Real Estate, Wills, Estates and Trusts, and Family Law, all of which are dominated by sole practitioners and small firms. Similarly, a large majority of all legal services provided in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario are provided by sole practitioners and small firms. This group also provides the vast majority of all Legal Aid services delivered in Ontario. Finally, and of particular note in light of the rapidly changing ethnic and linguistic composition of Ontario, the target group provides virtually all the legal services available in languages other than *English, French* or *Italian.*

4.0 Comparisons within the Target group

As noted in Section 2.2.5 we have distinguished five sub-groups within the target group:

- Sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Sole proprietors;
- Partners firms with five or fewer lawyers;
- Employees/associates in firms with five or fewer lawyers.

This section examines some of the differences and similarities between these sub-groups, taking a closer look at aspects of language and diversity, practice profile and income.

4.1 Summary of Findings

Comparisons between the five sub-groups revealed some differences.

Both groups of sole practitioners reported the lowest percentages of English as a first language. With the exception of sole proprietors, these two groups also reported the highest percentage of languages other than English as one or more of their first languages.

Sole proprietors reported the lowest percentage of *growing* areas of practice among all main practice areas mentioned. This was the only group to report a lower percentage of practice areas as *growing* than the percentage of practice areas reported as *stable*.

Sole practitioners practising with others in the same office reported the highest percentage taking some Legal Aid clients (45%).

Among those who reported taking Legal Aid clients, associates/employees in small firms, reported Legal Aid billing was almost two-thirds of their work. Sole practitioners practicing with

others in the same office, reported that Legal Aid comprised close to half of their work, and sole practitioners practicing alone reported that it made up less than three-tenths of their work.

Among first mentions of main areas of practice, Family Law and Real Estate were described as *growing* by 56% and 55% respectively. The other three main practice areas (Civil Litigation; Corporate; Wills-Estates-Trusts) were described as *growing* by less than half of all respondents who mentioned them first.

Still comparing first mentions of areas of practice, the lowest overall income levels were reported by those who cited Wills, Estates and Trusts, followed by Family Law. The highest income levels were reported by those whose first practice area mentioned was Civil Litigation, followed by Corporate- Commercial.

One quarter of sole practitioners practicing alone reported earning less than $50,000 annually. About three fifths of both groups of sole practitioners reported earning less than $100,000 annually. Among the five sub-groups, partners in small firms reported the highest income levels, with more than three-fifths earning over $100,000 annually.

Controlling for other factors, women, equality-seekers and those who take Legal Aid clients were all more likely to earn lower than average incomes.

Sole practitioners practising alone without other lawyers in the same office reported the lowest percentage of billable work and the highest percentage of non-billable work. Sole practitioners practising alone reported working the fewest hours per week in their practice (46).

4.2 Language and diversity

As noted in Chart 5, 80% of target group respondents listed *English* as a first language. Chart 15 shows some variations within the target group. In particular, both groups of sole practitioners reported a slightly lower percentage of *English* mentions and a slightly higher percentage of other language mentions, when they were compared to both partners and employees/ associates in firms with fewer than five lawyers.[2]

CHART 15 - FIRST LANGUAGE (MULTIPLE MENTIONS)

(see chart in Convocation Report)

4.3 Practice Profile

4.3.1 Areas of Practice

Chart 16 compares all mentions of *growing, stable* and *decreasing* practice areas across the five sub-groups. Here again there are some notable differences. Sole practitioners practising alone without other lawyers in the same office report the lowest overall percentage of *growing* practice areas at just 42%.

[2] The figures for sole proprietors in Chart 14 and throughout should be interpreted with caution since the sample size for this sub-group is just 24.

Within the target group this is the only sub-group that reported a lower proportion of *growing* than *stable* areas of practice. However, sole practitioners alone reported only a very slightly higher than average percentage of *decreasing* areas of practice (11% compared to an average of 10%), which is also slightly lower than the 14% reported by sole practitioners sharing office space with other lawyers.

CHART 16 - IS YOUR PRACTICE AREA GROWING, STABLE OR DECREASING? (ALL MENTIONS)

(see chart in Convocation Report)

Whereas Chart 16 aggregates target group response for all areas of practice mentioned, Chart 17 provides the same information for "first mentions" only, summarizing respondents' description (*growing, stable* or *decreasing)* for the top five areas of practice which were mentioned first.

Just as we noted differences across sub-groups, there are also some differences based on which area of practice respondents listed first. A majority of respondents who mentioned Family Law and Real Estate first, described those areas of practice as growing (56% and 55% respectively). In contrast, for those whose first mention was Wills, Estates and Trusts - another area of practice dominated by our target group - just 44% reported that area was growing, whereas 48% described it as stable. Corporate Commercial was the only other area of practice among first mentions where growing was cited less frequently than stable, 41% compared to 48%.

CHART 17 - COMPARING STABILITY BY THE TOP FIVE AREAS OF PRACTICE (FIRST MENTIONS)

(see chart in Convocation Report)

4.3.2 Legal Aid

CHART 18 - WHAT PERCENTAGE OF YOUR WORK IS LEGAL AID WORK?

Chart 18 shows distribution of Legal Aid work across the five sub-groups.

(see chart in Convocation Report)

A comparatively lower percentage of sole practitioners practising with other lawyers in the same office reported taking no Legal Aid work (55%), while 28% of this group reported that Legal Aid comprised more than one quarter of their billable time. Similarly 57% of employees/associates in small firms reported doing some Legal Aid, and 33% reported that Legal Aid comprised more than one quarter of their billable time. In contrast a relatively higher 67% of sole practitioners practising alone reported taking no Legal Aid and only 11% of this group reported that Legal Aid made up more than one quarter of their billable time.

As Table 3 below shows, among those lawyers in the target group who reported taking Legal Aid clients, Legal Aid made up a lower percentage of billable work for sole practitioners practising alone than it does for the other four sub-groups. For this group of sole practitioners, Legal Aid comprised 29% of their billable work compared to an average of 43% for sole

practitioners sharing offices with other lawyers, and an average 62% for employees/associates. These figures suggest that for sole practitioners working alone without other lawyers in the same office, the economics of Legal Aid may be comparatively unattractive, even for those lawyers who take Legal Aid clients. In contrast, for a sizeable proportion of sole practitioners sharing space with other lawyers and employees/associates, Legal Aid constitutes a healthy percentage of all billings.

4.3.3 Other Aspects of Practice Profile in the Target Group

In addition to providing comparisons of the percentage of Legal Aid billing among those who reported taking legal aid, Table 3 provides comparisons of percentages of billable and non-billable time, pro bono work and estimated average hours worked each week.

Sole practitioners practising alone reported slightly higher than average time spent on administration, client development and marketing. Both groups of sole practitioners reported a higher than average percentage of pro bono work. And finally, sole practitioners practicing alone reported the lowest average hours of work per week (46), while sole proprietors and employees/associates reported the highest hours worked per week, 57 and 51 respectively.

TABLE 3 - SUMMARY OF MEANS (AVERAGES)

	SOLE PRACTITIONER ALONE	SOLE PRACTITIONER WITH OTHERS	SOLE PROPRIETOR	PARTNER	EMPLOYEE/ ASSOCIATE
Billable legal work (%)	66	67	66	73⌋	70
Non-billable work (%)	23⌋	20	18	17	18
Legal aid (%)	29	43	39	31	62⌋
Pro bono (%)	13	11	10	9	16⌋
Avg week worked	46hrs	49hrs	57hrs⌋	49hrs	51hrs

4.4 Income

In Chart 3 we compared income between the target and non-target groups, noting that the target group reported substantially lower income levels. Chart 19 shows some significant differences across the sub-groups within the target group. Fully 25% of sole practitioners who work alone reported an annual income of less than $50,000. 57% of sole practitioners who work alone, 61% of sole practitioners sharing offices with other lawyers and 70% of employees/ associates reported earning less than $100, 000 annually. In contrast, and as might be expected, a majority of partners (61%) and a majority of the smaller group of sole proprietors (54%) reported annual incomes over $100,000.

CHART 19 - INCOME BY SUB-GROUP*

(see chart in Convocation Report)

CHART 20 - INCOME BY REGION*

(see chart in Convocation Report)

Chart 20 provides some regional comparisons that indicate close to two thirds (65%) of lawyers in Non-Urban Areas are earning less than $100,000 whereas just 5% reported earning over $200,000 annually. This may be explained in part by the fact that the highest percentage of relatively low earning sole practitioners (47%) and the lowest percentage of relatively high earning partners (15%) are located in the Non-Urban Areas.

Further comparisons of reported income, based on the first area of practice mentioned, illustrate some important differences. What stands out in Chart 21 is that 27% of all respondents who mentioned Wills, Estates and Trusts first, reported an annual income of less than $50,000 and an additional 54% reported earning more than $50,000 but less than $100,000. In short, 81% of lawyers whose first areas of practice mentioned was Wills, Estates and Trusts reported earning less than $100,000 annually.

It is notable as well that a minority, just 44%, of this same group of respondents, reported that Wills, Estates and Trusts was a *growing* practice area (Chart 17). This suggests that the low income levels reported by this group of respondents may originate in part in a stable or declining demand for legal services related to Wills, Estates and Trusts.

Reflecting a similar pattern of income distribution, 75% of respondents who mentioned Family and Matrimonial Law first among their main areas of practice, reported an annual income of less than $100,000. But in contrast to the apparently limited growth in the area of Wills, Estates and Trusts, 56% of those whose first mention was Family and Matrimonial Law reported that it is a growing area of practice (Chart 17). This reinforces an opinion that we heard throughout the follow-up long interviews: there is no shortage of demand for Family Law services but rather, for a variety of other reasons, this is a comparatively difficult area of law from which to earn a good income.

CHART 21 - COMPARING INCOME BY THE TOP FIVE AREAS OF PRACTICE (TARGET GROUP) *

(see chart in Convocation Report)

Comparing average income levels based on first area of practice mentioned yields statistically significant differences that can be summarized as follows:[3]

[3] In order to deal with the problem of multiple mentions collected in the survey, we selected first mentions as a market or indicator of practice profile that would permit some comparisons with practice stability (i.e., *growing, stable* or *decreasing* practice area), and with income. However, first mentions do not necessarily provide an accurate indicator of other practice characteristics, or the relative importance of that Area of Practice in relation to second, third and fourth mentions. Statistical correlations between first mentions and stability or income levels may be

- First mentions of Wills, Estates and Trust, or Family and Matrimonial Law, have lower incomes than Real Estate, Corporate/ Commercial, and Civil Litigation;
- First mentions of Civil Litigation have higher incomes than Wills, Estates and Trusts, and Family or Matrimonial Law, Real Estate, and Corporate/Commercial.

4.4.1 Income "Drivers"

As might be expected, several factors are positively correlated with higher incomes. These included:

- Years at the Bar;
- Higher percentage of billable work time;
- Lower percentage of non-billable work time;
- Average hours of work per week.

However if we control for these factors, that is temporarily eliminate their influence through the process of statistical regression, then the most powerful drivers of income are:

- *Gender* -- All other factors being equal men are more likely to earn more than women lawyers;
- *Equality-Seekers* -- Non equality-seekers are more likely to earn more than members of equality-seeking communities;
- *Practice Stability* -- Those who report that their first mention of main practice areas is growing are more likely to earn a higher income than those who report their first mention is *decreasing* (Incomes are not likely to be higher for those who report *growing* compared to those who report stable.);
- *Legal Aid* -- Lawyers who do not take Legal Aid are more likely to earn higher incomes than those who take Legal Aid clients.

Gender and equality-seeking status have the same weight and statistical significance as drivers of income. Practice stability, that is *growing* versus *decreasing,* has slightly less statistical significance and power as a driver of income, as does taking/not taking Legal Aid.

4.5 Discussion: Differences and Similarities within the Target group

Differences within the target group on language/ethnic diversity, income and related aspects of practice profile and stability (*growing, stable* or *decreasing* areas of practice), are not as clearly defined as those between the target and non-target groups. However, they do illustrate that comparisons between the target and the non-target groups can also be viewed as a continuum. Sole practitioners, particularly those practising alone without other lawyers in the same office, tend to be the most different from non-target group respondents. In contrast partners in small firms tend to be the most similar to respondents in the non-target group. Other factors such as region, gender, equality- seeking status and whether lawyers accept Legal Aid clients, may

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useful in pointing to potential differences based on area of practice. However, they are not a substitute for fuller analysis of practice and stability based on a more precise calculation of the relative importance of each area of practice mentioned.

provide equally or more salient parameters for defining sub-groups within the target group of sole practitioners and small firms.

5.0 Satisfaction and Financial Viability

This sections compares satisfaction and perceptions of financial viability between the target and non-target groups. It then takes a closer look at the key factors and drivers of satisfaction, dissatisfaction and financial instability among target group respondents.

5.1 Key Findings

Comparing the Target and Non-Target Groups

Respondents in both the target and non-target groups reported a high degree of overall satisfaction with their practice, 75% and 88% respectively. Within the target group, overall satisfaction was lowest among sole practitioners practicing alone, at 66%. Just one tenth of the target group and a mere 2% of the non-target group reported some degree of overall dissatisfaction with their practice.

Just over half of the target group respondents were satisfied with their income, compared to four fifths of non-target group respondents.

One-fifth of the target group, compared to less than one tenth of the non-target group, indicated they were dissatisfied with their current mix of practice areas.

36% of the target group, compared to 29% of the non-target group, reported some degree of *challenge* in sustaining the financial viability of their practice. A smaller group within the target group (17%) described sustaining financial viability as a *serious* or very *serious challenge.*

Just over one tenth of respondents in both groups described the prospect of maintaining financial viability five years hence as *much more difficult*. Interestingly, a higher percentage of target group respondents described the prospect of maintaining future financial viability as either *somewhat* or *much less difficult* (41% compared to 28% in the non-target group).

Within the target group, 28% of respondents reported that upon retirement they would refer their clients to other lawyers in the area. A further 14% reported they would *close the doors.* In contrast, 78% of non-target respondents reported that other lawyers in the firm would continue the practice.

Satisfaction and Financial Viability

Four specific issues emerged as the most salient ‘drivers’ of satisfaction in the target group. In order of importance these were:

- Earning a good income;
- Interesting and challenging work;
- Pursuing career objectives;
- Maintaining a good work-life balance.

Two of these issues, pursuing career objectives and maintaining a good work-life balance, had roughly the same importance for the non-target group. In contrast, earning a good income and

having interesting challenging work were more important and more statistically significant issues for the target group.

Four specific issues emerged as the most salient drivers of dissatisfaction in the target group. In order of importance they were:

- Dissatisfaction with present areas of practice;
- Income lower than expected;
- Lack of freedom to make decisions;
- Too much time on administration.

In comparison with the non-target group, two of these issues, lower than expected income and too much time spent on administration, were important and statistically significant to the target group.

Three specific issues emerged as the most salient drivers of financial instability in the target group. In order of importance they were:

- Increased difficulty or risk of financing your practice;
- Increased overhead costs of running the practice;
- Market pressures to keep fees low.

Comparisons with the non-target group revealed similar concerns over the increased overhead costs of running the practice and market pressures to keep fees low. However, the increased difficulty and risk associated with financing practices, was unique to the target group. It was the single strongest driver of financial instability for respondents in the target group.

Overall a cluster of practical financial/utilitarian issues - income concerns, time spent on administration and above all the difficulty/risk of financing practices - constitute the unique source of greater dissatisfaction and greater financial instability in the target group as a whole.

5.2 Comparisons: Target and Non-target groups

We asked respondents to rate “your overall level of satisfaction with your practice” on a seven point scale from *very dissatisfied* to *very satisfied*. As Chart 22 shows, 10% of the target group respondents reported some degree of *dissatisfaction* compared to just 2% in the non-target group.

CHART 22 - RANK YOUR OVERALL LEVEL OF SATISFACTION WITH YOUR PRACTICE

(see chart in Convocation Report)

When we asked about *satisfaction* with “your before tax income from your practice” the percentage of those reporting dissatisfaction rose and the differences between the target and non-target group became more distinct, as Chart 23 illustrates.

CHART 23 - ARE YOU SATISFIED WITH YOUR ANNUAL INCOME?

(see chart in Convocation Report)

A narrow majority (52%) of the target group indicated some degree of *satisfaction* while 32% reported some degree of *dissatisfaction*. In contrast an impressive 80% of the non-target group registered *satisfaction* with their income while just 11% reported some degree of *dissatisfaction.*

As Chart 24 shows, target group respondents registered somewhat greater dissatisfaction with their "current mix of practice areas". One fifth or 20% reported they needed to make a change in their "current mix of practice areas," compared to slightly less than one tenth of the non-target group.

CHART 24 - SATISFIED WITH YOUR CURRENT MIX OF PRACTICE AREAS OR DO YOU NEED TO MAKE A CHANGE?

(see chart in Convocation Report)

Respondents were asked to rank the issue of maintaining the financial viability of their practice on a seven-point scale from *not a problem* to a *very serious challenge*. Chart 25 summarizes responses and groups them into three categories: *not a problem, neither*, and *challenging.*

A higher percentage of target group respondents, 36% compared to 29% of the non-target group, described the issue of maintaining financial viability as a *challenge*. Of the 36% of target group respondents who identified some degree of challenge in maintaining the financial viability of their practice, roughly half or 17% rated the problem *serious* or *very serious* (not shown). This compared to 11% in the non-target group.

A further question asked respondents if it would be *more* or *less difficult* to "maintain the financial viability of your practice five years from now." Chart 26 summarizes the results.

CHART 25 - FINANCIAL VIABILITY OF YOUR PRACTICE

(see chart in Convocation Report)

CHART 26 - DO YOU EXPECT IT TO BECOME MORE DIFFICULT OR LESS DIFFICULT TO MAINTAIN THE FINANCIAL VIABILITY OF YOUR PRACTICE FIVE YEARS FROM NOW?

(see chart in Convocation Report)

Interestingly, the target and non-target groups shared a similar distribution of opinion regarding the viability of their practice five years hence. In the target group, 12% expected things to get *much more difficult*, compared to 11% in the non-target group. But on the optimistic end of the spectrum, 15% of target group respondents expected things to be *much less difficult* compared to just 8% in the non-target group. As a group then, sole practitioners and lawyers in small firms appear to be more optimistic about the future viability of their practice.

A follow-up open-ended question asked respondents to indicate steps that could be taken to improve the financial viability of their practice. Responses were grouped into twenty-three different categories. Of those who offered some form of response the most common

recommendation was the need for an *increased client base* or *new client development* (15% of the target group and 23% of the non-target group). A further 9% of the target group and 8% of the non-target group identified the need for *improved advertising* and *marketing*. These responses may be an indication that about one quarter of the lawyers in both groups viewed the challenges of maintaining financial viability at least partly in terms of taking specific measures to increase the amount of work available. Among the other top three most frequently mentioned steps to improve financial viability, 9% of target group respondents and 11% of non-target group respondents cited *cutting costs and overhead.*

We asked respondents about their likely options upon retirement. Chart 27 compares and summarizes responses.

CHART 27 - RETIREMENT: WHICH OF THE FOLLOWING IS MOST LIKELY TO HAPPEN TO YOUR PRACTICE? (SELECTED RESPONSES)

(see chart in Convocation Report)

Comparisons illustrate a striking difference between the target group and the non-target group. Whereas the overwhelming majority (78%) of non-target group respondents suggested other lawyers in the firm would continue the practice, 28% of the target group said they would refer their clients to other lawyers in the area while a further 14% reported they would simply *close the doors* to their practice. Controlling for other factors, lawyers in the target group were ten times as likely to report that they would refer their clients to other lawyers or close the doors to their practice.

Although these sharply divergent responses may reflect the obvious differences of circumstance between sole practitioners and very small firms on the one hand and the larger law firms on the other, they nevertheless provide a stark indicator of the relatively greater economic insecurity of lawyers in the target group. The selections of the retirement option to *refer clients* or *close the doors*, is a tacit acknowledgement by the respondent that his/her law practice has no market value beyond the day to day earning capacity of the individual. This may be both cause and consequence of the somewhat greater financial insecurity reported by respondents in the target group. Perhaps not surprisingly, individuals who reported one or more decreasing areas of practice were twice as likely to choose referring clients or closing the doors as their preferred retirement option.

5.3 The Target Group: Sources of satisfaction

As Chart 28 shows, levels of overall satisfaction varied somewhat across the five sub-groups within the target group.

Whereas 88% of the non-target group and 75% of the target group reported some degree of overall satisfaction with their practice, satisfaction was lowest for both groups of sole practitioners, dropping to 66% for sole practitioners practising alone. For this group, dissatisfaction rose to 14%. But whereas sole practitioners practising alone are the least satisfied sub-group, and significantly less satisfied than respondents in the target group as a whole, their level of satisfaction is nevertheless relatively high. Satisfied sole practitioners practising alone outnumber the unsatisfied by a ratio of more than four to one.

CHART 28 - RANK YOUR OVERALL LEVEL OF SATISFACTION WITH YOUR PRACTICE? *

(see chart in Convocation Report)

A bank of 10 questions explored potential sources of satisfaction.
Subsequent analysis sorted these 10 potential sources of satisfaction into four groups or "factors", determined by how closely they were statistically correlated. Table 4 below lists the four factors, the statistically related issues within each factor and the most important individual issues or drivers within each factor.

The right hand column in Table 4 lists the four issues which, controlling for other factors (such as gender, equality-seekers, practice stability and those who take Legal Aid), contribute most to the level of individual respondents' overall satisfaction with their practice. Beside each of the issues listed is a number in parenthesis. This number, known as a "regression coefficient", provides a simple statistical measure of how important that issue is in contributing to satisfaction or the lack thereof. The higher the number the more powerful its effect as a "driver" of overall satisfaction. So, for example, earning a good income is the strongest factor affecting overall satisfaction, followed by *interesting and challenging work, opportunity to pursue career objectives*, and *maintaining a good work- life balance.*[4]

TABLE 4 - FACTORS AFFECTING OVERALL SATISFACTION

Factors	Grouping of related issues	Most important single issues*
Workplace satisfaction	• Working in a team • Earning a good income • Pursuing career objectives	• Earning a good income (.218) • Pursuing career objectives (.176)
Professional satisfaction	• Interesting and challenging work • Work that is meaningful or socially useful • Professional satisfaction meeting the needs of clients	• Interesting and challenging work (.207)
Quality of Life	• Maintaining work life balance • Freedom of being in business for yourself	• Maintaining a good work-life balance (.114)
Community Connection	• Working with a community you belong to by virtue of ethnicity, cultural background etc. • Profile and recognition in the community where you work	

[4] For every increase of one unit on a seven-point scale ranking *income satisfaction*, there is a corresponding increase of .218 on the seven-point scale measuring *overall practice satisfaction.* Similarly, for every increase on a seven-point scale ranking the degree of *challenging and interesting work,* there is a corresponding increase of .207 on the seven-point scale measuring *overall practice satisfaction*. And so on.

** Accompanying numbers are "regression coefficients", a statistical measure indicating the relative importance of each issue. The higher the number, the more important the issue as a driver of overall satisfaction.*

By way of comparison, using the same model of statistical analysis, two issues emerge as important drivers of satisfaction within the non-target group. *Pursuing career objectives* has the same importance for lawyers in larger firms as it has for the target group (regression coefficient .178), while *maintaining* a *good work-life balance* (regression coefficient .089) is slightly less important but still relevant as a driver of overall satisfaction in the non-target group. On the other hand, neither *earning a good income* nor *interesting and challenging work* are statistically significant drivers of overall satisfaction in the non-target group. These two issues emerge as the most salient sources of overall satisfaction within the target group, while controlling for other factors.[5]

5.4 The Target Group: Sources of Dissatisfaction

A bank of nine questions explored potential sources of dissatisfaction. Subsequent analysis sorted these nine potential sources of dissatisfaction into two groups or factors, determined by how closely they were statistically correlated. Table 5 summarizes the two factors, the statistically related issues within each factor, and the most important individual sources or drivers of dissatisfaction.

TABLE 5 - FACTORS AND ISSUES AFFECTING OVERALL DISSATISFACTION

Factors	Grouping of related issues	Most important single issues*
Psychological /Subjective	• work lacks challenge and interest • dissatisfied with present area of practice • lack of freedom to make decisions • too many hours-bad work like balance	Dissatisfaction with present area of practice (.130) Lack of freedom to make decisions (.085)
Practical/Utilitarian/ Resource-based concern	• Financial risks of maintaining practice are too high • Income lower than expected • Too much time on administrative activities • Isolated from other lawyers	• Income lower than expected (.134) • Too much time on administration (.077)

**Accompanying numbers are "regression coefficients", a statistical measure indicating the relative importance of each factor. The higher the number, the more important the issue as a driver of overall dissatisfaction.*

[5]Comparisons across the target and non-target groups, while allowing us to isolate specific causal relationships, control for other important factors such as gender, equality-seeking status, and taking Legal Aid, all of which may contribute to actual considerations of satisfaction. Still, this form of analysis permits us to identify one set of issues that are specific to the target group as a whole and unique in terms of their impact.

As the list of issues in the right-hand column and the accompanying regression coefficients show, *lower than expected income* followed by *dissatisfaction with present area of practice,* are the strongest contributors to overall dissatisfaction among target group respondents.

Again, by way of comparison, three issues emerge as important sources or drivers of dissatisfaction within the non-target group. Dissatisfaction with *present area of practice* is a slightly more important issue driving overall dissatisfaction in the non-target group (.196), followed by *lack of freedom to make decisions* (.089), which has the same salience for the non-target group as the target group, and a *bad work-life balance* (.073). In this comparison the two issues of *lower than expected income* and *too much time spent on administration* emerge as sources of dissatisfaction that are unique to the target group, controlling for other characteristics such as differences in the social composition of the target and non-target groups.

5.5 The Target Group: Sources of Reduced Financial Viability

Chart 29 examines respondents' perception of the challenge of maintaining financial viability across the five sub-groups within the target group.

CHART 29 - FINANCIAL VIABILITY OF YOUR PRACTICE*

(see chart in Convocation Report)

Sole proprietors are the most positive, with 67% describing the challenge of *maintaining financial viability* as *not a serious problem*. Employees/associates in small firms are the least positive, with 44% describing *maintaining financial viability* as a *challenge*. Consistent with other comparisons, a higher percentage of both groups of sole practitioners, report challenges in *maintaining financial viability* than do partners in small firms.

A bank of eight questions explored potential sources that might make it more difficult to *maintain financial viability* in the future. Subsequent analysis sorted these eight potential sources of dissatisfaction into two groups or factors, determined by how closely they were statistically correlated with one another. Table 6 summarizes the two factors, the statistically related issues within each factor, and the most important individual issues or drivers of financial viability.

TABLE 6 - FACTORS AND ISSUES MAKING IT MORE DIFFICULT TO MAINTAIN FINANCIAL VIABILITY

Factors	Grouping of related issues	Most important single issues*
Competition and Market Forces	• Market pressure to keep fees low • Increased competition from large firms • Increased competition from sole practitioners and small firms • Extra-professional competition	• Market pressure to keep fees low (.118)
Cost and Overheads	• Low Legal Aid fees • Increased overhead costs of	• Increased difficulty or risk of financing your practice

	running practice • Increased difficulty or risk of financing practice • New technology costs	(.393) • Increased overhead cost of running practice (.178)

** Accompanying numbers are "regression coefficients" a statistical measure indicating the relative importance of each factor. The higher the number, the more that issue contributes to a perceived financial viability problem.*

On competition and market force measures, differences between the target and non-target group were not significant, with the target group registering a slightly higher degree of concern on the issue of *market pressure to keep fees low.* However, the target group registered a significantly higher degree of concern around the cluster of *cost and overhead issues.* Comparisons within the target group suggest that cost and *overhead* are the strongest driver of concerns over financial viability for both sole practitioners practicing alone and those practicing with other lawyers in the same office.

For the non-target group, increased *overhead costs* (.282), *extra-professional competition* (.211) and *market pressure to keep fees low* (.191) all emerge as important sources of problems with financial viability. In this comparison the *increased difficulty or risk of financing the practice* emerges as the single strongest driver of financial uncertainty for the target group. Of all these relevant issues, it was the one source of problems with financial viability that was unique or specific to the target group of sole practitioners, sole proprietors and small firms.

5.5.1 Problems of Financial Viability: What Was Said

Follow-up interviews explored issues with individuals who had reported high levels of *dissatisfaction* and/or *financial instability*. As might be expected, many reports of *dissatisfaction* often reflected the specific circumstances of the interviewee. Nevertheless, it was not uncommon to hear a description of financial issues that directly or indirectly confirmed the general findings of the survey.

Interviewees described various circumstances in which sustaining the financial viability of their practice required limiting their fees and taking on additional financial risks in order the make it all work for their clients. One sole proprietor from a larger urban center in Southern Ontario explained that the problem of maintaining financial viability had reached the point that he was considering "closing my doors". The root of this problem, as he explained, was the limited ability of clients to pay for services and the increased financial risks that the lawyer was therefore forced to assume:

> The financial viability, covering the overheads, is an extremely difficult battle and it basically comes down to the extent to which you have to fund clients in order to assist them in accessing justice.

This comment provides one illustration of the extent to which the increased risk to individuals in financing their practice is rooted in the reduced ability of clients to pay for the legal services they need.

A variation on this theme, suggested that it was not only the incapacity of clients to pay for services, but also the changing expectations of clients. One Toronto lawyer described the issue

of financial viability in terms of the expectations of the community he was serving. He described the challenge of billing for production of a will, which is perceived by a client as merely, "five pages of paper":

> It's a service where a lot of it is unseen, and so you give instructions to somebody in the case of a will. You come back a week or two later and you sign this five-page piece of paper. How much is that worth? How much, possibly, could this person have taken in terms of time in order to prepare this will?

An Ottawa lawyer touched on the problems of delivering Family Law services where the case management system has imposed additional responsibilities on lawyers, and increased costs on clients. The results are costs that may become prohibitive to the lower income clients who are more often being served by the sole practitioner and small firms. In contrast, the higher income client "isn't going to be leaving the [legal] system because their bill is $5000 instead of $2,500." The implication here is that the lower income clients, typically served by the interviewee, are on the verge of "leaving the system" because of unmanageable expenses.

One lawyer, who as a matter of conscience and involvement in disability issues, took on the cases of disabled clients, described a more extreme example of incapacity to sustain financial viability. Many of this lawyer's clients had virtually no capacity to pay for the legal services, which they desperately needed:

> These are cases that I feel need to be heard and wouldn't be heard otherwise. And these are people who from, you know, people with disabilities who have real issues, issues that are not covered by Legal Aid. [They are] people who are on welfare and lucky to pay their rent, let alone pay a lawyer. So I do handle a number of cases of that nature. Human rights issues, some landlord/tenant issues, although landlord/tenant for the most part are under Legal Aid. Issues of accommodation for disabilities.

Still others, from our sample of those reporting serious challenges to the financial viability of their practice, described increased competition and the pressure to reduce fees, particularly in the area of Real Estate. One lawyer from southwestern Ontario, who saw the need to broaden his areas of practice, lamented that on Real Estate transactions: "People don't even call me for price quotes anymore." Another Real Estate lawyer from Toronto, who reported minimal earning from her practice, commented, "I think it is difficult for most sole practitioners, most small firms to make a living. Yes it is." Echoing the sentiments of a small group of the most disaffected lawyers we encountered, this interviewee commented:

> I used to make speeches about how great it was coming into the practice of law. In the last five or six years I will no longer go into a school and tell them about how great it is to practice law.

5.6 Discussion: Financial Viability and Dissatisfaction

Two insights emerge from our analysis of satisfaction/dissatisfaction, and perceptions of financial viability among survey respondents:

- Target group respondents reported somewhat less overall satisfaction with their practice, less satisfaction with the annual income from their practice and perceived greater challenges to their financial viability. However, despite substantive differences

between the two groups, respondents from both groups registered relatively high levels of satisfaction and a similar assessment of the future financial viability of their practice.

- A cluster of issues - notably the practical financial/utilitarian concerns of financing the practice, dealing with increased overhead costs and lower than expected incomes – are the main drivers determining both dissatisfaction and reduced financial viability in the target group. The explanation for the unique combination of drivers affecting the financial viability of the target group may lie in the specific nature of the legal services provided and the characteristics of the client population served.

Evaluating dissatisfaction/financial viability in the target group

As a group, sole practitioners and lawyers in small firms are less satisfied generally, less satisfied with their annual income, and perceive greater challenges to maintaining financial viability than respondents in the non-target group of lawyers in larger firms.

As noted, more than one sixth of the target group, almost three times the proportion of the non-target group reported they were *somewhat* or *very dissatisfied* with their annual income. A similar proportion of target group respondents reported that maintaining financial viability was a *serious* or *very serious challenge* compared to less than one tenth of the non-target group.

Differences between the target and non-target groups are further highlighted when we compare the relative percentages of the *most dissatisfied* respondents in each group. Whereas 6% of the whole survey population reported both a high degree of income dissatisfaction and serious challenges to sustaining the financial viability of their practice, this group was made up of just 2% of the non-target group compared to 7% of the target group.

This sub-group of 7% of the lawyers in the target group – three fifths of whom are sole practitioners practicing alone - are struggling to maintain the viability of their practice. They may be earning substantially less than they had expected, face serious difficulties financing their practice and dealing with overhead costs, and experience market pressure to keep or set fees at unreasonably low rates. And within this group, is a still smaller sub-group, some of whom we heard from in our long interviews, who are more profoundly frustrated with the practice of law, in some cases to the point of considering “closing the doors” and abandoning the profession entirely.

But notwithstanding the differences between the target and non-target groups, including evidence of a small, but measurable, subset of the target group whose viability may be threatened, it is nevertheless important not to overstate the differences between the two groups. Three quarters of the target group reported overall satisfaction with their practice, four fifths were satisfied with their current mix of practice areas, and those who were satisfied with their income outnumbered those that were dissatisfied by a ratio of almost two to one. Perceptions of current and future financial viability, particularly the latter, are similar in broad outline to the perceptions of lawyers in the non-target group. All of this suggests that as group, sole practitioners and lawyers in small firms have a generally high level of overall satisfaction, are reasonably satisfied with their income, and reasonably optimistic about the financial viability of their practice.

As a whole, the target group is stable and financially viable. At the same time this group includes a smaller subset of dissatisfied lawyers who are facing a variety of financial challenges, which in some instances are converging to threaten the overall viability of individual practices.

Evaluating drivers of dissatisfaction and loss of financial viability

Although the practice environment for lawyers in the target and non-target groups undoubtedly has many common characteristics, statistical analysis isolated a specific configuration of drivers of satisfaction/dissatisfaction and threats to financial viability for the target group. As noted in Section 5.5 the most important of these are problems associated with the increased difficulties and/or risks of financing law practices, followed by the increased overhead costs of running a law practice.

How do we explain the different configuration of key drivers affecting the dissatisfaction and financial viability of the target group compared to the non-target group? One explanation lies in the characteristics of the client market that is served by sole practitioners and small firms. As detailed throughout Section 3 of this report, the target group is comparatively more numerous in the Rest of GTA outside of Toronto and in Non-Urban Areas of Ontario. It serves a higher proportion of individuals than businesses, the overwhelming proportion of individuals using Legal Aid, and virtually all individuals seeking services in languages other than *English, French* or *Italian.*

It is reasonable to suggest that problems of financing law practices as well as those of managing rising overhead costs, have surfaced in a market environment characterized by the growing inability of the client population to purchase legal services and/or pay adequate fees for those services. This was the core explanation for the problems of financial viability facing many target group respondents - particularly sole practitioners - which we heard from individuals who participated in the long interviews.

6.0 Shortages of Legal Services

6.1 Key Findings

Respondents in the target group were almost twice as likely as the non-target group to report shortages of legal services in “whatever community you serve” (35% to 18%).

Among those reporting shortages, the problem of access to *Legal Aid or to a Legal Aid lawyer*, was the issue most frequently mentioned by respondents in both groups (26% in the target group and 36% in the non-target group). Other mentions included *Family Law, affordability of rates, Litigation, Criminal Law, general shortage of practitioners, Immigration and Refugee Legal Services*, and *services in non-English cultures/languages.*

Target group respondents were most likely to site *affordability of services for clients* (22%) and *attrition in unattractive areas of practice (17%)* as reasons for threatened shortages of legal services. Other mentions included *low demand for services due to economic and/or demographic conditions* and *not enough lawyers* serving the community. Comparable percentages of non-target group respondents mentioned *affordability, attrition in areas of practice*, and *economic and/or demographic factors.*

Shortages of legal services were reported by 64% of target group respondents based in Non-Urban Areas, 34% in Other Urban Areas, 28% in the Rest of GTA outside of Toronto and 24%

in Toronto. Non-Urban respondents were most likely to report shortages in the areas of *Family Law, Legal Aid and Civil Litigation.*

Within the target group, almost half (48%) of those who identified themselves as equality-seekers reported shortages of legal services, compared to less than one third of those who were not equality-seekers. A majority of women (53%) reported shortages of legal services, compared to less than one third of the men in the target group.

Among equality-seekers *access to Legal Aid, lack of services in non-English cultures and languages, Family Law* and *lack of affordability* were the most frequently mentioned types of shortage of legal services.

Describing Shortages of Legal Services

Analysis of survey data and long-interview transcripts revealed five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid and Legal Aid lawyers;
- Shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups, and communities of interest;
- Shortages due to legal process and administration.

Although research suggests that each of these aspects of shortage of legal services has its own specific impact on limiting access to legal services in Ontario, the underlying issue of affordability often appeared to set the context for many more specific issues of shortages.

6.2 Comparisons: Target and Non-Target Groups

Respondents were asked if there were shortages of legal services in "whatever community you serve." As Chart 30 shows, 35% of target group respondents compared to 18% of non-target group respondents, reported a shortage of some kind of legal services. These findings are interesting in both the generally higher percentage of survey respondents who mentioned shortages, and the significantly greater frequency of mentions by respondents in the target group.

CHART 30 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE?

(see chart in Convocation Report)

As Chart 31 shows, non-target group respondents who reported shortages of legal services were most likely to cite problems of *getting Legal Aid and/or finding lawyers to take Legal Aid clients* (36%), *shortages in the areas of Family Law* (23%), and *the cost/affordability of legal services* (23%). In contrast, the target group cited problems of Legal Aid less frequently, which may be explained in part by the fact that a much higher percentage of lawyers in this group accept Legal Aid clients (Chart 14). In addition to *Family Law shortages* (22%), target group respondents also mentioned shortages in several specific areas that were not mentioned by

non-target group respondents: *litigators* (9%), *a general lack of practitioners* (7%), *Criminal Law* (7%) and *services in cultures/languages other than English* (5%).

We asked those who identified shortages in their communities to rank the problem of access to legal services on an 11-point scale, from *no legal services at all* to *a full range of legal services* in their community. As Chart 32 shows, a large majority of both groups identified shortages as *limited or moderate.*

CHART 31 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE (SELECTED RESPONSES)

(see chart in Convocation Report)

CHART 32 - RANKING THE PROBLEM OF ACCESS TO LEGAL SERVICES*

(see chart in Convocation Report)

Chart 33 reports selected responses to the open-ended question, " What is the main reason for shortages of legal services in the community you serve?" Within the target group, among those who offered a positive response[6], 22% cited the problem of *affordability of services for clients*, followed by 17% who mentioned the problem of *attrition in unattractive areas of practice*. Other mentions included *low demand for services due to economic and/or demographic conditions (14%), and not enough lawyers* serving the community *(9%)*. Comparable percentages of non-target group respondents mentioned affordability, attrition in areas of practice, economic and/or demographic factors. However, these figures should be interpreted cautiously since a sub-sample of just 15 non-target group respondents offered a specific response.

CHART 33 - WHAT IS THE MAIN REASON FOR THE THREATENED SHORTAGES OF LEGAL SERVICES? (SELECTED RESPONSES)

(see chart in Convocation Report)

A further question was asked of respondents who had already identified shortages of legal services (*"In which practice areas do you think there will be shortages and limits to access in your community in the future?")*. Although the proportions varied somewhat, the most frequently identified practice areas were similar across the two groups. 48% of target group respondents compared to 27% in the non-target group anticipated future shortages in *Family and Matrimonial Law*. 38% of target group respondents compared to 33% in the non-target group expected shortages in the area of *Criminal or Quasi Criminal Law*, and 34% of target group respondents compared to 30% in the non-target groups anticipated shortages in the areas of *Civil Litigation (Plaintiff and Defendant).*

6.3 Describing shortages of legal services

[6] It is often the case that in open-ended questions many responses are too vague or generic to be grouped under any specific heading, and forcing an interpretation can lead to distortion. In this instance, more than one third (34%) of target group responses could not be coded as a "positive" response.

Survey results and follow-up interviews identified five different aspects of shortages of legal services:

- Affordability and/or shortage of Legal Aid;
- Greater shortages in some regions;
- Shortages in specific areas of law;
- Shortages of legal services to cultural and linguistic groups;
- Shortages due to legal process and administration.

6.3.1 Legal Aid and Affordability

Exploring the issues of shortages of legal services in our long interviews with individual lawyers, it was common to hear descriptions of the general problem of a shortage of services for people of limited means. As one lawyer in the southwestern Ontario explained: "I think there is always a need for competent lawyers that are willing to handle low income cases. I think that's always a struggle in any community, as well as this one." And, as a lawyer from northwestern Ontario put it:

> From a consumer point of view, for the public, I think there's generally a shortage of affordable legal services. Many people in Thunder Bay can't afford a lawyer. They struggle with my bills… There's a shortage of Legal Aid certificates available to them…There is a shortage of lawyers in Thunder Bay who will take a Legal Aid certificate.

Several respondents pointed out that the problem of affordability was both a matter of accessing legal services through Legal Aid, and at the same time a problem of affordability for those with incomes too high to qualify for Legal Aid. One lawyer in Northeastern Ontario, who first described the limited availability of lawyers who would take Legal Aid clients, went on to discuss the problem of affordability for the many people who did not qualify for Legal Aid services in the first place:

> You've got a lot of people [here] that make between $40,000 and $50,000 per year, which is, you know, a great income for people with their families. Is it a great income to add legal fees to? No. These people tend to live quite comfortably but do they have $3,000, $4,000 or $5,000 in the bank for a retainer? No. So I think that those are the people that kind of fall into a hole where they can't really retain lawyers but at the same time they don't qualify for Legal Aid. We're seeing a number of these people showing up in court.

The same point was reiterated by a Toronto lawyer, who described the shortages of legal services for that segment of the population that does not qualify for Legal Aid:

> I wouldn't be able to give you a breakdown of the numbers, but I think the other sector that you're seeing are people who are the working poor, who do not qualify for Legal Aid.

Many of the lawyers we contacted for long interviews to discuss the issue of shortages of legal service, acknowledged the general problem arising from limits to the Legal Aid system and the general problem of affordability for the many of limited means who failed to qualify for Legal Aid. This brought us to the general conclusion that the problem of affordability, which might also be

described as under-funded demand for legal services, is linked to many of the more specific problems of shortages in a particular region, areas of practice, and cultural or linguistic communities.

The problem of shortages of legal services arising from under-funded demand can be described as follows. Individuals require Legal Aid to access legal services, or they have access to Legal Aid but cannot find a lawyer who will take Legal Aid clients, or they do not qualify for Legal Aid but cannot afford the cost of hiring a lawyer. These various forms of under-funded demand for legal services result in limits to the supply of services. Lawyers are not able or willing to provide legal services at the unsustainable rates which individuals, and in some cases businesses, are able to pay. The result could be described as a form of market failure. The need for legal services exists, but there is not sufficient capacity - money or subsidized supports - to pay for those services. Thus, while the supply of legal services is potentially available, it cannot be adequately delivered at the low prices that potential clients are able to pay.

The underlying problem of the limited ability of many potential and actual clients to pay for legal services sets the context for many of the more specific shortage issues, ranging from regional shortages to gaps in specific areas of law.

6.3.2 Regional Differences

As Chart 34 shows, in Toronto 24% of the target group reported shortages of legal services. This rose to 28% in the Rest of GTA, 34% in the Other Urban Areas, and 64% in the Non-Urban Areas. These are quite dramatic differences. Controlling for other factors - gender, equality-seekers and lawyers who take Legal Aid - Non-Urban respondents were three times more likely to report shortages of legal services than respondents in Other Urban Areas. They were, respectively, four and five times more likely to report shortages than respondents in the Rest of GTA outside of Toronto, and in the Toronto region.

CHART 34 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE (BY REGION)?

(see chart in Convocation Report)

Comments from the Non-Urban Areas of Ontario were rich with specific descriptions of shortages. The following account from Eastern Ontario illustrates how a smaller community of lawyers may be more likely to give rise to shortages or unanticipated gaps in specific areas of the law:

> As far as ... really good competent Civil Litigators, there's only a few in our community … I think there's a need for more… Today someone's coming in with a Workers' Compensation claim. So I immediately called one of the four guys [in the community] and said: " Who should I refer him to?" He said, "I don't think there's anyone in [town] I'd do that with" So I acknowledge now that Civil Litigators have some kind of specialization that I'm not aware of.

Along similar lines a lawyer in a small, relatively isolated Northwestern Ontario town reported a shortage of Family Law services where local demand generally exceeded the supply of services offered by the "three or four lawyers that will do [Family Law]".

These and other cases of shortage are problems arising from the relatively small size of the local bar, and the resulting shortages of supply in specific areas of law, or at specific times. These shortages could be viewed as specific gaps, in an otherwise reasonably functional supply and demand equation.

On the other hand, we also encountered reports of a more general shortage of lawyers in some regions, as the following comment from a lawyer in eastern Ontario illustrates:

> The area where I am, clearly has a need for lawyers. I'm in a town of about 6,000, but I'm serving a population base of 25,000 and there's nobody around…There are very few counsel between here and the Quebec border to deal with these people, to deal with Anglophones or Francophones.

In some cases the shortages which lawyers reported were explained in terms of local economic conditions and a client base of limited means, largely dependant on Legal Aid. One lawyer, located in central Ontario, described the local situation as follows:

> We do not have a really high socio-economic group of year-round residents, so they tend to be on Legal Aid and therefore they find it even harder to get representation. You can get Legal Aid up here, but the fact of the matter is that certainly in [this county], it's going to be difficult to find a lawyer who's willing to accept Legal Aid.

Ironically, in the challenging economic environment of this community, relatively few lawyers were able and willing to accept Legal Aid, notwithstanding their general need for clients. The result, as described by our interviewee, was a general shortage of legal services, particularly in the area of Family Law, coupled with the imminent prospect of a shrinking local bar.

But although shortages were sometimes explained in terms of regional economic stagnation, our group of Non-Urban interviewees was just as likely to describe regional shortages as a failure of the legal profession to keep up with the demand generated by an expanding local economy. For instance, the respondent who described the general absence of lawyers in the region east of Ottawa, attributed this in part to local development and growth which had outstripped the supply of lawyers. In his words:

> The amount of stuff I turn away on a daily basis convinces me that there's at least another full practice here for somebody. Absolutely- another full practice. All the stuff I'm not doing.

In this case the shortage of local legal services was largely explained by the failure of urban-based and urban-oriented lawyers to recognize the opportunities in the region. Along similar lines, a lawyer based in Aurora, just outside Toronto, described a "chronic shortage" of lawyers in the area, due to extremely rapid local growth and the failure of the legal community to keep pace.

Finally, we interviewed individuals in Non-Urban Areas where they reported both fairly rapid local growth and the accompanying development of a robust local bar. One lawyer, located near Coburg, reported that the legal community had expanded since he had first worked in the region more than four decades earlier. Residential developments, expanding eastwards from Toronto, had helped generate demand for legal services and attracted new lawyers to the community. Another lawyer reported that while there were generally no shortages of legal services in the Muskoka community he served, local economic development was sufficiently

strong that it could provide work for "two brand new lawyers to make a living …in a relatively short time."

Survey results showed the extent to which shortages of legal services are quite extensive in Non-Urban Ontario. At the same time the results of follow-up long interviews suggest that it would be a mistake to conceive of the causes or the context as identical throughout this region. Long interviews helped us begin to build a more complex picture of Non-Urban Ontario where proximity to major urban centers, regional growth or conversely regional stagnation are factors which contribute to locally unique issues of shortages of legal services. The most important conclusion we drew in this regard is that whereas shortages of legal services in some communities are the result of a lack of effective demand for legal services, shortages in other Non-Urban Areas are the result of a lack of supply of legal services. Strategies developed to deal with shortages of legal service in the Non-Urban regions will necessarily have to address both aspects of these shortages.

6.4 Shortages in specific Areas of law

Chart 35 summarizes some of the most frequently mentioned types of shortages of legal services and compares mentions across the four regions. Whereas *shortages of Legal Aid and Legal Aid lawyers* were cited most frequently in Toronto, Rest of GTA and Other Urban regions, *shortages of Family Law* services were mentioned most often by respondents from the Non-Urban region.

CHART 35 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE*

(see chart in Convocation Report)

When asked, regarding their community, which practice areas will be affected by future shortages and limits to access, respondents in the Other GTA, Other Urban and Non-Urban areas all cited *Family and Matrimonial Law* most frequently. In the Other GTA Area, 66% of respondents anticipated future shortages in *Family and Matrimonial Law,* followed by 60% in the Non-Urban Area and 43% in the Other Urban Area. In all three of these regions Family and *Matrimonial* was followed by *Criminal or Quasi Criminal*, which was cited by 60% of respondents in the Other GTA Area, 34% in the Non-Urban Area and 28% in the Other Urban Area. In these three areas *Civil Litigation (Plaintiff and Defendant)* was the area of practice ranked third among anticipated future shortages (41% in the Non-Urban Area, 34% in the Other GTA Area and 28% in the Other Urban Area). Respondents in the Toronto Area ranked the same areas of practice among the top three areas of anticipated future shortage, but in different order. In the Toronto Area *Criminal or Quasi Criminal Law* received the highest percentage of mentions (37%), followed by *Civil Litigation (Plaintiff and Defendant)* with 33%, *and Family and Matrimonial Law* with 28%.

Of all the specific current shortages of legal services identified in this research project, the lack of Family Law services was certainly the most extensive. Almost one quarter of target group respondents who identified shortages of legal services mentioned Family Law. This figure rose to 38% in the Non-Urban region. One quarter of all the lawyers surveyed from that region mentioned a shortage in the area of Family Law.

Shortages of Family Law services were also frequently mentioned by those we spoke to in follow-up long interviews. These interviewees pointed out that clients in Family Law cases often relied on Legal Aid. Hence, the shortage of Family Law services is closely related to the limits of the Legal Aid system, and the inability or unwillingness of many lawyers to take Legal Aid cases.

Several interviewees pointed out that Family Law was quite simply an unattractive area of law for some people. As one lawyer explained: "Nobody who comes into my office on a Family Law file is happy." The result is "burnout" and a regular pattern of lawyers leaving the area of practice: "A bunch of people have stopped doing Family Law." Or, as another explained: " I can't do that stuff anymore, because I did have a passion and it's exhausting when you're always prepared to take a phone call on Christmas Eve because of a custody access issue. I can't be bothered with that…"

Still others identified problems in the area of Family Law associated with court procedure. As one lawyer explained:

> These so-called family rules which are supposed to be for the assistance of matters, it puts an awful lot of extra paperwork and responsibility and burden on the lawyer or whoever is handling the file.

One Ottawa lawyer summarized the problems of delivering Family Law services, linking them to affordability, the limitations of Legal Aid and the problems created by an expensive and time-consuming court procedure:

> The context I'm most familiar with is Family Law. The reality is, Legal Aid covers only the very, very poor. People who are not quite completely destitute, but almost there, don't qualify. They are often left in the position where they have to try to represent themselves because they can't afford lawyers and don't have Legal Aid. That's complicated by the fact that the system we have in Family Court requires a ton of time and a lot of paper preparation that results in lawyer's bills being higher than they ought to be, quite frankly. We now have a case management system that is designed to try and help settle cases. But realistically it means that on most files you're probably spending three times as much time and therefore three times as much in fees you bill to your client than what you had before it was case management. So that makes legal services unaffordable.

Interviewees cited several other specific areas of legal service where there were shortages. A Toronto-based lawyer stressed that although shortages of Family Law services existed, the problem of child protection was much more serious:

> But I think the most severe shortage is at the child protection end… People coming into practice don't find it a particularly appealing area. They know it's not going … it's never going to be a field where you make a ton of money and it can be quite emotionally taxing.

Another Toronto lawyer pinpointed a shortage of cost-effective services to medium-sized businesses:

> I'd say business law for the medium-sized company: let's say 5 to 50 million dollars in sales. Almost impossible for those people to get advice… Between ... cookie cutter advice... and the people who will advise on the fanciest transactions, there's nobody.

Finally, one lawyer from Sarnia, pointed out a local shortage of lawyers specializing in Workplace Safety and Insurance Board compensation claims, notwithstanding the extremely high rate of compensation claims from Sarnia in recent years:

> WSIB. There are people looking for representation in that area and as far as I've been able to tell, there isn't anybody in [private practice] taking those on...

6.5 Shortages in cultural/language and equality-seeking communities

Chart 36 compares reported shortages of legal services between equalityseekers and non equality-seekers, and men and women. Almost half (48%) of all equality-seekers report shortages of legal services while slightly over half of all woman reported shortages (53%). In comparison, just 31% of both nonequality- seekers and men reported shortages.

CHART 36 - ARE THERE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE? *

(see chart in Convocation Report)

Chart 37 shows the areas of shortage most frequently mentioned by equality-seekers. *Legal Aid issues* were mentioned by 34% of the equality-seekers, followed by 16% who mentioned *shortages of services to non-English cultures and languages* and 16% who mentioned *shortages of Family Law services.*

CHART 37 - DESCRIBE THE SHORTAGES OF LEGAL SERVICES IN WHATEVER COMMUNITY YOU SERVE*

(see chart in Convocation Report)

6.6 Legal administration/procedure

Just 4% of respondents in the target group identified the need to streamline or simplify the legal process as a positive step toward improving access to legal service. In our long interviews we heard several mentions of areas of law where the legal process renders the services of lawyers too expensive and cumbersome for low or middle-income clients. These included Civil Litigation, Family and Matrimonial Law, Children's Aid and Protection Services, and Real Estate. The following exchange with a Mississauga lawyer is representative of several comments we heard from interviewees:

> Lawyer: The court system has been notoriously under-funded and inefficient…
> Interviewer: I have heard from more than one lawyer that this was what made litigation unattractive…
> Lawyer: Absolutely. Absolutely. I mean the inefficiencies… If Joe Blow is paying his lawyer $300 an hour and his lawyer has to go to court and sit around for five hours doing nothing, that's not a particularly efficient way for him to deal with his problems.

6.7 Discussion: Shortages of Legal Services

Survey research and the real-world descriptions provided by the individuals we interviewed highlighted the extent to which shortages of legal services are rooted in problems of affordability. Of target group respondents who identified shortages, close to two fifths mentioned either problems of access to Legal Aid and Legal Aid lawyers, or problems of affordability of legal services. In the comparable group of equality-seekers this proportion rose to almost half who cited Legal Aid or affordability problems. But beyond these direct references to shortages rooted in the limited means of potential users of legal services, many of the specific descriptions of shortages in regions and areas of law cited the same underlying problem. Limitations or absences of services in such areas as Family Law, Child Protection and Workplace Safety and Insurance Board claims, were often explained by reference to clients' limited ability to pay or their general reliance on Legal Aid.

Viewed from this angle, we conclude that the issue of shortages must first be seen from the general point of view of the supply and demand of legal services. And as we have already suggested, the problem of shortages of legal services is rooted in under-funded demand. Many potential users of legal services are not able to access those services because of their limited ability to pay. Conversely the supply of legal services – lawyers working in specific regions, areas of law and communities - is limited by the inability of individuals and communities to purchase services at rates which will sustain sole practitioners and small firms. By definition our research is a snapshot of conditions at this time. Still, comments from many interviewees suggested there may be a growing proportion of the population who need legal services but are unable to adequately access those services due to financial constraints.

Although we have stressed the overarching importance of understanding shortages as a matter of affordability and restricted access to legal services, there are clearly other more specific shortage issues which are relevant to regions, areas of practice and specific communities.

In some parts of Ontario, a shortage of clients of sufficient means to sustain a healthy local community of lawyers may be complicated by a failure or lag in the legal community's response to changing demand. There may be several areas in Ontario, particularly the Non-Urban region and the Rest of GTA outside of Toronto, where attractive opportunities to practice may have gone unnoticed.

This research also identified, and in a preliminary way explored the issues of shortage in specific areas of practice. There are a host of issues that may be unique to each area of practice.

Finally, this section of the report explored the extent to which equality-seekers identified shortages of legal services, and the nature of the shortages they reported.

7.0 Conclusion

The findings of this research suggest that the issues of dissatisfaction and financial viability, and shortages of legal services, may be closely linked to the character of the client market that is served by sole practitioners and lawyers in small firms.

The problems experienced by some sole practitioners and small firms in managing the financing and overhead costs of their practices are rooted in the growing incapacity of potential clients to pay for those services. As we heard directly from several interviewees, some lawyers find themselves on the horns of a dilemma. Many potential clients cannot pay adequately or in a

timely fashion for the legal services they need. Yet, in many instances lawyers are obliged to take on these cases both for financial and professional reasons, with the consequences that they assume an increased burden in financing their practice and covering overhead costs, and inevitably earn a lower income.

The same situation also accounts for the absence of services, and possibly also a trend toward growing shortages in some regions, areas of practice or cultural communities. As a matter of both choice and necessity, lawyers are forced to restrict the Legal Aid clients they accept, as well as clients of limited means, who do not qualify for Legal Aid. Regions, areas of practice or cultural communities, where the potential client population has a limited capacity to pay for services, are inevitably subject to growing shortages as the underlying economic realities force lawyers to seek out other more viable markets for legal services.

This report has provided:

- Detailed comparisons between the target and non-target groups;
- Detailed comparisons within the five sub-groups comprising the target group;
- Analysis of the key drivers of satisfaction, dissatisfaction, and financial viability within the target group;
- An exploration of the extent and characteristics of shortages of legal services as they were perceived by respondents in the target group.

In the analysis and interpretation of the research findings, this report has developed a general framework to guide the next stage of research.

APPENDIX I: SURVEY QUESTIONNAIRE

Law Society of Upper Canada
December 4, 2003

Hello may I speak with (name recorded). *If not, arrange a time to call back.*

Hello _____. My name is _____. I am calling on behalf of the Law Society of Upper Canada. We are calling today to ask members some questions about their law practices. We are collecting this information so that we can better understand the practice environment and challenges faced by sole practitioners and small firms. We are also interviewing lawyers in larger firms to compare differences and similarities in the practice environments. This information will be used to develop policy recommendations to address the viability of sole practices and small firms, and ensure access to legal services for the Ontario public.

Your individual responses will be kept strictly confidential. The Law Society will only see the results of the survey as whole. Do you have about 20 minutes to be interviewed for this confidential survey?

If YES: Thank you very much. May I begin? GO TO SECTION A
If NO: Is there a better time to interview you?
If NO: Thanks for your time.
If YES: (schedule callback) Thank you, I'll call back then.

A PRACTICE PROFILE (All survey respondents)

A1. Please indicate your main area or areas of practice. [*DO NOT READ: RECORD UP TO FIVE RESPONSES]*
[*If necessary probe with*: " For example do you do criminal, labour or corporate commercial law?"]
[NOTE: If respondent answers "General" to indicate area of a practice, repeat the question with, "But can you tell me your main area or areas of practice?"]

1) ADR/Mediation Services
2) Administrative
3) Bankruptcy and Insolvency
4) Civil Litigation – Plaintiff
5) Civil Litigation – Defendant
6) Construction
7) Corporate/Commercial
8) Criminal/Quasi Criminal
9) Employment/Labour
10) Environmental
11) Family/Matrimonial
12) Immigration
13) Intellectual Property
14) Public Law
15) Real Estate
16) Securities
17) Tax law
18) Wills, Estates, Trusts
19) Workplace Safety & Insurance
20) Other (specify) _____
21) DK/NA

A2. As I read the area or areas you just mentioned please tell me if your practice is growing, stable or decreasing in that area? *[REPEAT ORDER OF MENTIONS FROM A1]*

A2. a) [First Mention]
1) Growing
2) Stable
3) Decreasing
4) Refused [DO NOT READ]
5) DK/NA

A2. b) [Second Mention]
1) Growing
2) Stable
3) Decreasing
4) Refused
5) DK/NA

A2. c) [Third Mention]
1) Growing
2) Stable
3) Decreasing

4) Refused
5) DK/NA

A2. d) [Subsequent Mentions]
1) Growing
2) Stable
3) Decreasing
4) Refused
5) DK/NA

A3. Are you satisfied with the current mix of practice areas or do you feel you will need to make a change?

1)	Satisfied	GO TO A5
2)	Need to make a change	GO TO A4
3)	Refused	GO TO A5
4)	DK/NA	GO TO A5

A4. What changes do you feel will be necessary?

_____

_____

_____

A5. Which of the following most accurately describes your current practice? Do you,

1)	Practise alone without other lawyers in the same office space	GO TO A8
2)	Practise alone but share space with other lawyers	GO TO A6
3)	Practise alone with other lawyers you employ	GO TO A7
4)	Practise in partnership in a firm with 5 lawyers or less	GO TO A7
5)	Practise as an employee/associate in a firm with 5 lawyers or less	GO TO A7
6)	Practise as an employee/associate in a law firm of 6-15 lawyers	GO TO A7
7)	Practise with partners in a law firm with 6-15 lawyers	GO TO A7
8)	Practise as an employee/associate in a law firm with more than 15 lawyers	GO TO A7
9)	Practise as a partner in a law firm with more than 15 lawyers	GO TO A7
10)	Other (specify) _____	GO TO A7
11)	Refused [DO NOT READ]	GO TO A7
12)	DK/NA	GO TO A7

A6. How many lawyers do you share space with?

1)	_____	GO TO A8
2)	DK/NA	GO TO A8

A7. What is the total number of lawyers who work in same office space as you?
1) ____
2) DK/NA

A8. What is the main reason or reasons you chose the size of firm you practise in?

_____

_____

_____

A9. Please tell me what administrative support staff you use *[RECORD ALL MENTIONS]*

1)	_____	GO TO A10
2)	None	GO TO A11
3)	DK/NA	GO TO A11

A10. For each position you mentioned please tell me if they are a full-time employee, part-time employee or paid a fee-for-service.

A10. a) [First Mention]
1) Full-time employee
2) Part-time employee
3) Fee-for-service
4) DK/NA

A10. b) [Second Mention]
1) Full-time employee
2) Part-time employee
3) Fee-for-service
4) DK/NA

A10. c) [Third Mention]
1) Full-time employee
2) Part-time employee
3) Fee-for-service
4) DK/NA

A10. d) [Fourth Mention]
1) Full-time employee
2) Part-time employee
3) Fee-for-service
4) DK/NA

A10. e) [Repeat for all Mentions]
1) Full-time employee
2) Part-time employee
3) Fee-for-service
4) DK/NA

A11. Do you employ an articling student?

1)	Yes	GO TO A14
2)	No	GO TO A12
3)	DK/NA	GO TO A12

A12. Have you ever employed an articling student?

1)	Yes	GO TO A13
2)	No	GO TO A13
3)	DK/NA	GO TO A14

A13. What is the main reason you don't have an articling student now?

_____
_____
_____

A14. What percentage of your work time is made up of following:

A14. a) Billable legal work
1) _____
2) DK/NA

A14. b) Pro Bono legal work
1) _____
2) DK/NA

A14. c) Non-billable time spent on the administration, client development and marketing
1) _____
2) DK/NA

A15. What percentage of your work is legal aid work?
1) _____
2) DK/NA

A16. How many hours do you work in your practice during an average work week, including all billable and non-billable time?
1) _____
2) DK/NA

B SATISFACTION WITH PRACTICE (All survey respondents)

B1. Using a scale from one to seven, where "1" is very dissatisfied and "7" is very satisfied how would you rank your overall level of satisfaction with your practice?

1----------2----------3----------4----------5----------6----------7
Very Dissatisfied Very Satisfied

B2. What are the main problems or challenges you are facing in your current practice?

_____
_____
_____

[NOTE: ROTATE ORDER OF B3/B4 AND B5/B6]

B3. Can you tell me a ***positive*** aspect, something that makes you ***more satisfied*** with your practice? *[After first response ask,* "Is there another ***positive*** aspect, something that makes you more satisfied with your practice?" After *second response ask*, "And is there another ***positive*** aspect,.. (something that makes you ***more satisfied*** with your practice ?")]
[DO NOT READ. RECORD UP TO THREE RESPONSES]

1) Income (good level, rising, more than I can earn elsewhere)
2) Freedom (being my own boss)
3) Interesting/creative/varied work
4) Meaningful/socially useful/helpful work
5) Working in a team
6) Flexibility (hours, time off)
7) Community position/status
8) Other (specify) _____

B4. I'm going to read you some positive statements. Please rate each statement, using a scale from 1 to 7 where "1" is strongly disagree and "7" is strongly agree. *[READ AND RANDOMIZE]*

1----------2----------3----------4----------5----------6----------7
Strongly disagree Strongly agree

B4. a) You are earning a good income
B4. b) You are able to maintain a balance between work and the rest of your life
B4. c) You get professional satisfaction from meeting the needs of your clients
B4. d) You are pursuing career objectives
B4. e) You have the freedom of being in business for yourself
B4. f) You have work that is interesting or challenging
B4. g) You have profile and recognition in the community where you work
B4. h) You are working in a team
B4. i) You are doing work that is meaningful or socially useful
B4. j) You are working with a community that you belong to by virtue of your ethnicity or cultural background, your race, religion or creed, a disability, your language, your sexual orientation or your gender.

B5. Can you tell me a negative aspect, something that makes you *less satisfied* with your practice? [*After first response ask*, "Is there another negative aspect that makes you less satisfied with your practice?" *After second response ask*, "And is there another *negative* aspect…(that makes you less satisfied with your practice?")] [*DO NOT READ. RECORD UP TO THREE RESPONSES]*

1) Income (too low, not rising fast enough)
2) Lack of Freedom (work for a boss, can't make my own decisions)
3) Work is uninteresting/uncreative/no variety
4) Work is not meaningful/not socially useful
5) Isolated (from other lawyers)
6) Work Life Balance (hours are too long/ too much pressure)
7) Too hard to make a living (financial viability, increased competition etc.)
8) Lack of flexiblity (no one to take files in cases of emergency/no one to share work)
9) Area of practice (not interesting/not first choice/not successful)
10) Other (specify) _____

B6. I'm going to read you some negative statements. Please rate each statement using a scale from 1 to 7 where "1" is strongly disagree and "7" is strongly agree. *[READ AND RANDOMIZE]*

1----------2----------3----------4----------5----------6----------7

Strongly disagree Strongly agree

B6. a) You are earning an income that is lower than you expected
B6. b) You don't have as much freedom to make decisions as you want
B6. c) You have work that is uninteresting or unchallenging
B6. d) Your work is not meaningful or socially useful
B6. e) You are isolated from other lawyers
B6. f) Your hours of work are too long and your work impinges on the rest of your life
B6. g) The financial risks of maintaining your practice are too high
B6. h) You spend too much time on the administrative aspects of your practice
B6. i) You are dissatisfied with your present area or areas of practice

B7. Is it important or unimportant to you in your practice, to have a network of other lawyers or staff to share information, clarify ideas, solve problems and provide support? *[If important*, "Would that be very/somewhat important?" *If unimportant,* "Would that be somewhat unimportant or not at all unimportant?"]

1) Very important
2) Somewhat important
3) Somewhat unimportant
4) Not important at all
5) Refused
6) DK/NA

B8. And would you say that your existing supports – professional associations, other lawyers, staff or colleagues in the legal profession – are adequate or inadequate to meet your current needs? *[Would that be very or somewhat adequate/inadequate]*

1) Very adequate
2) Somewhat adequate
3) Somewhat inadequate
4) Very inadequate
5) Refused
6) DK/NA

B9. Using a scale from 1 to 7 where "1" is not important at all and "7" is extremely important please tell me which of the following *supports* are important or unimportant to you in your practice. *[READ AND RANDOMIZE]*

1----------2----------3----------4----------5----------6----------7
Not important at all Extremely important

B9. a) Regular interaction with other lawyers in the same office
B9. b) Working with law clerks in the same office
B9. c) Working with paralegals paid on a fee-for-service basis
B9. d) A network of informal contacts or colleagues who are lawyers in other firms
B9. e) Membership in a professional association

B9. f) A network of colleagues that belong to the same community as you by virtue of your ethnicity or cultural background, your race, religion or creed, a disability, your language, your sexual orientation or your gender.

B9. g) Having a group of lawyers who can take on your work in cases of family or other emergencies

B9. h) Good secretarial or administrative support.

B10. Using the same scale where 1 is <u>not important at all</u> and 7 is <u>extremely important,</u> please tell me which of the following resources are important or unimportant to you in your practice. *[READ AND RANDOMIZE]*

1----------2----------3----------4----------5----------6----------7
Not Important at all Extremely important

B10. a) Internet
B10. b) Continuing Legal Education
B10. c) The library in your office space
B10. d) Access to other lawyers with expertise or experience
B10. e) Administrative support staff
B10. f) The library run by the local law association
B10. g) Articling students

B11. Are you <u>satisfied</u> or <u>dissatisfied</u> with the quality of the service you are providing to your clients? *[Would that be very or somewhat satisfied/dissatisfied]*

1)	Very satisfied	GO TO SECTION C
2)	Somewhat satisfied	GO TO B12
3)	Somewhat dissatisfied	GO TO B12
4)	Very dissatisfied	GO TO B12
5)	Refused	GO TO SECTION C
6)	DK/NA	GO TO SECTION C

B12. How could your practice be changed to improve the quality of the services you provide your clients?

_____

_____

C FINANCIAL VIABILITY (All survey respondents)

C1. Would you say it is <u>more difficult</u> or <u>less difficult</u> to maintain the financial viability of *your practice* than it was five years ago, or since you began practising as you are now, if less than five years. *[Would that be much more/less difficult or somewhat more/less difficult].*

[NOTE: If respondent has difficulty with "my practice" prompt with, " If you can't answer this question in terms of *<u>your practice</u>* can you tell me if it is more difficult or less difficult to maintain the financial viability of the *<u>firm you work for</u>*, than it was five years ago…]

1) Much more difficult

2) Somewhat more difficult
3) Somewhat less difficult
4) Much less difficult
5) Not Applicable
6) DK/NA

C2. Using a scale from one to seven, where "1" is not a problem and "7"is a very serious challenge, how would you rank the issue of maintaining the financial viability of your practice?

[NOTE: As in C1 if respondent has difficulty with "my practice" prompt with, " If you can't answer this question in terms of *your practice* , then how would you rate the financial viability of the *firm you work for.]*

1----------2----------3----------4----------5----------6----------7
Not a problem Very serious challenge

C3. And do you expect it to become more difficult or less difficult to maintain the financial viability of your practice five years from now? *[Would that be much more/less difficult or somewhat more/less difficult]*

1)	Much more difficult	GO TO C4
2)	Somewhat more difficult	GO TO C4
3)	Somewhat less difficult	GO TO C5
4)	Much less difficult	GO TO C5
5)	Not applicable	GO TO C5
6)	DK/NA	GO TO C5

C4. What is the most important factor that will make it more financially difficult to maintain your practice in the future? [*After first mention ask,* "And is there another important factor that will make it more financially difficult to maintain your practice in the future?" *After second mention* ask, "And is there one more important factor … (that will make it more financially difficult to maintain your practice in the future?")] *[DO NOT READ. RECORD UP TO THREE RESPONSES]*

1) Increased competition from paralegals and other non-lawyer suppliers of legal services
2) Increased overhead/cost of running the practice
3) Costs of new technology
4) Low rate of legal aid fees
5) Increased competition from sole practitioners and small firms
6) Increased competition from larger firms
7) Market pressure to keep fees low
8) Increased costs of financing the practice (size of loans, difficulty of getting bank financing)
9) Other (specify) _____
10) Refused
11) DK/NA

C5. Using a scale from one to seven, where "1" is not a problem and "7" is a very serious problem, please rank each of the following as a factor which will make it more financially difficult to maintain your practice in the future. *[READ AND RANDOMIZE]*

1----------2----------3----------4----------5----------6----------7
Not a problem A very serious problem

C5. a) The increased competition from paralegals and other non-lawyer suppliers of legal services.
C5. b) The increased overhead costs of running the practice
C5. c) The costs of new technology
C5. d) Low rate of legal aid fees
C5. e) Increased competition from sole practitioners and small firms
C5. f) Increased competition from larger firms
C5. g) Market pressure to keep fees low
C5. h) The increased difficulty or risk of financing your practice

C6. Of the factors that I just read, which one presents the greatest threat to the survival of your practice? *[DO NOT READ. RECORD ONE RESPONSE]*

1) The increased competition from paralegals and other non-lawyer suppliers of legal services.
2) The increased overhead costs of running the practice
3) The costs of new technology
4) Low rate of legal aid fees
5) Increased competition from sole practitioners and small firms
6) Increased competition from larger firms
7) Market pressure to keep fees low
8) The increased difficulty or risk of financing your practice
9) Other (specify)_____
10) Refused
11) DK/NA

C7. Do you think technology – computers, specialised software, internet access to legal information – has made it easier or more difficult for you to maintain the financial viability of your practice? *[Would that be much/somewhat easier/more difficult]*

1) Much more difficult
2) Somewhat more difficult
3) Somewhat easier
4) Much easier
5) DK/NA

[NOTE: ROTATE C7 AND C8]

C8. In what way does technology make it more difficult to maintain the financial viability of your practice? [*After first mention ask,* "Is there another way technology makes it more difficult to maintain your practice?" *After second mention ask*, "And is their one more way…(technology makes it more difficult to maintain your practice?")]
[RECORD UP TO THREE RESPONSES]

1) Too expensive to purchase
2) Too costly to upgrade
3) Too hard/ too costly to maintain
4) Too much time to learn how to use it
5) Increases the financial risks of sole practice/small firms
6) Can't keep up with the big firms
7) Easier to work from locations other than the office/from home
8) Other (specify) _____
9) DK/NA

C9. In what way does technology make it easier to maintain the financial viability of your practice? [*After first mention ask,* "Is there another way technology makes it easier to maintain your practice?" *After second mention ask*, "And is their one more way…(technology makes it easier to maintain your practice?")] *[RECORD UP TO THREE RESPONSES]*

1) Easier to compete with big firms
2) Boosts productivity
3) Much easier to access legal information
4) Easier to learn new areas of the law
5) Reduces labour costs
6) Improves communications
7) Other (specify) _____
8) DK/NA

C10. Thinking about your income over the past five years - or since you began practising as you are now if it is less than five years - would you say your income has kept pace, fallen behind or increased more rapidly than the average for lawyers in your areas of practice, with similar experience, practising in similar communities?

1) Kept pace with the average
2) Fallen behind the average
3) Increased more rapidly than the average
4) Refused
5) DK/NA

C11. Using a scale from one to seven where 1 is very dissatisfied and "7' is very satisfied please rate your current level of satisfaction with your before-tax annual income from your practice.

1----------2----------3----------4----------5----------6----------7
Very Dissatisfied Very Satisfied

C12. Do you believe your practice will be financially viable 10 years from now?

1) Yes
2) No
3) Refused
4) DK/NA

C13. What is the most important step or steps that could be taken to improve the financial viability of your practice?

_____
_____
_____
_____

D ACCESS TO LEGAL SERVICES
(Sub-sample of survey respondents)

D1. Were you raised in the geographic area where you now practise law?

1) Yes, born and/or raised GO TO D2
2) No, not born/raised GO TO D3
3) Refused GO TO D3
4) DK/NA GO TO D3

D2. Did you begin practising law in your present geographic community from the start of your career or did you return to your geographic community after practising law somewhere else?

1) Began practising law in present geographic community
2) Started practising law in a different geographic community
3) Refused
4) DK/NA

D3. Why did you choose to practise law in your present geographic community?

_____
_____

D4. Please describe the geographic community your practice serves.

_____
_____
_____
_____

D5. Please estimate the average distance in kilometres your clients travel to meet with you?

1) _____
2) DK/NA

D6. What percentage of your clients are individuals and what percentage is businesses, organizations, or government?

1) Individuals_____
2) Business, organizations, government _____
3) Refused
4) DK/NA

D7. Some clients prefer to deal with their lawyer in a language other than English. In what languages are you able to offer your services to your clients?

1) English only GO TO D9
2) Other Languages (specify) _____

D8. What percentage of your clients do you serve in
[*REPEAT FOR ALL MENTIONS*]

1) First mention from D7
2) Second Mention from D7
3) Third mention from D7

D9. Looking ahead to the time when you are ready to retire, which of the following do you think is most likely to happen to your practice? *[READ AND ROTATE]*

1) You will sell the firm to other lawyers
2) Other lawyers in the firm will continue the practice
3) You will recruit lawyers to join the firm to continue the practice
4) You will "close the doors" on your practice when you retire
5) You will refer your clients to other lawyers in the area
6) Other (specify) [DO NOT READ]_____
7) DK/NA[DO NOT READ]

D10. Do you think there is currently a shortage of any kinds of legal services in whatever community you serve?

1)	Yes	GO TO D11
2)	NO	GO TO D13
3)	Refused	GO TO D13
4)	DK/NA	GO TO D13

D11. Please describe the shortage of legal services in <u>whatever</u> community you serve.

_____
_____
_____

D12. Using a scale from 0 to 10 where "0" represents <u>no legal services</u> and "10" represents a <u>full range of legal services adequate to meet demand</u>, how would you rank the access to legal services in the community you serve?

0----------1----------2----------3----------4----------5----------6----------7---------8----------9----------10
No legal services Full range of legal services

GO TO D14

D13. Do you think there is likely to be a shortage of any kinds of legal services in the community that you serve, in the forseeable future?

1)	Yes	GO TO D14
2)	NO	GO TO SECTION E
3)	Refused	GO TO SECTION E
4)	DK/NA	GO TO SECTION E

D14.

D14. a) Using the same 0 to 10 scale where "0" represents no legal services and 10 represents a full range of legal services adequate to meet demand how would you rank access to legal services in your community 5 years from now?

0----------1----------2----------3----------4----------5----------6----------7---------8----------9----------10
No legal services Full range of legal services

D14. b) And on that same 0 to 10 scale where "0" represents no legal services and 10 represents a full range of legal services adequate to meet demand how would you rank access to legal services in your community 15 years from now?

0----------1----------2----------3----------4----------5----------6----------7---------8----------9----------10
No legal services Full range of legal services

D15. What do you believe is the main reason for the threatened shortages of legal services in your community? [*After first mention ask*, "And is there another reason for the threatened shortages of legal services in your community?" *After second mention ask*, " And is there another reason… (for the threatened shortages of legal of services in community?")] *[RECORD UP TO THREE RESPONSES]*

1) Not enough new lawyers serving your community
2) Declining incomes
3) High incomes offered by large urban firms
4) Financial risks of sole practice/small firms are too great
5) Hours/workweek too long
6) Lack of support – administration, staff
7) Too isolated
8) Shortage of lawyers practising in specific languages
9) Other (specify) _____
10) DK/NA

D16. In which practice areas do you think there are likely to be shortages or limits to access in your community in the future? [*DO NOT READ. RECORD ALL RESPONSES]*

1) ADR/Mediation Services
2) Administrative
3) Bankruptcy and Insolvency
4) Civil Litigation – Plaintiff
5) Civil Litigation – Defendant
6) Construction
7) Corporate Commercial
8) Criminal/Quasi Criminal
9) Employment/Labour
10) Environmental
11) Family/Matrimonial
12) Immigration
13) Intellectual Property
14) Public Law
15) Real Estate
16) Securities
17) Tax law

18) Wills, Estates, Trusts
19) Workplace Safety & Insurance
20) Other (specify) _____
21) DK/NA

D17. And of the areas of practice you mentioned, where do you think the shortages of legal services are likely to be *most severe? [DO NOT READ. RECORD UP TO FIVE RESPONSES]*

1) ADR/Mediation Services
2) Administrative
3) Bankruptcy and Insolvency
4) Civil Litigation – Plaintiff
5) Civil Litigation – Defendant
6) Construction
7) Corporate Commercial
8) Criminal/Quasi Criminal
9) Employment/Labour
10) Environmental
11) Family/Matrimonial
12) Immigration
13) Intellectual Property
14) Public Law
15) Real Estate
16) Securities
17) Tax law
18) Wills, Estates, Trusts
19) Workplace Safety & Insurance
20) Other (specify) _____
21) DK/NA

D18. What is the most important step or steps that should be taken to ensure adequate future access to legal services in the community you serve?

_____
_____
_____

E MEMBERS OF EQUALITY-SEEKING COMMUNITIES
(Sub-sample of survey respondents)

E1. The Law Society has defined members of "equality-seeking communities" as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation, or gender. Do you consider yourself a member of an equality-seeking community?

1)	Yes	GO TO E2
2)	No	GO TO E3
3)	Refused	GO TO E3
4)	DK/NA	GO TO E3

E2. Are you a member of an equality-seeking community for one or more of the

following reasons:

1) Your race
2) Your ethnicity or cultural background
3) Your religion or creed
4) A disability
5) Your language
6) Your sexual orientation
7) Your gender
8) Or some other reason (specify)_____
9) Refused [DO NOT READ]
10) DK/NA [DO NOT READ]

GO TO E5

[NOTE: Questions E3 & E4 which follow are a second attempt to identify "equality-seekers" who may not see themselves as falling into the definition provided in E1]

E3. Thinking about your work as a lawyer, have you ever experienced any discrimination or limitations to your employment opportunities as a result of your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender?

1)	Yes	GO TO E4
2)	No	GO TO SECTION F
3)	Refused	GO TO SECTION F
4)	DK/NA	GO TO SECTION F

E4. Has your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender affected the financial viability of your practice? If so , please explain. *[RECORD VERBATIM]*

_____
_____
_____
_____
_____

GO TO SECTION F

[NOTE: Questions E5 to E10 apply only to those respondents who indicated in E1 that they are members of equality-seeking communities.]

E5. Has your ethnicity or cultural background, your race, your religion or creed, a disability, language, your sexual orientation or gender affected the financial viability of your practice? *[RECORD VERBATIM]*

_____
_____
_____
_____
_____

E6. *[READ SLOWLY]* Using a scale from 1 to 7 where "1" is <u>not important at all</u> and "7" is <u>the most important reason</u> please tell me how important being a member of

an equality-seeking community was in your decision to practise as you are now, by which I mean practising *alone*, or with *other lawyers in a small firm,* or with *other lawyers in a larger firm.*

1----------2----------3----------4----------5----------6----------7
Not important at all Most important reason

E7. Lawyers have different reasons for choosing their area or areas of practice. Was being a member of an equality-seeking community an important factor, one consideration among others, or not a relevant consideration in your decision to choose the area or areas in which you now practise?

1)	Important factor	GO TO E8
2)	One consideration among many	GO TO E8
3)	Not a relevant consideration	GO TO E9
4)	Refused	GO TO E9
5)	DK/NA	GO TO E9

E8. How did your membership in an equality-seeking community affect your decision to choose the areas or areas in which you now practise?

_____
_____
_____
_____

E9. What percentage of your clients are from the same equality-seeking community as you are?

1) _____
2) Refused
3) DK/NA

E10. Some individuals have found that being a member of an equality-seeking community has affected the income they earn as a lawyer. In your case would you say that being a member of an equality-seeking community has contributed to reducing your income level, increasing your income level or has had no effect on your income level?

1)	Reducing your income	
2)	Increasing your income	
3)	Had no effect either way	GO TO SECTION F
4)	Refused	GO TO SECTION F
5)	DK/NA	GO TO SECTION F

E11. Would you say that being a member of an equality-seeking community is the most important factor, very important, somewhat important, not very important or not important at all as a factor in determining your annual income from your practice?

1) Most important reason
2) Very important reason
3) Somewhat important
4) Not very important
5) Not important at all

6) Refused
7) DK/NA

F DEMOGRAPHICS (All survey respondents)

I just have a few more questions for you so that we can make some statistical comparisons.

F1. Gender [DO NOT ASK. FROM LSUC DATA FILE]

F2. Would you tell me your year of birth? [DO NOT ASK. FROM LSUC DATA FILE]

F3. Can you tell me what year you were called to the bar? [DO NOT ASK. FROM LSUC DATA FILE]

F4. During the past year were you

1)	Employed mainly full-time as a lawyer	GO TO F6
2)	Employed mainly part-time as a lawyer	GO TO F5
3)	Employed temporarily full-time as a lawyer	GO TO F5
4)	Other (specify) _____	GO TO F6

F5. And was your part-time/ temporary employment status your personal choice or was it caused by other factors such as limited opportunity to practise law.

1) Personal choice
2) Limited opportunity to practise law
3) Refused
4) DK/NA

F6. I am now going ask you about your annual income. As I read the following list, please indicate the range that applies to your annual before tax income earned from your practice in 2002.

1) ZERO or lost money
2) Less than $24,999
3) More than $25,000 but less than $49,999
4) More than $50,000 but less than $74,999
5) More than $75,000 but less than $99,999
6) More than $100,000 but less than $199,999
7) More than $200,000 but less than $399,999
8) More than $400,000
9) Refused [DO NOT READ]
10) DK /NA[DO NOT READ]

My next few questions are designed to allow the Law Society to make comparisons with Census Canada data and identify trends in the profession:

F7. What language or languages did you first learn at home in childhood and still understand? [*DO NOT READ. RECORD ALL RESPONSES]*

1) English
2) French
3) Italian
4) Cantonese
5) Portuguese
6) Spanish
7) Punjabi
8) Polish
9) Arabic
10) Tagalog
11) German
12) Tamil
13) Urdu
14) Greek
15) Vietnamese
16) Other (Specify) _____
17) DK/NA

F8. Census Canada provides the following membership options in certain communities. Would you please indicate which membership option or options apply to you. [*READ LIST and RECORD ALL RESPONSES. AS NECESSARY PROMPT WITH DESCRIPTIONS IN PARENTHESIS]*

1) Aboriginal (Native American, Status/Non-Status Indian, Metis or Inuit)
2) White
3) Chinese
4) South Asian (e.g. East Indian, Paskistani, Sri Lankan, etc.)
5) Black (African-Canadian/African-American/African-Caribbean, Continental African)
6) Filipino
7) Latin American
8) Southeast Asian (e.g. Cambodian, Indonesian, Laotian, Vietnamese, etc.)
9) Arab
10) West Asian (e.g. Afghan, Iranian, etc.)
11) Japanese
12) Korean
13) Other (specify) _____
14) Refused
15) DK/NA

G QUALITATIVE RECRUITMENT (All survey respondents)

G1. That brings me to the end of our survey. Thank you very much for taking the time to answer my questions. The next phase of this research project may involve longer face-to-face taped interviews as well as focus groups. A focus group is a conversation involving 8-10 participants at a time. Would you be willing to participate in a <u>longer recorded interview</u> or <u>a focus group</u> some time in January, 2004? [*MARK ALL THAT APPLY]*

1) Longer recorded interview
2) Focus group
3) Not interested

4) DK/NA

[If YES to long interview or focus groups] That's great! I can't guarantee that you will be contacted but you may be hearing from us in the next few weeks.
Thanks again for taking the time to participate in this research.

[If NO] Well thanks again for taking the time to participate in this research.

APPENDIX II: LONG INTERVIEW GUIDE

Law Society of Upper Canada
January 26, 2004

Procedure

Candidates for follow-up long interviews were selected from the pool of respondents to the telephone survey conducted in December, 2003, who indicated a willingness to participate in a follow-up interview. A staff member at Strategic Communications phoned each candidate, reminded him/her of the December interview, and asked the individual if they were willing to participate in a 30-60 minute telephone interview which would be recorded. Phoning began on Monday, January 19. David Kraft, a senior consultant at Strategic Communications, conducted all the telephone interviews.

PART ONE: INTRODUCTION

Introduction *[All respondents]*

[Moderator begins by reminding the respondent that the interview is being taped, and restating the guarantee that although their comments will be used, he/she will not be identified by name, nor will the community where they practice be mentioned in any way that could identify the individual interviewee.]

1. Can you describe your law practice?
[Probe for number of lawyers, support staff, area of practice, choice of sole practice/small firm, and issues of importance]

2. Can you tell me about the community you practice in?
[Probe for… reasons for practising in 'your' community. Why did you choose to be here? How did you end up there? Do you like the community you are practicing in?]

PART TWO: SUSTAINABILITY

Satisfaction/Dissatisfaction [*for respondents who identified issues of dissatisfaction]*

3. Can you tell me something about what you like or dislike about your current practice?
[Probe for likes and dislikes. Explore specific issues.]

4. In terms of what you have just described are there things about your practice that have *gotten worse* over time – since you began practising, or more recently?
[Probe for description of specific factors, impact on practice. Also, the reasons for these

changes.]

5. Are there things about your practice that have gotten better over time – since you began practising or more recently?
[Probe for description of specific factors, impact on practice. Also, the reasons for these changes.]

6. In terms of what we have been discussing do you expect things to get better or worse in the future?
[Probe for what things? why?]

7. Are you satisfied with your current income?
[Probe for future expectation?]

8. Are any of the issues/problems you have described serious enough to affect your decisions about practicing law in the future? For example do you think these problems could cause you to change practice areas/move to another community/even stop practicing law/etc.?
[Probe for specific issues and possible response]

Financial Viability [*primarily for respondents who identified financial viability issues]*

9. From a financial point of view is it more difficult to sustain your practice than it was in the past? [*If so, why?]*

10. How would you describe the challenges or issues that you face in maintaining the financial viability of practice? *[Probe for: competition, legal aid rates, paralegals, market pressure]*

11. How serious are these problems for you? Are they likely to affect decisions you make about you choice of practice area(s) or continuing to practice in your community?

PART THREE: ACCESS TO LEGAL SERVICES

Legal Services in Your Community [*All respondents, with some specific probes for Equality-seekers*]

12. Does the community where you practice have any *specific* needs for legal services? By that I mean is there any demand for a particular type of legal services due to the nature of the community and the people who live there?
[Probe equality-seekers to define "community" and its needs.]

13. Are there shortages of any legal services in your community? Can you describe them?
[Probe for practice areas: Family Law, Litigation, Criminal, Employment, Immigration.]

14. Can you give me some examples of cases you know about, where individuals or businesses could not access the legal services they needed?
[Probe for stories, specific examples of shortages.]

15. How serious are the problems you have just described?

16. Can you compare access to legal services in your community with other communities in Ontario? Are there similarities or differences that come to mind?

The Impact of Shortages of Legal Services [*Primarily respondents who identified access issues]*

17. What do those people who can't access legal services in your community do? Where do they go for those services?

18. Does the shortage of legal services affect your own practice in any way? *[Probe for changes to areas of practice, problem with referrals, people go out of town whenever they need a lawyer, etc. This may also be an opportunity to explore the financial viability of the respondent's practice.]*

The Legal community *[All Respondents]*

19. Can you describe the legal community in your area?
[Probe for number of lawyers, size of firms, areas of practice, gaps and/or over-supply]

20. Within the legal community you just described are there lawyers or firms that you work with on a regular basis? *[Probe for contacts, collaboration, support/isolation.]*

21. Is the legal community you described changing? *[Numbers, demographics, type of firms, areas of practice and reasons. Probe for causes.]*

Shortages of lawyers *[Primarily respondents who identified access issues or others who have raised this issue in the course of the interview]*

22. Is there a shortage of lawyers in your community? *[What kinds, i.e., area of practice or expertise, age, gender, language.]*

23. *[follow-up]* What do you think makes your community attractive or unattractive as a place where lawyers would decide to practice?

24. What do you think could/should be done to attract more lawyers to practice in your community? *[Probe: What about having/increasing use of articling students? Have you thought about sharing an articling student with another lawyer? If not, why not?]*

PART FOUR: SOLUTIONS

Solving problems of sustainability and financial viability *[Sustainability/viability]*

25. (*Note: Sustainability/satisfaction/equality seekers)* Are the problems you described in terms of your own practice, experienced by other lawyers? If so, are there specific steps or policy measures that should be taken to make practising law less difficult for lawyers like yourself? Are there things the Law Society should be doing?

26. (*Note: Sustainability/financial viability)*. Are the problems of financial viability that you described serious enough that specific steps or policy measures should be developed to make practising law more financially viable for lawyers like you? Are there things the Law Society should be doing?

Overcoming the Shortage of Legal Services in Your Community *[Access or others who identify access issues]*

27. Are the problems of access to legal services in your community serious enough that specific action should be taken or policy measures developed to improve the availability of legal services in your community? What steps?

28. What should the Law Society be doing to deal with the problem of shortages of legal services in your community and other communities?

Concluding comments

29. That brings me to the end of my questions. Is there anything further you would like to add or clarify?

[Interviewer explains that the information from the interview will be integrated into the survey results and submitted in a final report to the LSUC Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms.]

Thanks again for taking the time to speak with me. Goodbye.

Report to the Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms

Sole Practitioners and Employees/Associates in Small Firms:

Benefits, drawbacks, financial challenges and the future of practising in the small firm environment.

August 23, 2004
Strategic Communications, Inc.
David Kraft, Stephen Arsenault,
Olga Ialanskaia, Gillian Strange

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Executive Summary

Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in May 2004, to conduct focus group research. This

was the follow-up to an earlier phase of (primarily) survey research detailed in Strategic Communications April 7, 2004 report.

This phase of focus group research explores similar themes within the target group (lawyers in sole practice or in firms of five or fewer lawyers), including:

- Reasons for choosing a specific practice context;
- Individuals' perceptions of the benefits and drawbacks of their chosen practice context;
- Perceptions of the financial viability of practising as a sole practitioner or as an employee/associate in a small firm;
- The future of sole practitioners and small firms;
- Responses to ideas for possible policy initiatives.

This report interprets the findings of the focus group research. It reports the opinions and some verbatim comments of participants with accompanying interpretation throughout. It relies on the results of earlier survey research to inform the discussion and interpretation of specific qualitative findings. In some cases we have augmented the existing survey results with additional data analysis relevant to the focus group analysis. In this respect the quantitative data presented in this report extends the analysis presented in the April 2004 report.

Methodology

The research project was comprised of nine focus groups and three long interviews including:

- Two groups of sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Two groups of sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Three groups of employees/associates in firms with five or fewer lawyers;
- Two groups of lawyers who self identified as being members of equality-seeking communities;
- Three long interviews with employees/associates.

Two groups were convened in London, one in Sudbury, and six in Toronto. The three individual long interviews were all with employees/associates in Sudbury. The sample of 62 focus group and long interview participants was comprised of 27 sole practitioners practising alone, 20 employees/associates, 13 sole practitioners practising with others, one sole proprietor and one partner in a small firm. Within this group there were seven women and seven men recruited because they identified themselves as equality-seekers.

Of the 62 participants, 26 or 42% comprised women, compared to 21% of the target group as a whole. 27 individuals or 44%, were lawyers with 10 years or less since their call to the Bar, compared to 27% of the target group as a whole.

The results of the focus groups are analyzed thematically. Most of the quantitative data presented (all of which is taken from survey research unless otherwise specified), compares differences and similarities between the various sub-groups identified in the April 2004 report. The presentation and interpretation of focus group results references these quantitative research findings. Where relevant the practice context of individuals is identified.

This report touches on some issues associated specifically with equality-seekers and it draws from the transcripts of the two groups of equality-seekers. However, a separate report looks more closely at the sub-group of equality-seekers and analyses the themes that were specific to the discussion in those two groups.

Characteristics of the Target Group

The report compares demographic, practice characteristics, main areas of practice and practice stability in the five sub-groups, between men and women, and across age groups.

Findings with respect to main areas of practice included:

- Sole practitioners alone report working in Real Estate, and Wills, Estates and Trust more often than the average;
- Employees/Associates cite Civil Litigation with much greater frequency than average;
- Women mention Family-Matrimonial Law twice as frequently as men, and all other areas of practice less frequently;
- Older lawyers mentioned Real Estate and Wills, Estates and Trusts more frequently than the other two age groups;
- Younger lawyers cited Civil Litigation with much greater frequency.

Findings in the areas of practice stability showed:

- A higher proportion of women than men report their main areas of practice are growing;
- A higher proportion of younger lawyers compared to older lawyers, reported their main areas of practice were growing.

Benefits of Working in Sole Practice and Small Firms

A majority of focus group participants reported that their current practice context was a matter of choice over other possible private practice options. Some reported they felt they were best suited or pre-disposed to the flexible and independent aspects of the sole practice or small firm environment. For some, working in a large firm was viewed as an unattractive option. Others chose their current practice context because it offered flexible work and/or lifestyle options. Still others chose their practice context as the best opportunity to advance their career.

A minority reported their decision to work in a sole practice or small firm environment was largely a matter of necessity. The decision to set up sole practice was the only available private practice employment option. A smaller group reported that factors of race, religion or gender bias were the main reasons why other employment options, including in some cases larger firms, were ruled out or had become untenable.

Sole practitioners enthusiastically described the benefits of their practice context in terms of control and flexibility, independence and freedom. This included the freedom to adapt the work schedule to personal or family needs, managing the work schedule and the satisfaction of being completely in charge of the law practice. For some, sole practice was an opportunity to escape the more rigid controls of the large firm or the traditional lawyer's office.

Sole practitioners with others and employees/associates ranked regular interaction with other lawyers in the same office among the most important supports. This was a key difference from

sole practitioners alone, for whom regular interaction with lawyers in the same office was not ranked high among the benefits of their current practice context.

Employees/associates also stressed the positive values of flexibility in relation to scheduling hours of work, holidays, and time off. Among the benefits of their current practice context they also noted the "predictable", "reasonable" and "manageable" aspects of work and the expectations they encountered.

Drawbacks of Working in Small Firms or Sole Practices

Comparisons within the survey results showed that target group participants are significantly more dissatisfied than the non-target group. Within the target group, sole practitioners registered the highest general level of dissatisfaction.

Sole practitioners alone ranked "earning an income that is lower than expected," "spend too much time on administration", and "isolated from other lawyers" as the top three sources of dissatisfaction. Sole practitioners with others and employees/associates ranked isolation from other lawyers 5th and 6th respectively.

25% of sole practitioners alone earned less than $50,000 in 2002. Compared to sole practitioners working with others, a higher proportion of both sole practitioners alone and employees/associates reported they were "falling behind" average income levels.

Sole practitioners frequently cited low incomes and the irregular income stream as a drawback of their current practice context. But a majority of participants accepted lower income as part of the positive trade off involving greater control over work and various lifestyle benefits. A small group expressed general satisfaction with their current income. Another small group appeared to be facing more serious problems and reported declining and/or inadequate incomes.

Individuals who reported spending more than 20% of their time on administration also registered significantly higher overall levels of dissatisfaction. Participants in every group complained of "having to waste time on administration" and the burden of a "huge administrative workload." At the same time the problem of too much time spent on administration is part of a larger complex of issues confronting sole practitioners and more generally lawyers working in small firm environments. Lawyers repeatedly described under-resourced practices where the demands of financial and business management, lack of professional and staff supports, limited the capacity to practice law effectively and compete with larger firms "for and within cases."

Those who reported they were isolated from other lawyers – mainly sole practitioners practicing alone - registered 32.15 on the general "dissatisfaction index" compared to 24.31 for those who were not isolated. Sole practitioners alone complained of the absence of professional advice and interaction, back up and support in all aspects of practice management.

Isolation from other lawyers distinguishes the experience of sole practitioners alone, from other sole practitioners and employees/associates, and accounts in part for higher levels of general dissatisfaction in this group. For sole practitioners alone, isolation from other lawyers is a key factor contributing to the negative and unsustainable aspects of sole practice. It undermines the skill levels and confidence of individuals practising law, aggravates virtually all the problems associated with practice management and erodes the balance of work and life.

For many of the sole practitioners in our focus groups the work-life balance is currently somewhat strained. Any further deterioration of the work environment - income decline, longer hours of work, reduced management resources, intensified competition – would appear likely to push many sole practitioners to the edge of being able to sustain an acceptable work-life balance.

Financial Challenges

The non-target and target groups, as well as each of the sub-groups within the target group ranked “market pressure to keep fees low”, “increased overhead costs of running a practice”, and the “costs of new technology”, among the top financial challenges they faced. Although the target group scored somewhat higher on the financial viability index (indicating they had slightly greater financial challenges), these issues are concerns common to lawyers in both groups.

Focus group participants described a market place where prospective clients could not afford legal services, clients were less willing to pay the fees lawyers sought and shopped for the lowest priced services, and competition from non-lawyer suppliers was driving down the price of legal services.

Many identified the problem of under-funded demand: the existence of an actual or potential client market that needed the services of lawyers but could not pay or could not pay adequately for legal services.

Intensified competition has altered the general character of the market place for many types of legal services. Potential clients are “more educated”, more prepared to “shop around” and take advantage of the options to access non-legal services, including the services of banks, consultants or paralegals.

For Lawyers with a relatively large proportion of Legal Aid clients, the problem in this area was not so much direct market competition as the very low rates, limitations and controls imposed by Legal Aid. With few exceptions even those who rely on Legal Aid, claimed it to be a risk, because they were forced to accept dangerously narrow margins and very low income. In their view, the net effect of the existing Legal Aid system was to limit the capacity of sole practitioners and small firms to respond to the demand for legal services.

The counterpoint to market pressures to keep fees low was concern about meeting, limiting or reducing overhead costs. Focus group participants repeatedly cited the problem of “overhead”, “limiting and controlling costs,” and “increasing expenses.”

Most agreed that overhead costs – expenses of all descriptions, office costs and technology – were all rising and needed to be controlled. Sole practitioners and employees/associates find themselves caught in the squeeze between upward pressure on all costs and downward pressure on revenues.

As a consequence it may be the case that sole practitioners and lawyers in small firms are forced, for reasons of short and medium economic necessity, to adopt a strategy that will make them *less* financially viable in the long run. It may be that the drive to reduce overheads will result in the further erosion of key administrative, staff and technology supports which in turn reduce the capacity to compete for work at higher levels of specialization and fee rates.

While this may make good short term accounting sense, it may also be the case that sole practitioners and small firms need the resources they are currently sacrificing in order to rise to emerging competitive challenges and maintain their longer term viability.

Current and future challenges

Factors that will shape the future challenges and viability of sole practitioners and small firms include:

- Continued preference of some lawyers for the small firm environment, and the continued necessity of some to choose sole practice as their only employment option.
- The growing demands of practice management in small firms, especially for the sole practitioner alone, and the pressures of increasingly specialized legal knowledge and business management skills.
- Fundamental shifts in the market place, intensifying competitive pressures, which have in turn limited the resources available to practitioners in the small firm environment and eroded their overall capacity to compete against lower priced non-legal services, as well as more specialized and/or larger legal firms.

While acknowledging the intense competitive environment and even upheaval in some areas of practice, a majority of our focus group participants declared themselves “mildly” “moderately” or “cautiously” optimistic about the future. For this group, there is an established and potential clientele whose needs continue to be better and more efficiently satisfied by small firms and sole practitioners than by larger firms.

The optimists stressed several advantages/opportunities for the sole practitioner. These include:

- The structure of the market which continues to create competitive space for the small firm;
- Computer technology and the Internet -- as a source of advertising, networking and research – is an equalizing factor, improving the competitive position of the single lawyer, in relation to their larger and more specialized competitors;
- Opportunities to build a client base through a higher level of personal service and “accessibility” than competitors in larger firms are able to deliver;
- Building, maintaining and taking advantage of existing client bases built up over time, or drawn from geographic or ethno-specific communities.

Notwithstanding the practice viability of most of our focus group participants, a small minority appeared to be unable to meet the challenges of the many changes in the small firm environment and appear to be facing problems sustaining their practice. Our findings suggest that this is likely to be more common amongst sole practitioners alone, some of whom have been forced into their current practice context and are too under-resourced and isolated to meet the daily demands of practice management.

Specialization

Increased competition and pressure for higher levels of expertise, coupled with the erosion of the “professional monopoly” in many areas of law practice are undermining the economic viability of the sole practitioner/general practitioner, fueling a trend toward specialization.

On the other hand the availability of technology, research and software tools allows individuals to work more efficiently and to a higher standard of specialization. An established client base, or connection to a "community" of clients continues to place a premium on trust and professional service, even while "a change of attitude" in the market place erodes the larger practice context.

Increased specialization implies the expansion of existing networks or possibly the development of new forms of networking and referrals based on the collective delivery of services hitherto provided by the single general practitioner.

Shortages of Legal services

The commentary of focus group participants reinforced our previous findings and conclusions, which identified general and specific shortages of legal services including:

- General limits on access to legal services for those who are neither wealthy enough to pay privately nor poor enough to qualify for Legal Aid;
- A Legal Aid system that limits the quantity and quality of legal services even for those who qualify;
- Widespread shortages of services in Family-Matrimonial Law in many regions of the province;
- Shortages in specific areas of law including WSIB, Mental Health, and Residential, Landlord and Tenant;
- Shortages or threatened shortages in expanding suburban communities and stagnating or declining non-urban areas;
- Shortages in various ethno-language communities.

Interacting with the Law Society

Perceptions or attitudes toward the Law Society ranged from supportive but wary, to critical, and in a few instances vociferously so. Wariness was expressed, among other ways, in the cautious approach that many participants took toward the focus groups themselves.

Unprompted, focus group participants and especially sole practitioners voiced three types of expectations. The Law Society should:

- Intervene more vigorously to protect lawyers from the competition of legal services being delivered by non-lawyers and institutions;
- Provide more active support for sole practitioners;
- "Address the Public" with a two part message about what to expect in legal services and the benefits of using a lawyer.

Some sole practitioners and employees/associates are, in varying degrees, at odds with the Law Society. A sizeable proportion of our focus group participants believed the mandate could be differently interpreted or implemented in a way that served lawyers in the small firm environment more effectively. Others flatly distrust the Law Society, and still others do not understand its purpose for existence.

Focus group findings suggest that ongoing communications must continue to be an important part of the development of policy initiatives affecting sole practitioners and lawyers in small firms.

Policy Recommendations

In the final exercise of the focus groups we asked participants for their written and verbal responses to six broadly defined policy ideas which, it was suggested, could conceivably be undertaken by the Law Society, the Government or some other agency. Tabulated responses show that a substantial majority of participants across the three groups (sole practitioners who work alone, sole practitioners who work with others and employees/associates), endorsed all six of the general policy ideas put forward, with some differences across the groups and some specific individual recommendations.

Conclusion

This focus group research project confirmed the main findings of earlier survey research. Sole practitioners and employees/associates registered moderately high levels of satisfaction, viability, and confidence in the future, although there was strong evidence of an increasingly challenging competitive environment.

While reinforcing the general findings of our survey research, focus group research created a strong impression that while generally stable, the small firm environment is operating at high stress levels. A widening gap between the price and affordability of a broad range of legal services, a competitive upheaval in some traditional areas of lawyer-provided legal services, and a technological transformation in acquiring and selling legal information have created a demanding small firm environment. Focus group participants contributed a rich and detailed picture of how these forces manifest themselves in the day to day stresses of sustaining a law practice.

The focus groups participants, 44% of whom were sole practitioners alone, strengthened and deepened earlier tentative conclusions that sole practitioners alone are facing the most serious challenges. Sole practitioners alone, who are most likely to be general practitioners are also most likely to be subject to pressures from both sides of the market - specialists and competition from non- lawyer individuals and institutions. In a competitive climate the sole practitioner is at a great disadvantage in terms of marshalling either the financial resources or the legal expertise to respond effectively to the changing environment. Moreover, isolation from contact with other lawyers in the same office may impose limits on organizational capacity and intellectual flexibility.

Our survey research and even more so the focus group findings lead to the conclusion that a minority of sole practitioners are currently presiding over an unsustainable practice which cannot survive over the long run. Just how large this group is depends, as one sole practitioner alone in Toronto explained, on how you define survival. But at any rate some proportion of sole practitioners alone will probably be unlikely to meet the standards of management, efficiency and competence required in the increasingly competitive environment. This was evident in the focus groups.

The survival of sole practitioners and small firms, and especially sole practitioners alone will depend on:

- Overcoming the increasingly large structural barriers which currently limit access to legal services for large parts of the population, a substantial portion of whom are most likely to use the services of sole practitioners and small firms;
- Developing a marketing strategy that actively cultivates and sustains existing and potential client communities (comprised mainly of individuals), who represent the natural client market of small firms and sole practitioners;
- Developing an effective strategy to achieve greater expertise and specialization and the preservation of professional status in the market place;
- Overcoming the limitations of the isolated practitioner by developing new forms of association which can provide the benefits of collective marketing and service delivery, while retaining the low overhead and flexibility of the sole practice;
- Marshalling the resources necessary to furnish the technical and organizational infrastructure that is a pre-condition to efficiently and competently competing in the new environment.

Finally, as we have tried to suggest throughout this paper, the forces affecting the small firms and sole practitioner environment are societal in their scale.

1.0 Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in May 2004, to conduct focus group research as the follow-up to an earlier phase of (primarily) survey research which was completed in April 2004.

The first survey research phase explored:

- Differences and similarities between lawyers in sole practices and small firms (the "target group"), and lawyers in firms with more than five lawyers, (the "non-target group");
- Demographic and practice characteristics of the target and non-target groups, and of sub-groups within the target group;
- Satisfaction/dissatisfaction and financial viability within the target group;
- Members of equality-seeking communities in the target and non-target groups.

This phase of focus group research explores similar themes within the target group, including:

- Reasons for choosing a specific practice context: sole practitioner practicing alone, sole practitioner practising with others, sole proprietor, partner or employee/associate;
- Individuals' perceptions of the benefits and drawbacks of their chosen practice context;
- Perceptions of the financial viability of practising as a sole practitioner or as an employee/associate in a small firm;
- The future of sole practitioners and small firms;
- Responses to ideas for possible policy initiatives.

This report interprets the findings of the focus group research. It reports the opinions and some verbatim comments of participants with accompanying interpretation throughout. The report relies on the results of earlier survey research to inform the discussion and interpretation of specific qualitative findings. In some cases we have augmented the existing survey results with

additional data analysis relevant to the focus group analysis. In this respect the quantitative data presented in this report extends the analysis presented in the April 2004 report.[1]

2.0 Methodology

2.1 Research Design

Initially planned as 10 focus groups, the research project was comprised of nine focus groups and three long interviews including:

- Two groups of sole practitioners practising alone in an office without other lawyers (sole practitioners alone);
- Two groups of sole practitioners practising with other lawyers in the same office (sole practitioners with others);
- Three groups of employees/associates in firms with five or fewer lawyers;
- Two groups of lawyers who self-identified as being members of equality-seeking communities;[2]
- Three long interviews with employees/associate.

Focus group research did not generate a regionally representative sample, since the number of groups and total number of individuals involved would make this almost impossible. However, groups were convened in London, Sudbury and Toronto in order to explore the perspectives of lawyers from different Ontario communities. These two comparatively larger regional centers were selected in part because the size of the local Bar, and the number of lawyers in the specifically targeted sub-groups, was judged to be the minimum necessary to allow recruitment of at least one group in each city.

Focus group recruitment proved to be quite difficult. Telephone interviewers specified they were calling from Strategic Communications, conducting research on behalf of the Sole Practitioner and Small Firm Task Force of the Law Society. Consistent with past practice we did not offer prospective participants a cash incentive, as is common in some focus group research. This may have been one of the reasons that extensive phoning resulted in only limited turnouts for some groups. In particular it proved to be quite difficult to recruit employees/associates in general and so difficult in Sudbury that a scheduled employees/associates group could not be convened.[3] In the selection of employees/associates and equality-seekers - the pairs of groups were divided along gender lines. This was done deliberately in order to explore differences and

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[1] Except in one or two cases we have refrained from reproducing the findings presented in the April 7, 2004 report. The reader is referred to *Sole Practitioners and Lawyers in Small Firms: Distinctive Characteristics, Satisfaction and Financial Viability, Perceptions of Shortages of Legal Services*, for details of the research methodology and the findings which are referred to in this report.

[2] We asked survey respondents the following question: “The Law Society has defined members of ‘equality seeking communities’ as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual, orientation or gender. Do you consider yourself a member of an equality seeking community?” 26% (n=139) of target group respondents answered yes to this question. The same question served as a qualifying question for the recruitment of the two focus groups convened in Toronto.

[3] As an alternative to a focus group we arranged three separate long interviews with employees/associates from Sudbury.

similarities between men and women. One consequence of this method of recruitment was comparatively stronger representation from women. Of the 62 participants in nine groups and three long interviews, 26 or 42% comprised women, compared to 21% of the target group as a whole. In addition a deliberate effort was made to have strong representation from more recently called lawyers. As a result, 27 individuals or 44% were lawyers with 10 years or fewer since their call to the Bar, compared to 27% of the target group as a whole.

2.2 Analysis of the Different Sub-Groups

As Table 1 shows, our sample of 62 focus group participants and long interview respondents is comprised of 27 sole practitioners practising alone, 20 employees/associates, 13 sole practitioners practising with others, one sole proprietor and one partner in a small firm. Within this group there were seven women and seven men recruited because they identified themselves as equality-seekers.

Our previous survey research and data analysis has demonstrated that on many important measures there are substantive differences between these subgroups, providing a good rationale to apply these criteria in the process of focus group selection. However, as the focus group discussion demonstrated, these individuals are working in the same sole practitioner/small firm environment in which there are typically more similarities than differences. Moreover, the focus groups reinforced an earlier insight. Whereas the terms sole practitioner alone, sole practitioner with others and employee/associate can be misunderstood to refer to fixed and distinct practice contexts, in reality

TABLE 1 FOCUS GROUP CRITERIA AND COMPOSITION

(see table in Convocation Report)

sole practitioners and small firm employees frequently move between practice contexts. Further, the actual arrangements that lawyers in private practice enter into with other lawyers may defy clear definition. This was particularly striking in the groups of employees/associates, where individuals reported a wide diversity of practice contexts ranging from salaried employee, to arrangements that closely resembled sole practice with others or even a partnership in a small firm.

For these reasons we have chosen to analyze the results of the focus groups thematically rather than by group, which we believe has produced a richer, more informative report. Throughout the report most of the quantitative data presented compares differences and similarities between the various sub-groups within the target group. As appropriate, the presentation and interpretation of focus group results references these quantitative research findings. Where relevant the practice context of individuals is identified.[4]

This report touches on some issues associated specifically with equality-seekers and it draws from the transcripts of the two groups of equality-seekers. However, a separate report looks

[4] Throughout this report we have used the term “respondent” to refer to individuals who answered the survey questions and “participants” to refer to the individuals who took part in one of the nine focus groups and three long interviews.

more closely at the sub-group of equality-seekers and analyses the themes that were specific to the discussion in those two groups.

3.0 Characteristics of the Target Group

3.1 Summary of Demographic Characteristics

Table 2 summarizes some of the demographic comparisons reported in the previous research. The columns on the right hand side of the table compare the target and non-target groups, and show that the target group has a lower proportion of women, a higher average age and higher average years since called to the Bar, greater linguistic diversity and slightly greater racial diversity.

Women comprised 21% and men comprised 79% of the target group. The highest concentration of women was among employees/associates (33%) and

TABLE 2 DEMOGRAPHIC COMPARISONS

(see table in Convocation Report)

the lowest was among partners in firms with fewer than five lawyers (13%), followed by sole practitioners alone (19%).

The average age of men in the target group was 50, compared to 43 for women. Across the five sub-groups sole practitioners alone had the highest average age at 52 and employees/associates the lowest at 41. On average employees/associates reported 11 years since they were called to the Bar, compared to about 20 years for all the other sub-groups. Women reported 12 years since they were called compared to men at 21.

As noted and analyzed in some detail in our previous research the target group is substantially more linguistically diverse than the non-target group. Interestingly, in the target group, 42% of women, compared to 32% of men reported offering services to their clients in languages other than English. 37% of sole practitioners alone reported offering services to clients in languages other than English.

Finally, as previously reported, the target group was slightly more diverse than the non-target group with 19% of respondents reporting they belong to one or more racialized groups other than “White”. Interestingly, 27% of women compared to 17% of men reported belonging to one or more racialized groups other than white.

3.2 Practice Characteristics

Table 3 summarizes some practice characteristics, some of which has been reported in previous research. Among other things it shows that billable time, as a percentage of total work time is substantially lower in the target group than the non-target group (68% compared to 79%). Conversely non-billable time is higher for the target group than the non-target group (18% to 15%). Of those who take Legal Aid clients, Legal Aid work constitutes a much higher percentage of their work (39% in the target group compared to 25% in the non-target group). Target group respondents do more pro bono work (12% compared to 8%) and report working slightly fewer hours on average per week (48 compared to 51). And finally, whereas 70% of non-target group clients are businesses, 77% of target group clients are individuals.

As the note at the bottom of Table 3 explains, 47% of women, 45% of sole practitioners practising with others, and 43% of employees/associates report taking some Legal Aid clients. For those women who take Legal Aid clients, Legal Aid constitutes, on average, 55% of their work. For sole practitioners

TABLE 3 COMPARING PRACTICE CHARACTERISTICS*

(see table in Convocation Report)

with others who take Legal Aid clients it constitutes, on average, 43% of their work and for employees/associates who take Legal Aid it constitutes on average, 62% of their work. In short, Legal Aid work is a comparatively important part of work for more than two fifths of the lawyers in these three sub-groups. In contrast a lower proportion of sole practitioners alone report taking Legal Aid clients (33%) and for this group Legal Aid constitutes a smaller percentage of their overall work (29%). Employees/associates reported the highest percentage of pro bono work (16%), followed by women (14%) and sole practitioners alone (13%). Women and sole practitioners alone reported the lowest number of average hours worked each week (46). Women in the target group reported the highest estimated percentage of clients who are individuals (85 %).

3.3 Areas of Practice

In previous survey research we asked respondents to indicate their main areas of practice, recording all mentions. Comparing the target group and non-target groups, we noted that substantially higher percentages of sole practitioners and lawyers in small firms reported working in Real Estate (46% compared to 20% in the non-target group), Wills, Estates and Trusts (35% compared to 8% in the non-target group) and Family-Matrimonial (26% compared to 6% in the non-target group).

Chart 1 lists the top six areas of practice most frequently mentioned, across the five practice descriptions within the target group. In comparison to sole practitioners practising with others, a higher percentage of sole practitioners alone reported working in Real Estate (55% compared to 38%) and Wills, Estates and Trusts (41% compared to 36%). Whereas similar percentages in both groups reported working in the areas of Corporate-Commercial and Civil Litigation, a higher percentage of sole practitioners with others reported working in Family-Matrimonial (31% compared to 26% of sole practitioners alone), and Criminal (32% compared to 11%). In comparison with both groups of sole practitioners a lower percentage of employees/associates report working in Real Estate (27%) and Wills, Estates and Trusts (18%). In contrast, a much higher percentage of employees/associates mentioned Civil Litigation (56% compared to 31% of sole practitioners alone and 32% of sole practitioners with others).

The differences in the distribution of areas of practice across the different practice contexts are important for a variety of reasons. As we heard in the focus groups, individual feelings of satisfaction and perceptions of the benefits and the viability of one's practice were often closely connected to the specific areas of law being practised. As discussed in Section 6.1 of this report, focus group participants who reported the most serious market pressure to keep fees low, frequently cited examples from the areas of Real Estate and Wills, Estates and Trusts.

CHART 1 MAIN AREAS OF PRACTICE (PRACTICE DESCRIPTION)

(see chart in Convocation Report)

As we discuss in Section 7.2, lawyers who mentioned Real Estate and Wills, Estates and Trusts first among their areas of practice, were more likely to report they needed "to make a change" in their current mix of practice areas. Similarly, when we constructed a "dissatisfaction index" which aggregated responses to eight separate questions, survey respondents whose first area of practice mentioned was Real Estate or Wills, Estates and Trusts registered statistically significant greater dissatisfaction than participants whose first mention was Civil Litigation, Corporate-Commercial and Employment and Labour Law. First mentions of Family-Matrimonial also registered a comparatively high level of dissatisfaction similar to Real Estate and Wills, Estates and Trusts.

Chart 2 compares all main areas of practice mentioned by men and women. 29% of women compared to 50% of men mentioned Real Estate as one of their main areas of practice. A lower percentage of women also reported working in Civil Litigation (30% compared to 41% of men), Wills, Estates and Trusts (29% compared to 37% of men) and Corporate-Commercial (17% compared to 37% of men). In contrast, 44% of women mentioned working in Family-Matrimonial law compared to just 22% of men.

Chart 3 compares main areas of practice mentioned across three age groups. Here again the differences are considerable. In the younger age group (18-34 years of age), one third of whom work as employees/associates, 58% list Civil Litigation among their main areas of practice, compared to 35% and 38% respectively in the 35-54 and over 55 age groups. A higher percentage of younger lawyers, which also includes over one third women, list Family-Matrimonial among their main areas of practice; 34% compared to 29% and 17% respectively in the older age groups. In contrast 58% of the over 55 age group list Real Estate among their main areas of practice, compared to 42% of the 35-54 age group and 31% of the 18-34 age group. Similarly 47% of the over 55 age group list Wills, Estates and Trusts among their main areas of practice compared to 30% and 25% respectively in the two younger groups of lawyers.

The different configurations of practice mix across sub-groups, gender and age are clearly the result of a many specific factors. Nevertheless it does illustrate some general findings that have been reinforced in other aspects of this research. The areas of practice with the greatest instability and subject to the strongest market pressure – Real Estate, and Wills, Estates and Trusts – tend also to include the highest proportion of sole practitioners alone and lawyers over the age of 55.

CHART 2 MAIN AREAS OF PRACTICE (MEN AND WOMEN)

(see chart in Convocation Report)

CHART 3 MAIN AREAS OF PRACTICE (THREE-AGE GROUP)

(see chart in Convocation Report)

In contrast these areas of practice are under-represented in the younger groups of lawyers, which may reflect a trend away from Real Estate, and Wills, Estates and Trusts. Comparison

between men and women underscore the extent to which gender differences are clearly reflected in differences of practice mix. In comparison to men, women are heavily over-represented in the area of Family- Matrimonial law and under-represented in all the other most frequently mentioned main areas of practice.

3.4 Practice Stability

In the previous survey research we asked respondents if each of their main areas of practice was “growing”, “stable” or “declining.” Chart 4, taken from the previous report summarizes all mentions for all areas of practice and compares them across the five sub-groups. As we reported, sole practitioners alone reported the lowest overall percentage of growing practice areas at 42% compared to 46% for sole practitioners with other and 54% employees/associates. Sole practitioners alone reported 11% of practice areas decreasing, compared to 14% for sole practitioners with and 5% for employees/associates.

Comparisons of practice stability by the first areas of practice mentioned (not shown), revealed that 41% of those whose first mentions was Corporate- Commercial described their practice as growing, while 48% described it as stable, 10% decreasing. This was followed by Wills, Estates and Trusts (44% growing, 48% stable and 7% decreasing), Civil Litigation (49% growing, 43% stable and 8% decreasing), Real Estate (55 growing, 34% stable and 11% decreasing) and Family-Matrimonial (56% growing, 40% stable and just 4% decreasing).

Further comparisons show gender and age differences. Women reported that 57% of the main practice areas mentioned were growing, 34% were stable and 10% were decreasing. Men reported 44% of practice areas growing, 45% stable and 11% decreasing. As might be expected, younger lawyers reported a higher percentage of growing practice areas. In 18-34 age group 63% of all practice mentions were described as growing, compared to 49% for those aged 35-54 and 35% for those over 55. The youngest age group reported 7% all practice areas mentioned were decreasing, compared to 9% for the middle age groups and 14% for those over 55 years of age.

CHART 4 IS YOUR PRACTICE GROWING, STABLE OR DECREASING? (ALL MENTIONS)

(see chart in Convocation Report)

4.0 Benefits of Working in Sole Practice and Small firms

In previous research, when we asked respondents to rate their overall level of satisfaction with their practice, 75% of target group respondents compared to 88% of non-target group respondents reported they were somewhat or very satisfied with their practice. Just 10% of target groups, and 2% of non-target group respondents reported they were dissatisfied. Within the target group, satisfaction with their practice rose to 82% for employees/associates, and dropped to 73% and 66% respectively for sole practitioners with others and sole practitioners practising alone. Just 5% of employees/associates reported they were dissatisfied, compared to 10% of sole practitioners with others and 14% of sole practitioners alone. Thus, while the level of overall satisfaction in the target group was quite high, it was nevertheless lower than overall satisfaction in the non-target group, and declined somewhat further among sole practitioners. Among those sole practitioners who expressed a definite opinion, about five out of six indicated they were satisfied with their practice. Previous analysis also identified general factors

contributing to overall satisfaction -- the groups of issues that tended to be closely related -- and the specific issues that were particularly powerful drivers of satisfaction. The latter included earning a good income, pursuing career objectives, having interesting and challenging work, and maintaining a healthy work-life balance.

The focus group research explored similar themes in greater depth, including one's reasons for deciding to practice in their current context, and perceptions of the benefits and drawbacks of working as a sole practitioner or as an employee/associate.

4.1 The Choice of Practice Context

We asked focus group participants if the decision to work in their current practice context, as opposed to other possible private practice options, was a matter of choice or necessity. As one senior associate from Toronto explained it was a bit of both: "I am here as a matter of choice and necessity." Or as another employee/associate from London put it: "It's an evolution, if anything." Many accounts described a relatively fluid work experience in which the size of firm and practice description had changed over time and decisions were based on a mix of opportunity and circumstance: "I worked as an employee with a firm for six years. Senior partner retired. Turned it over to the juniors and I didn't like that environment, so I was off." Choice and necessity were interwoven in a series of decisions that had resulted in "where you end up" or "where you find yourself."

But allowing for many similar qualifications, most focus group participants characterized the decisions that had led to their current practice context as either primarily a matter of choice or primarily driven by necessity.

For many participants the decision to work as a sole practitioner or in a small firm was based on an established preference or predisposition favouring the small firm environment. They saw themselves as the type of person who was best suited to sole practice or a small firm and conversely, ill suited to the large firm environment. The choice of sole practice was the result of a "mindset" or "personality" which reflected both a positive preference for "being your own boss" and an acknowledgement that "some people don't fit into the larger firm way of thinking." One individual frankly explained his decision to be a sole practitioner in terms of his incapacity to adapt to the larger firm work environment: "I knew very well that I wasn't going to be able [to work in a larger firm]. Look, I got fired from my articling job. I don't work very well with other people."

For others, as the following comments illustrate, the choice of the small firm or sole practice represented the best opportunity to pursue career goals or accommodate life choices:

> It was a choice for me as well. Right after I completed my articles I decided I didn't want to work in a firm in Toronto. I wanted to come home to Sudbury. I was anxious to open up my own practice. Sometimes I think my personality is better suited to working on my own. I don't know if I'd do well in a firm environment.
>
> I had already had a previous career. So the big firm thing wasn't for me. The medium firm thing, I wasn't prepared to do that, and I was truly looking for, you know, an … experience and carving out my own skills.
>
> Absolutely a choice [to be a sole practitioner], because I worked with a lot of lawyers before, and I wanted to control the cases and how they were handled, especially ethical

> issues. That was my number one reason for being a sole practitioner. I decide how the case is handled.

In still other cases the choice to work in a sole practice/small firm environment reflected more pragmatic considerations. Individual decisions were couched as much in terms of rejecting employment in a large firm as they were a matter of positively choosing the small firm or sole practice. As one London woman explained, the choice was a matter of "working for a bigger firm and having no control of your life, or working in a small firm - self-employed- and you have to live with those restrictions." A Toronto woman explained that she "totally fell into the situation" of working for a sole practitioner, after having quit her job with a large Toronto firm, "with the idea of never practising again." And a London man, whose initial decision had been to work in a large firm, had opted for a small firm as a practical career choice:

> Working in Toronto wasn't doing me any good. Memos came in one slot in the box that I lived in and came out of the other slot. If you're trying to cut your teeth on litigation and specialized litigation, good luck. And there's the odd partner that takes a liking to you who says, 'Come with me little guy and I'll take you to court to show you how it's done…' There's plenty [of litigation], but in small firms. This allowed me to move in to the driver's seat of actual cases. It's a positive choice. It's out of necessity.

But whereas many participants explained their decision in terms of personal preference, specific goals, or a choice among a range of options, others found that necessity, or at least the pressure of circumstances, was the dominant factor that determined their current practice context. In many cases the decision to set up a sole practice was simply a matter of being forced to set up self-employment as the only available private practice employment option. As one Toronto woman explained: "For me it was necessity, just from the point of view that it took me over a year to find a job after articling." For others necessity had given way to choice: "I was forced into it as a start, yes. I choose it now. I've grown to like it by myself, but I was forced into it." For still others, as this Toronto woman describes, the process had been reversed, with an initial choice having given way to necessity:

> My situation was not of choice. It's by default. A few companies said they'd give me work, so I set up my own practice five years ago and it's been up and down but mostly down. But I'm not really making enough money and I'm trying to figure out what to do now. I'm considering changing from law, and I've started asking myself how much I enjoy law.

Necessity was not always or exclusively associated with economic factors. In some cases, race, gender and religion were also factors or even the primary determinant in the decision to set up a sole practice or take a job in a small firm. The following description, from an African-Canadian woman, hints that race and gender may have contributed to her decision to opt for sole practice:

> It started as a necessity. I was a lawyer in my country of origin, but I was called to the Bar here. I articled in …[an Ontario city]… then I came here not knowing anyone. I preferred to work as an employee in a solicitor's firm but somehow I didn't get any employment. So I had to make up my mind and that's how I became a sole practitioner.

Another woman reported that her decision to leave a medium-sized firm and choose a smaller firm was based entirely on the fact that she was an observant Jew:

> [my husband and I] started becoming more observant. We're both Jewish and it was actually a big problem which I was really shocked by… The firm culture was very go out to party, go out to eat, go here, go there, 'Why aren't you working on Saturday?', 'Why can't you just have this slice of pizza?' And it was a daily sort of thing and constantly having to explain. Just very uncomfortable and very shocking as well… The work was excellent and that was the only thing that was really too bad. I had picked there, as opposed to some other offers that I had, specifically because of the work and it just personally… I couldn't survive there. So I left quietly and [my new firm is] closed on Saturdays [and] Jewish holidays. It's very good for my lifestyle and I get a lot of independence.

Finally, another woman described how the coincidence of giving birth and being called to the Bar converted the process of choosing a practice context into the necessity of having to establish her own sole practice:

> I wouldn't say that I had a choice…I got admitted to the Bar and had a baby, within six weeks. I went around and I had a few interviews right after I had my baby and they said, 'You'll have to work till 9:00 p.m. What do you have a nanny for?' So there was absolutely no doubt in my mind after that summer that I was going to open my own practice.

Answers to the question whether their current practice context was a matter of choice or necessity revealed a range of individual motivations, career objectives and circumstances. In some cases sole practice or small firm employment was clearly the preferred career option, while in others it was chosen mainly as an alternative to the less desirable option of larger firm employment. In still others, sole practice or small firm employment was clearly the only choice and the last option for individuals seeking to establish a private practice.

For a sizeable minority of our focus group participants -- perhaps a third -- the decision to become a sole practitioner or an employee/associate was more a matter of necessity than choice. For this group, the viability of sole practice is defined largely in negative terms, as the only employment option and/or the inability to adapt or access other forms of private practice employment. This underlying element of necessity or at least a very restricted range of choice was also evident in the accounts of many participants who described the pressures of competition, the costs of financing their practice, declining incomes and the "excessive, endless" time demands.

Finally, the accounts provided by our focus group participants also suggest that some individuals had been forced to choose the sole practice/small firm option as a consequence of the work place culture or institutional inflexibility of larger firms, which triggered biases based on race, religion and gender. This issue is discussed at greater length in a separate report.

4.2 The Benefits of Current Practice Context

In the focus groups we asked participants to complete the following statement:

> Thinking of my own personal quality of life and the other forms of private practice that might be available to me, the benefits of being a [sole practitioner or employee/associate] are …

4.2.1 Sole practitioners

Control and Flexibility, Independence and Freedom

In their written and verbal responses focus group participants repeatedly described the benefits of their current practice context in term of control and flexibility, independence and freedom. Individuals stressed the benefits of having control over work time, flexibility of work hours, the schedule of the workday, timing of appointments, freedom to adapt work schedules to meet family or personal needs and the freedom to take holidays and time off. For some, control over work time included the capacity to limit the amount of time worked: "working the hours I choose," "control of my time and how I spend it" and having "lots of free time" were top of mind benefits for many participants.

Some acknowledged that in the larger context of flexibility and control of work time, there were still many pressures at play. As one London associate jokingly commented: "Control over my hours, i.e., I can work all the time!" A Toronto man observed: "Theoretically I can come and go as I please, but it doesn't work out that way in practice." But even as they acknowledged that the pressure of work imposed limits, there was a strong consensus among sole practitioners that they enjoyed an exceptional degree of control and flexibility over the management of their work and how that work was organized on a day to day basis. Flexibility and control over hours and work schedule was also a theme stressed by many employees/associates, though accompanied by some qualifications related to more limited overall responsibility. One 12-year associate explained how he saw benefits of the small firm environment:

> I've never worked in a large firm so I can't really compare it to what I'm doing now, working in a small firm atmosphere. But certainly the traditional elements of a small firm, of the autonomy, setting your own time and not being subject to the politics of a big firm or the billable hour sort of mentality - - although certainly elements of that come in.

Control over work time was closely associated with control over the work process itself, the choice of clients and to a lesser extent the type of legal work. For several participants a major benefit of sole practice was the freedom to be selective about clients, to turn away undesirable clients, and conversely to choose the kind of client relationship and the type of service to be delivered. As a sole practitioner alone who was recently called to the Bar explained: "[You are] able to meet clients' needs in creative manners not accepted by larger firms." For some, freedom of choice included being able to refuse undesirable clients or alternatively taking on pro bono cases based on one's own preferences.

Participants were less definitive about the extent to which their status as sole practitioners gave them the freedom to choose their type of work or area of practice. Some noted that they were free to select the work they found interesting or avoid certain areas of the law, while others pointed out that economic pressure, and competition from larger firms limited the choices before sole practitioners. A sole practitioner in Toronto described the effects of a 'buyers market' where client demand dictates the lawyer's decision about his/her area of work:

> After a while your clients take over and you don't have choice anymore. They want certain things and if you don't give them what they want, they might go away and you might lose a market place…you can't be a hotshot anymore.

To some extent control over the marketplace, and hence the power to choose among clients and areas of practice, was dependent on how well-established and financially stable one's practice was:

> Depends on the stage of your practice, because when you first start out you are ready to take on anybody with anything, just for financial reasons. But, I think as your practice develops you let things drift off to other people and start to concentrate in the areas you want.

Limited mobility within the client market also extended to limited geographic mobility. Although some participants acknowledged that sole practitioners enjoyed a measure of geographic mobility that might be greater than employees in medium sized or larger firms, all acknowledged the difficulty of establishing a practice and the associated challenges of moving to another community.

Freedom from Control

For many sole practitioners the freedom of being in business for themselves was strongly associated with the values of independence and self-reliance, and having complete responsibility for the management of their own business. As we noted in Section 4.1, many sole practitioners saw the choice to practice on their own as a matter of personal pre-disposition: "Sole practitioners will not work in a big firm… It's like being a goalie in hockey. It takes a certain type." Answering exclusively to oneself (and one's clients) was explained both as matter of general principle -- an intrinsically good thing -- but also as a matter of sound economic logic. For these individuals sole practice was viewed as the best opportunity to work exclusively for one's own benefit. Income was decided entirely by personal business decisions: clients retained, time worked, billings and overhead. For many sole practitioners this aspect of relying entirely on their own efforts and judgement clearly had very strong appeal.

For some, the freedom and self-reliance of sole practice was also associated with freedom from supervision, from the need to negotiate or compromise, and from the constraints of an office environment. The freedom of sole practice was about, "No office politics. No kissing ass," and "not having to answer to anyone." One sole practitioner alone explained his decision to practice entirely alone, despite a drop in income, as follows: "At a certain stage in your life, why should you have to get along?" Sometimes these declarations of independence referenced past failed associations or unsuccessful attempts to adapt to the "politically correct" sub-culture of larger firms.

Life style and Work style

At the simplest level sole practice offers the freedom to modify work habits on a daily basis and to work from home or office according to changing need, preference or family requirements:

> I work to my objective and not by the clock. I work at my office or at home, which is an advantage. I can go home and after supper I can work at my computer. I can do that. If I want to get up at six o'clock in the morning with a coffee and my pajamas, I can do that.

> I wrote down flexibility of time, which leaves me free to go to the school and meet with my kid's teacher. Nobody cared. I could do it without having to answer to anyone about it.

For others, sole practice provided an opportunity to modify their lifestyle in more fundamental ways. One Sudbury participant reported effectively combining a retirement lifestyle with the continued practice of law:

> I basically live in the woods…[in town]. I don't have to practise law to live. I've saved up over the 30 odd years that I've been working, so I'm sort of retired.

One sole practitioner alone proudly described a work environment and schedule, dramatically different from the traditional lawyer's office:

> Flexibility. I work from home. I see a client. Get a staff person to come in. They do whatever work has to be done. I lie on the couch, turn on the TV and I relax, and the next appointment comes in at 4 o'clock. And that's how I work. So if I make a $1000, that goes into my pocket. I don't kill myself.

Flexibility and Part-time Employment

One element of our survey research finding that reinforces the reports of focus group participants and their accounts of the greater flexibility of the sole practice, and to a lesser extent the small firm environment, are comparisons of the numbers of part-time employees in different groups. Whereas 6% of the target group (n=33) reported they were employed part-time, just 1.8% of the non-target group (n=3) were part-time employees. Moreover the higher proportion of part-time employees is concentrated in the sub-group of sole practitioners alone (n=24) and sole practitioners with others (n=5). In fact, part-time sole practitioners, about 80% of whom report they worked part-time during the past year as a matter of choice, comprised a rather surprising 11.2% of sole practitioners alone surveyed in our sample.

These figures tend to underscore the picture that emerged from focus group discussion, suggesting that for many a very important benefit of working in sole practice is a high degree of control and flexibility over the organization and execution of work. This is widely viewed as an advantage in and of itself, but also in comparison with the alternative of working in larger firm environment which is generally perceived as more strictly regulated and demanding. Particularly in the case of sole practitioners alone, flexibility and control may extend to a measure of independence that is dramatically greater than the larger firm work environment. This allows some sole practitioners to freely adapt their work to personal tastes and lifestyle preferences, including working part-time as the need arises.

4.2.2 Regular Interaction with Lawyers in the same office

With few exceptions the two groups of sole practitioners -- sole practitioners alone and sole practitioners with others -- stressed similar benefits of control and flexibility, independence and freedom. But, unlike their counterparts who were practicing alone, without other lawyers in the same office, sole practitioners sharing office space with others stressed the benefits of face to face contact with other colleagues in the same office. One London participant who described her practice at different points as an association and as a sole practice sharing space with others, distinguished her own work place environment from that of sole practitioners alone, by stressing the importance of direct contact with other lawyers:

> The other point I was going to make and it might counter the kind of practice I have, versus the sole practitioners is the one benefit to the kind of associates we have is that you have lawyers there that you can kind of run things by. I would be terrified being in sole practice, and I've practiced a long time. Just having that back up, or having an unusual situation, being able to walk down the hall, and there's a real strength having that associate.

In the same group an associate observed:

> I've worked for three [firms], - a large firm, worked from home, and a three person association - and it was very lonely when I worked by myself, and you do need a network of people that you can call on. It was very reassuring to have a colleague to call.

A Toronto associate was particularly unequivocal regarding the importance of having other lawyers in close proximity. Asked to consider the merits of being a sole practitioner alone, he declared:

> [It's] difficult to imagine that there's a benefit to doing that, not having an arrangement where you have somebody else to talk to. I've never heard of a lawyer in any field who is smarter than a second lawyer, to have something to bounce ideas off. I just don't know of anybody who operates, who is so brilliant that they can think of every perspective. It just doesn't happen.

Although opinion varied somewhat regarding the comparative benefits of contact with other lawyers through e-mail, phone or fax, most who offered an opinion agreed there was no substitute for face-to-face interaction with other lawyers. One sole practitioner practising alone, described how upon closing a Real Estate deal he visited the others lawyers offices: "I like going to see other lawyers and I miss that, being in my own office."

Commentary from the focus groups reinforced the findings of our earlier survey research, regarding the relative importance of regular interaction with lawyers in the same office. Table 4 summarizes the results of a bank of survey questions that explored the importance of various supports to an individual's law practice[5]. It shows that the sub-groups within the target group all assigned high importance to "good secretarial and administrative support," "a network of informal contacts or colleagues who are lawyers in other firms," and "having a group of lawyers who can take on your work in case of family or other emergencies." In addition, both employees/associates and sole practitioners practising with others ranked "regular interaction with other lawyers in the same office" as important or more important these other key supports.

In contrast, sole practitioners alone ranked "regular interaction with other lawyers in the same office" as the least important of the eight types of supports tested. However, it is not obvious how to interpret this finding. The low ranking of office contact with other lawyers by sole practitioners alone may simply reflect an acknowledgment of the absence of that particular support from their practice. In Section 5.3 we discuss the extent to which isolation from other lawyers is a source of dissatisfaction for sole practitioners alone.

At any rate both focus group results and research findings suggest that regular interaction with other lawyers in the same office is an important benefit and support to working as a sole practitioner with others or as an employee/associate. It seems likely that for most lawyers in both of these practice contexts, the loss of daily interaction with other lawyers is also a

[5] The numbers in each cell represent the mean or average response on a seven point scale, where "I" was strongly disagree and "7" was strongly disagree. The higher the number the greater the overall level of agreement on the importance of that specific support. For example the mean response or ranking of "good secretarial or administrative support" by sole practitioners alone is 5.60 (top left hand cell), indicating that it ranks first among the eight types of support tested.

strong disincentive against setting up a sole practice alone.

Further on this point, it is interesting that across all five practice descriptions younger lawyers (18-34) assigned more importance to regular interaction with other lawyers in the same office (mean of 5.30 on a scale from 1 to 7), than lawyers in the 35-54 age group (mean of 4.54), or lawyers over the age of 55 (mean 3.62). This may be an indication that the benefits of some form of

TABLE 4 SUPPORTS THAT ARE IMPORTANT*

(see table in Convocation Report)

association with other lawyers may outweigh the appeal of sole practice alone among lawyers who are relatively young or in their middle years.

4.3 Benefits of being an Employee/Associate

Employees/associates also stressed the positive values of flexibility in relation to scheduling hours of work, holidays, and time off. But as might be expected they also noted the "predictable", "reasonable" and "manageable" aspects of work and the expectations they faced. One Toronto associate compared the expectations of the small "neighbourhood" firm where she was employed, to the large firm environment she had left:

> Collegiality. You know when you work in a small firm there's less likelihood for office politics and that kind of thing. Almost a complete absence basically, of office politics. And obviously less… lower expectations regarding billing and billable hours. You know you just kind of work as much as you can, and bill as much as you can, and go on to the next. We're not looking at targets or anything like that.

Another Toronto associate pointed out the benefits of being an associate at a time when her private life was complex and demanding:

> At this point in my life, I have [a son, a husband…recent deaths in the family] so these are really big life events that impact on everything and so I'm glad that I don't have the extra headache of worrying about running the practice per say. Like, I can practice law, deal with my clients, get paid, and not really worry about my Law Society fees… rent, furniture, computer viruses, faxes. You know, all that other stuff that goes with running your own practice. So that's big.

Employees/associates also noted the benefits of training, support, and exposure and interaction with other lawyers. Having a "second pair of eyes" and "the ability to discuss situations, clients, law and approaches with my fellow practitioners", and having other lawyers "cover for me during vacation/unforeseen circumstances" were all strong arguments in favour of maintaining associate status " as opposed to sole practice."

Several employees/associates underlined the benefits of having the opportunity to "learn all areas of running a business" without having to assume the full burden of responsibility before they were adequately trained:

> One of the big things is being involved in the business of law. It's not a law school course that you take. No one teaches you how to be a lawyer, how to work as a lawyer

> in a business, in a practice. You know I get to be intimately involved with that on a direct level, which I think is crucial to learning how to be lawyer in the long run.

As might be expected some employees/associates assigned importance to having more limited responsibilities for the running of the law practice: not having to manage and assume responsibility for all aspects of the business. But as we have already suggested in the discussion in Section 4.1, for some more recently called lawyers, working as an employee/associate also represented access to new challenges and career opportunities. It was an opportunity for "hands on experience and "potential to earn income." And for those who found themselves in the right place, associate status in a small firm represented better opportunities than the large firm environment could offer:

> "That participation level is extremely high in the small firm, as compared to larger firms where, I know my friends and colleagues who are in litigation practices never get to court, for example."

5.0 Drawbacks of Working in Sole Practices and Small Firms

Table 5 summarizes the results of a bank of survey questions that explored sources of dissatisfaction in the target group.[6] As noted in previous research, target group respondents -- sole practitioners, sole proprietors, partners and employees/associates in small firms -- generally registered relatively high levels of satisfaction and conversely relatively low levels of dissatisfaction. However, as the "dissatisfaction index" -- the shaded row across the bottom of Table 5 -- shows, dissatisfaction in the target group was significantly higher than the non-target group. The dissatisfaction index was also significantly higher among sole practitioners practising alone in comparison with all the other sub-groups.

TABLE 5 SOURCES OF DISSATISFACTION*

(see table in Convocation Report)

Table 5 shows that, except for dissatisfaction with "hours of work" – a prominent concern across all sub-groups - there are few similarities in the specific sources of dissatisfaction or the overall level of dissatisfaction between the target group and the non-target group.

For all sub-groups except sole proprietors, and including men and women, "income that is lower than expected" ranked as the most important overall source of dissatisfaction. Women were more dissatisfied than men (mean of 4.12 compared to 3.85 for men). "Spend too much time on administration" was ranked second by both groups of sole practitioners and employees/associates, as well as by men and women. Sole practitioners ranked "isolated from other lawyers" third among sources of dissatisfaction, whereas sub-groups ranked this issue much lower. "Financial risks of maintaining practice are too high" was ranked third as a source

[6] For each separate question respondents were asked to indicate if they disagreed or agreed on a scale from 1 to 7. The results are summarized as mean or average responses. In this case, where dissatisfaction is being explored, the higher the number the greater the level of dissatisfaction. For example the mean response or ranking for "earning an income that is lower than expected" for sole practitioners alone is 4.01 (top left hand cell), indicating that it ranks first among the nine source of dissatisfaction listed in the table. The final row is a *dissatisfaction index* totaling all the means in each respective column.

of dissatisfaction for sole practitioners with others and was comparatively higher for both groups of sole practitioners, with a mean of 3.50 in each case.

In the focus groups we asked participants to complete the following statement:

> Thinking of my own personal quality of life and the other forms of private practice that might be available to me, the drawbacks of being a [sole practitioner or employee/associate] are …

In the written comments and discussion many of the issues summarized in Table 5 emerged. This section looks at what focus group participants told us about the drawbacks of working in their practice context.

5.1 Low Income

As reported in previous research, income differences between the target group and the non-target were significant. In the target group, close to 60% reported earning an annual income of less than $100,000 from their practice in 2002, whereas 70% of the non-target group reported an annual income of more than $100,000 earned from their practice in 2002.

Chart 5, taken from our previous research, shows the distribution of income within the target group. It shows that 25% of all sole practitioners alone reported an annual income of less than $50,000, compared to 15% of sole practitioners with others and slightly lower percentages for the other subgroups, including 11% of employees/associates. Chart 6 summarizes the results of a question that asked participants if their income had "kept pace, fallen behind or increased more rapidly than the average for lawyers in your areas of practice, with similar experience, practicing in similar communities." It shows that 55% of sole practitioners alone, 56% of sole practitioners with others and just 42% of employees/associates believed their income had "kept pace," and 12%, 17% and 12% of these groups respectively reported their

CHART 5 INCOME BY PRACTICE DESCRIPTION*

(see chart in Convocation Report)

CHART 6 HAS YOUR INCOME KEPT PACE, FALLEN BEHIND, OR INCREASED MORE THAN AVERAGE?

(see chart in Convocation Report)

income had "increased more rapidly than average." 22% of sole practitioners alone, 15% of sole practitioners with others and 28% of employees/associates reported their income "had fallen behind the average". Overall, just 12% of the target group believed their income was rising more rapidly than average, compared to 28% of the non-target group (not shown).

As Charts 5 shows, a comparatively higher percentage of sole practitioners alone (25%) reported earnings at the low end of the income scale for the target group. This group comprises close to 10% of the target group as whole.[7] Further, the summary in Chart 6 suggests there may

[7] As reported in Section 4.2.1 (sole practitioners), the majority of lawyers employed part-time are sole practitioners alone. Of the 26 sole practitioners employed part-time by choice, 13 reported earning less than $50,000 from their practice in 2002. If this group is removed from the sub-

be some widening in the current gap. A higher percentage of sole practitioners with others believed it's annual income was keeping pace or increasing more rapidly than average (73% of sole practitioners with others compared to 67% of sole practitioners alone). Employees/associates are significantly more pessimistic about their annual incomes. Just 54% believed their annual income was keeping pace or rising more rapidly than average.[8]

Among our 62 focus group participants, 47 provided information about their annual income. This group included three participants who reported earning less than $25,000 annually from their law practice, six who earned more than $25,000 but less than $50,000, 19 who earned more than $50,000 but less than $100,000 and 16 who reported an annual income of more than $100,000. This distribution corresponded quite closely to the overall distribution of income in the target group as a whole (Chart 5).

5.1.1 Positive trade-offs and optimism

In eight of the nine focus groups, participants listed "low income", "modest income," "less pay", and the "low level of remuneration" among the drawbacks of being a sole practitioner or an employee/associate. This was frequently associated with the "uncertain", " unsteady" and "irregular" income stream, and further compounded by the pressure of having to rely totally on one's own efforts. As one Toronto woman put it: " Low income. And none, if I don't work."

Participants pointed out that financial sacrifices were the most serious in the "formative years" but also perceived that a "modest income level" was all that could reasonably be expected from their practice environment. In this respect most, though not all, conceded that the sole practice or small firm environment generally meant "less pay than in larger firms" and much more limited opportunities for benefits.

On the other hand, many participants expressed satisfaction with the trade-off of a modest income combined with a desirable work-life balance that would be harder to achieve in a large firm environment. One senior sole practitioner with others, described her own favourable work-life balance as follows:

> I'm happy with the income I'm making. It certainly fluctuates… but I don't have any problem with that. I have the luxury - I don't work on weekends. I don't work in the evenings. I take a month off in the wintertime and go south and so I feel my income, relative to that, is good. In a bigger firm I would probably have to put in more hours. I would probably earn a lot more dollars.

But whereas some couched the issue of income in terms of the 'trade off' between lifestyle and the more demanding and lucrative large firm environment, there were individuals who expressed more unqualified optimism. A sole practitioner alone, participating in the same group as the woman quoted above, reported that having left a large firm: "I'm doing better

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sample of sole practitioners, low income sole practitioners drop slightly to just over 8% of the target group sample.

[8] The low percentage of employees/associates who believe their income is keeping pace or improving, is also reflected in the financial viability difficulty index in Table 6, which shows the highest level of concern of any of the sub-groups within the target group.

than I thought I'd do. I'm comfortable… I'm only 38 and I should be able to put in the long hours." Although this degree of optimism over personal income was the exception rather than rule, most sole practitioners reported acceptance if not satisfaction with their income.

Many participants described their solution or adaptation to the problem of lower than expected incomes. One sole practitioner sharing space with others, explained that he benefited financially from the support of two strong local firms. An African-Canadian reported that he enjoyed the benefits of a client base from his own community. A veteran lawyer in Sudbury declared: "And now though because of the big boom [in the past] we can't demand the same fees. You have to change and we just have to change with it." Thus, while incomes were certainly perceived to be modest and hard earned in a difficult environment, many participants offered up an explanation of their own specific circumstances to explain a general attitude of complacency.

For differing reasons employees/associates reported some degree of dissatisfaction with their income levels, which many associated with the small firm environment. One ambitious young associate reported that, despite specialized expertise, he could not bill at a rate comparable to the larger market in Toronto. A recently called lawyer employed by a small Toronto firm, described his own personal trade off in terms of on the one hand a steady and predictable income stream and on the other hand "limited growth potential". Others expressed mild to moderate dissatisfaction with the specific income arrangement negotiated with their employer. One Toronto lawyer, who had practised for 10 years, explained: "I think that's the downside of being an employee. You don't really have too much say in how the money gets divvied up. Especially since it's his practice not mine."

5.1.2 Evidence of declining incomes

The focus group context -- a group conversation among strangers or acquaintances -- probably constrained many participants from speaking forthrightly about typically sensitive issues of personal income. Still in some focus groups there were indications that one or more of the participants was in fact facing serious income problems. In one London group a sole practitioner conceded that his income was probably "falling behind". A Toronto woman reported flatly that, caught between overhead costs and declining revenues, she was considering abandoning law altogether. An associate with many years in practice worried out loud about the shrinking volume of work and her own declining income. And another Toronto sole practitioner, reacted to a general question regarding the future survival of sole practitioners and small firms with this anxious remark:

> It depends on what you mean by survival. Going bankrupt? Do you mean making $20,000 a year? For me I should be making more than what I made in government. But I am not, so I am not surviving.

A woman who identified herself as an equality-seeker offered this description of her circumstances:

> Let me make this statement. I came into Law and became poor, okay? And that explains it. And it is not getting any better. I am not anywhere near where I was before I went to law school.

Allowing for the fact that focus group discussions may yield partial information on sensitive issues and that our 62 participants were not a statistically reliable sub-sample, the balance of

evidence reinforced the quantitative research. It suggests there is a minority of sole practitioners, who may be earning very low incomes. The problem of low income may be both cause and consequence of more general difficulties this group is encountering.

5.2 Administration, Resources and Business Management

As noted in Table 3, sole practitioners and lawyers in small firms reported more time spent on non-billable administrative activity compared to lawyers working in larger firms. And within the target group, sole practitioners alone and sole practitioners with others estimated the highest average percentage of time spent on administration (19% and 18% respectively). This included 38% of sole practitioners alone, 29% of sole practitioners with others and 20% of employee/ associates who reported they spent more than 20% of their time on non-billable administration, client development and marketing.

As Table 5 shows, too much time spent on administrations ranked as the second most important source of dissatisfaction for both groups of sole practitioners and employees/ associates, with a mean score of 3.94 for sole practitioners alone, 3.86 for sole practitioners with others, and 3.69 for employees/associates. Individuals who reported spending more than 20% of their time on administration also registered significantly higher overall levels of dissatisfaction -- 28.20 on the "dissatisfaction index" compared to 25.45 for those who reported less than 20% time spent on administration (not shown)

Participants in every group complained of "having to waste time on administration" the burden of a "huge administrative workload," the "paper burden," having to do too much "grunt work" and the generally time-consuming nature of administrative responsibilities. The following comment from a Sudbury sole practitioner alone is representative of many comments we heard from sole practitioners.

> The biggest thing I find is the huge administrative paper burden that we all face. In larger firms you have people who can do it for you. In small firms you have to do it and that's a big difference. If you think about how much are you doing of the administrative stuff – lots. And at the bigger firms you don't have that because you normally have people who do that stuff. Stuff like Law Society transactions, filling out forms, doing the reports, doing the annual report, filling out the questionnaire. And with the Internet there is so much coming at you… Who needs it?

This comment is also representative in its reference to the demands of the Law Society, which sole practitioners and employees/associates complained was responsible for too much "regulation, rule changes, reporting requirements," as well as imposing unnecessary and time consuming procedures:

> We [the Law Society] have funny rules. Because we do a lot of Real Estate for example, the way in which you have to transfer money between trust accounts and your general account …It's stupid and it's so time consuming. So that's like an example of something that comes to mind.

A Toronto associate complained about a conflict with the Law Society over the use the phrase "in association with" in his letterhead: "I mean it was the silliest thing. Albeit this was a long time ago, but time wasted nonetheless." For many participants the Law Society was frequently cited as a source of often unpredictable administrative demands, both big and small.

But one Toronto sole practitioner alone who was also an equality-seeker pointed to a larger process of "downloading" from government and financial institutions and the resulting increased administrative burden:

> Everyone is downloading on me. Banks are becoming centralized and streamlined by making lawyers do more work. The Ministry of Community Affairs brings in reviews, automates systems for their convenience, saves money by doing a half-assed job and expects lawyers to clean the mess for free. I am put in queues more often. I am disconnected after being in a queue for a certain amount of time. I am being put in touch with "call centres" where no one knows anything.

As Table 5 shows, too much time on administration also ranked high as a source of dissatisfaction for this employees/associates. For those working in small firms with limited resources the need for more administrative support was a common complaint. And for those working their way into positions of greater responsibility, "added involvement in the administrative/business aspects of the practice" was a necessary, if unappealing, responsibility.

"Too much time spent on administration" was not simply "too much paperwork" or even the whole basket of tasks which distracted individuals from practising law. Rather, what emerged from discussion was the extent to which problems with administration were closely linked to larger issues of having the capacity – resources, skill and organization – to effectively manage a law practice.

Sole practitioners in both groups repeatedly referred to the multiple challenges of managing a business with limited resources and supports. One London sole practitioner alone summarized the drawbacks of his practice context simply as: "Being responsible for all the aspects of my practice, having no other individual to assist me." Along similar lines a Sudbury sole practitioner alone pointed to, " The financial stress of running a business". Another Sudbury sole practitioner with others, described the challenges of managing a business, and his progress over the 12 years since he had begun practising:

> I wrote [down] the financial stress of actually running a business. The business aspect of it. You're always thinking of your line of credit. You're always thinking of your accounts. It's the day to day running of the business. The bookkeeping, the receivables. I find that sometimes getting in the way of my wanting to practice law. When I initially started I did everything – bookkeeping – I didn't have any staff. I rented space in a big office and a receptionist who answered my phone. I finally have some support staff. But lack of support staff, lack of financial backing when you're starting up.

A London sole practitioner alone contrasted his interest in practising law with the daily burden of everything else that had to be done to sustain his practice:

> I like practicing law, but I don't like accounting. I don't like to do banking. I don't like… ultimately there are aspects of operating a firm, they are necessary for the practice. I don't like the lack of control I have and the responsibility I have. It's a pain on your own to have to take care of all those details.

For most if not all of the sole practitioners in our focus groups the problem of managing the business side of their law practice was perceived as a constant challenge in terms of learning how to "run a business" and finding the time and resources to do so. Some descriptions of these

challenges betrayed an element of desperation, as this comment from a Toronto sole practitioner alone illustrates:

> I find I'm doing more administrative work, even if I have part-time administrative help. I'm only acting as a lawyer 15% of the time and then some kind of administrator 85% of the time. I didn't expect that. Also some kind of a manager. I have this person who comes in everyday and these quasi employees. These people ask me for an answer and I better think one up. This isn't something they trained you for in law school.

Discussion about excessive time spent on administration also intersected with larger concerns about the lack of support, resources and professional assistance. One Toronto sole practitioner sharing space declared: "I could not accept retainers because I feel I do not have the resources and support to see them through." In this and other similar comments we heard from lawyers that the lack of supports, resources and organizational infrastructure, a chronic situation given the accompanying need to keep overheads as low as possible, often placed them at a disadvantage in representing their client. Explained one Toronto sole practitioner alone: "Some counsel take advantage of the fact I have no regular support staff and [they] make time demands that are unreasonable." Others stressed the same point noting their "limited resources to bring cases."

Although somewhat less concerned with the larger issues of overall business and resource management, many employees/associates also referred to the problems of inadequate or precarious administrative support, and the accompanying pressure to do the work oneself. One long time associate with a small Toronto firm, pointed out that precisely because of the pressure for greater self-reliance and the necessity to do for oneself, skilled administrative support was essential:

> Also, I think a bigger reliance on your legal assistants. I mean every lawyer is reliant on that but maybe even more particularly in a small firm, because you're doing a lot of jobs yourself. I mean, if you lose a key assistant it's quite devastating to maintain your practice.

At the same time a recently called associate pointed to problems created by not having adequately trained support staff, implying that this might be more common in the small firm environment:

> … I could use more administrative support. That's a little bit difficult. I mean I do have somebody helping me but none of our support staff are like, really trained. They're just sort of people that they've hired because they were cheap. No one is actually qualified as a clerk or a legal secretary.

The problem of excessive time spent on administration is part of a much larger complex of issues confronting sole practitioners and lawyers working in small firm environments. We heard lawyers repeatedly describe chronically under-resourced work situations where the demands of financial and business management, lack of resources and staff supports, not only drew energy away from the daily practice of law, but also limited the capacity to practice effectively and compete with larger firms "for and within cases."

5.3 Isolation from other lawyers

"Isolation from other lawyers" was ranked as the third most important source of dissatisfaction for sole practitioners alone, with a mean response of 3.71 (Table 5). In contrast sole practitioners with others ranked isolation from other lawyers fifth among sources of dissatisfaction with a mean response of 2.48, and employees/associates ranked isolation from other lawyers sixth with a mean response of 2.32.

The focus groups demonstrated that isolation from other lawyers was a much greater concern for those practising alone. The following is a sample of written comments about the prevalence of a sense of isolation and its effect on sole practitioners working alone. It illustrates the extent to which isolation from other lawyers was very much a top-of-mind issue and linked to a variety of specific concerns:

> Limited contact with other lawyers, for my practice.
>
> Isolation from other members of the profession. Difficult to confer with other colleagues.
>
> Being responsible for all aspects of my practice. Having no other individual to assist me.
>
> Lack of mentorship, in the early years especially.
>
> No one handy to discuss issues with… No replacement for illness or vacation.
>
> No one to rely/lean upon… No one to consult/discuss matters with.
>
> Less Security. Less back up for holiday time.
>
> Time commitment. Coverage of practice during family commitments. Lack of people to bounce ideas off.
>
> Lack of opportunity for consultation with peers… [Lack of] stability to take leave for long periods.
>
> No one to share responsibility with.
>
> No peer feedback.
>
> Isolation.
>
> Miss interaction with other staff – isolated. No vacation over [a period of] days.

Prominent among the negative consequences of isolation was the lack of opportunity for regular peer interaction. As one Toronto lawyer described, not having another lawyer to consult was a "major drawback" particularly when new problems arose: "You're always getting problems that you haven't dealt with and there's nobody to consult or throw ideas around." One Sudbury lawyer noted that having, "a readily available sounding board" was particularly important for the general practitioner: "Because there isn't just one law involved." For others, having another lawyer available at close proximity was equally important for getting quick help with small, even "trivial" matters that, "you've forgotten how to handle." And as one lawyer confessed, "I like going to see other lawyers and I miss that being in my own office. It's just nice to talk to other people."

Beyond the powerful need for professional and personal interaction, isolation from other lawyers was linked to the larger problem of scarce resources and supports. For this group, not having another lawyer in the same office meant that in virtually every situation there was no readily available back up or assistance. It meant that in addition to having to assume the full burden of sustaining the financial viability of the practice, taking time off was itself a major challenge:

> Less security because if you have a dry spell collecting fees there's no one in the next office collecting fees, which is very different from when I was in a firm. But the other thing is there is no back up for holiday time. I find it difficult to get away for an extended period of time. In the 7 years I've been doing this, I've been away once for more than four days at a time.

Ironically, the freedom, flexibility and control that so many focus group participants stressed as the benefits of sole practice, is here portrayed as isolated, demanding and unrelenting work. One lawyer with 15 years experience and a measure of financial success described her experience practicing alone in Toronto as follows:

> Yes I made the choice of sole practitioner. Am I happy with it? No. I miss having colleagues… I miss working with other lawyers. I miss going on vacation and knowing someone is covering my files. I do miss that stuff.

Although the full implications of isolation from other lawyers certainly appeared to be most keenly felt by lawyers practicing completely on their own, we heard similar comments from some sole practitioners practising with others and employees/associates as well. Sharing space with other lawyers or working as an associate in a small firm had not necessarily solved the problem of isolation from other lawyers. One veteran Toronto lawyer noted the need for a "fellow lawyer to discuss issues" and despite a well-established practice, "no back up for holidays." Another lawyer with similar practice experience noted the "lack of colleagues to discuss matters." An associate, with long experience with the same firm described how she communicated with the lawyer she worked for by "voice mail". Another long time associate, summarizing his workplace experience, also touched on theme of isolation:

> Less of a support structure. You know you work in a small firm, you may be doing the garbage. Whatever needs doing. No job's too small…You do your own faxing where typically you don't have the same support structure. And I find, I guess, unless you've gone to law school here, which I didn't do, you don't have the same kind of peer support.

Although not exclusively the concern of sole practitioners alone, isolation from other lawyers and its negative consequences for practice management, was a more prevalent and serious concern for this group. The attention the issue received from sole practitioners alone in the focus groups was also consistent with our survey findings, where fully 40% of sole practitioners alone agreed they were isolated from other lawyers, compared to just 19% of sole practitioners with others and 14% of employees/associates. To put this another way, across all five practice descriptions within the target group, sole practitioners alone comprised 64% of all participants who agreed, and 71% of participants who strongly agreed that they were isolated from other lawyers.

Isolation from other lawyers was associated with other key indicators of dissatisfaction. For example, those who agreed they were isolated were more likely to agree that their income was below expectations (mean response of 4.48 on a seven-point scale compared to a mean of 3.91

for the target group as whole). Among those who strongly agreed they were isolated 34%, compared to 23% of the target group, believed their income had fallen behind others in comparable practice environments. This group was also more likely to agree that they spent too much time on administration (mean response of 4.16 compared to a mean for the target group of 3.91). And those who agreed they were isolated from other lawyers registered a much higher overall dissatisfaction index of 32.15 compared to 24.31 for those who were not isolated. Finally, among those who strongly agreed that they were isolated from other lawyers, 29% indicated they needed to make a change in their current mix of practice areas, compared 22% in the target group as whole.

To summarize, isolation from other lawyers is an important issue that distinguishes the experience of sole practitioners alone compared to sole practitioners who are practising with other lawyers and employees/associates. It accounts in part for a greater degree of overall dissatisfaction in this group. For sole practitioners alone, isolation from other lawyers is a key factor contributing to the negative and unsustainable aspects of sole practice. It undermines the skill levels and confidence of individuals practising law, aggravates virtually all the problems associated with practice management and erodes the balance of work and life.

5.4 Work-Life Balance

As noted in Section 4, many focus group participants ranked the flexibility to balance and creatively manage the demand of work and the rest of their lives among the most important benefits of their chosen practice context. But these same individuals often conceded that it was nevertheless a challenge to negotiate the demands of the work place. For some, those demands clearly spilled over into their personal life. The sheer volume of work threatened to absorb every waking hour, and the practice proved not so flexible when it came to meeting the demands of sole management while maintaining a family commitment or a responding to a sudden illness.

The problem of taking vacations, already noted in the discussion about isolation, was also cited in relation to the challenge of maintaining revenue flow. As a sole practitioner with others in Sudbury explained, taking holidays meant losing money:

> The biggest drawback I find is taking time off. When you're creating the income and you take time off you're not getting paid for your holidays and you're paying for your holidays when you come back. You're not building up your clients during that period, you're not billing during that time and the office stays open. It's just not making any money.

Taking holidays posed the challenge of finding a window of opportunity where practice stability, cash flow and the demands of clients all permitted it. One practitioner who attended law school after a previous career, noted the difficulty of detaching oneself from "other people's problems" to permit a two week vacation:

> I'm sure everyone has those one or two clients who just know when you're going away and they just cannot stand the fact that you are out of the city. They call you and they do it every time.

The impact of underlying economic insecurity triggered other concerns as well. One sole practitioner alone, whose practice was facing an uncertain future, expressed concern over the lack of dental coverage and extended health care. Another Toronto sole practitioner, called to the Bar in 1973, expressed concern about having an adequate post-retirement income.

The group of women equality-seekers analyzed the many and profound barriers to women having children and maintaining their private practice. Accompanied by general assent from the women around the table, one woman commented:

> I have yet to find a woman who actually found a satisfactory remedy to deal with the issues of birth…The maternity issue is a big thing. I work and I remain single because of the quantity of work that I do…so that's the personal aspect of being female. Most women who have children leave private practice. I've been called for 10 years and most women who've gotten married and had children that I know, have somehow altered their private practice arrangement. They have either gone in-house, [or] have left private practice altogether and they are staying home with the children because the law doesn't mix well with it.

The same woman went on to detail how men often confronted the "same decision" but make the choice to have someone else spend the time with their children. Others participating in the same discussion, raised the idea that given the pressure of a law practice, adoption was more realistic alternative than the unworkable route of attempting to sustain a practice while having birth and raising a child from infancy.

The majority of participants believed they were maintaining a positive balance between flexibility, control and adequate income against the negative pressures of economic insecurity, unpredictable and unmanageable work, competition and the challenges of practice management. But two other impressions help to complete the picture. First, the accounts of sole practitioners in both group are replete with descriptions of a high stress environment in which the daily challenges of sole practice and the treadmill of sustaining financial viability demand a great deal of personal energy. For this group the balance of work and life would appear to be at best, fragile. Second, there is a still smaller group for whom the scales have been tipped to the negative side and the combined pressures of long hours, isolation and declining income add up to a work context which is eroding rather than sustaining a robust personal life.

For many sole practitioners the work-life balance is somewhat strained. Consequently any further deterioration of the work environment -- income decline, longer hours of work, reduced management resources, intensified competition -- would appear likely to push many sole practitioners to the edge of being able to sustain an acceptable work-life balance.

6.0 Financial Challenges

Table 6 summarizes the results of a bank of eight survey questions, and one additional separate question that explored challenges to the financial viability of respondents' practice. In comparison with Table 5, which measured different sources of dissatisfaction, the mean scores measuring challenges to financial viability, and particularly the means for "market pressure to keep fees low" (4.52) and "increased overhead costs of running the practice"(4.20) are somewhat higher. This may be an indication that top-of-mind concerns over financial viability are somewhat more important than the sources of dissatisfaction that we tested. It is interesting to note as well that market pressure to lower fees, increased overhead costs of running a practice, and the costs of new technology, all ranked among the top three concerns for respondents in the target and non-target groups, and within the five subgroups comprising the target group. The target group scored somewhat higher than the non-target group on the overall

"financial viability" index, but these issues are clearly concerns common to lawyers in both groups.

Interestingly, within the target group both sole practitioners practicing with others and employees/associates scored higher on the overall financial viability index. Both of these groups ranked increased overhead costs somewhat higher than did sole practitioners practicing alone. The slightly lower level of concern about overhead costs among sole practitioners alone may reflect the influence of sole practitioners who are working from home and whose practice is sufficiently low-volume that overhead costs are not a prominent concern. Both sole practitioners and employees/associates also registered greater concern over the low rate of Legal Aid fees (mean of 3.40 and 3.66 respectively) compared to sole practitioners alone (mean of 2.78). This is accounted for by the fact that, as reported in Table 3, over 40% of lawyers in both groups take Legal Aid and for them, Legal Aid constitutes a comparatively higher proportion of their overall billing.

Women registered a lower level of concern than men over the problem of market pressure to keep fees down. This may reflect differences in areas of law practised. A much higher percentage of men work in the competitive field of Real Estate (50% compared to 29% of women) and a higher percentage of women work in the less competitive field of Family-Matrimonial law, much of which is covered by Legal Aid. Finally, women registered a higher level of concern over increased overhead costs of running a practice, which may partly be accounted for by their comparatively higher percentage in the employees/associates group as well as the burden of managing overhead costs with revenues based on Legal Aid rates.

6.1 Market Pressure to Keep Fees Low

The problem of market pressure to keep fees low typically touched on one or more aspects of a complex and demanding competitive market. Lawyers described a market place where prospective clients could not afford the fees lawyers sought to charge, where clients themselves were less willing to pay lawyers fees and shopped for the lowest priced services, and competition from non-legal suppliers was driving down the price of legal services.

TABLE 6 CHALLENGES TO FINANCIAL VIABILITY*

(see table in Convocation Report)

6.1.1 Under-funded Demand

Previous research identified the problem of under-funded demand: the existence of an actual or potential client market that needed the services of lawyers but could not pay or could not pay adequately for legal services. This issue was raised by many of our focus group participants.

In Sudbury, where many comments referenced the stagnating local economy and the challenge of "earning enough to pay yourself month in and month out," sole practitioners described the problems of finding clients who could afford their services.

> Getting a population base that can afford legal services on a regular basis. That's what I see in my practice…You can get a few people who can pay for [legal services], but the vast majority are on Legal Aid or representing themselves.

One participant observed that neither he nor a colleague he had recently spoken to could themselves afford the services of an experienced lawyer:

> …we agreed that neither one of us could afford to hire experienced counsel. And he allowed the only ones who can are the very poor or the very rich.

Another participant agreed, noting that, "I meet clients all the time that can't afford to pay me or any lawyer because of their financial situation." Or as another participant put it: "I can get tons of work, done for free seven days a week. The trick is to find people who can pay their bills." One London lawyer observed she had to adapt to "clients who would prefer to have me do the minimum required." A Toronto sole practitioner alone, working in a specialized area noted that changes in insurance practices had occurred since he began practising made it much more difficult for "small and mid-sized businesses" to fund the litigation services he provided. Another Toronto sole practitioner alone, working in the field of mental health explained her own approach to balancing Legal Aid work and private clients, and touched on the big problem of delivering service to the "middle class":

> Every once in a while you will get a wealthy person who will pay the private rate…When you want to represent people who are in the middle, it's very hard for middle income families. There are categories of clients -- corporations, people who need it -- and then there are middle class people who can't afford a private rate. Mine is in the middle …for a lawyer 10 years out who has expertise in mental health. [But] the cost of bringing a case to court is too prohibitive. People mortgage their house.

Another Toronto lawyer acknowledged that part for his business depended on clients from his own ethno-specific community. He framed his challenges in more general terms that also described the dilemmas facing many sole practitioners and small firms:

> "For a community-based practice, survival seems to depend on the survival of the community as a viable economic group."

Notwithstanding repeated declarations of the importance of setting and maintaining adequate fee levels, many focus group participants conceded that they simply adapted to the financial limitations of their clients, while continuing their own struggle to make a living. As one Toronto sole practitioner with others put it: "It's kind of a tough balancing act to say 'I've got to do this and I've got to charge you for it'." But as a Sudbury lawyer conceded, the billing process becomes something of a roll of the dice: "They're in custody and they just can't pay. And you just hope you can get them out of custody and they can work to pay you." But whatever the particular cases, many lawyers have been forced to adapt to their clients' inability to pay the going rate, as this comment illustrates:

> I don't even charge more than $125 an hour. My Legal Aid rate is almost $100 an hour. My middle class clients are making $30,000 or $40,000 a year. I would rather they pay me what they are comfortable with. I would rather they pay me in the long run. That's why my rates are low.

6.1.2 The Changing Market Place

There was a general consensus that lawyers faced intensified competition, which in turn had altered the general character of the market place. Participants described potential clients as "more educated", more prepared to "shop around" and take advantage of the options to access

non-legal services, including the services of banks, consultants or paralegals. One London lawyer summed up the new environment as follows:

> I think it's just a change in attitude that people have. People used to come to a lawyer for advice and now they get information from a lot of different sources. And now they feel they don't have to pay the dollars to come and see a lawyer. And they think they can sit and draft their own things and take the banker's advice and plan their own estate, put it into joint names and you know, not have any problems afterwards There are a lot of misconceptions….So I think it's true, there is trouble for sole practitioners.

But whereas many participants were resigned to market pressure on fees, and even saw the lower fees they charged as a matter of competitive advantage, others, particularly in the fields of Real Estate and Wills, Estates and Trusts, faced more serious competitive pressures. As one London lawyer put it: "The banks can do things for $299.00 and there's no way I can do that in my office." The following is a sample of comments from lawyers in London and Toronto, all stressing the extent to which they felt they were literally being "nickeled and dimed" in the competitive struggle for clients:

> Do you get the free will with a Real Estate deal? I get that all the time. 'How much is a Real Estate deal going to cost me and do I get a free will with that?' And I know that there are lawyers that do that. I spend five and half hours doing a will and I still don't charge fair value or an hourly rate for that.

> A sole practitioner doing what I do, my accountant calls it the race to the bottom in terms of the fees and pressures we face. I get very few clients in Real Estate anymore who don't phone me first to tell me about another person who's $25.00 cheaper.

> Quote a certain fee and well… I have someone who will do it five cents cheaper-literally, you know? So that's a problem that you have to deal with. And you have to draw a bottom line on what your bottom is that you're going to charge. Otherwise you will work for nothing, you will literally work for nothing.

For some of our focus group participants whose primary practice area was Real Estate and/or Wills, Estates and Trusts, market pressure on fees was sufficient to make them consider alternative areas of practice. One long time Real Estate lawyer in London, observed that he had five years left to practice Real Estate law, provided the Law Society would take a more active role in attempting to limit the activities of banks and paralegals. A general practitioner, a long time associate with a small Toronto firm, reported that he was looking for an opportunity to changes areas of practice, in part due to the growing difficulties of making a living in the area of Real Estate.

But while we certainly heard strong statements about the negative effects of the competitive market, opinion was far from unanimous. Many sole practitioners viewed the pressure of the market as a more or less natural and generally permanent condition that sole practitioners and small firms were obliged to deal with. One Toronto sole practitioner alone, pointed out that delivering lower priced services was both a condition and a guarantee of the survival of the sole practitioners and small firms. She cited an example of a larger firm setting Family Law services at $500 an hour, thus creating an opportunity for the small firm and sole practitioners to compete:

> My point is that my clients will not pay those fees. So therefore the sole practitioner is going to exist, because the big firms set the rates and fee schedules intentionally, so you won't go there.

Another Toronto associate also stressed the competitive advantage of small firms, contrasting their lower priced personalized service without the excessive fees and the impersonal treatment characteristic of some larger firms:

> … Whether I'm working for my larger clients or my smaller clients…I think there's a large group out there who have just had it with the big firms and the big firm billing and they want to come and find cost savings. They don't want to pay the big firms anymore and the huge fees and the lack of control that they have. When you go to a large firm, you give the file to the large firm, the next thing you know, the one guy you have contacted, he's given it to all sorts of other people who are working on the file and the bill comes and there's three, four, five different names on the file being billed.

Even in the general besieged environment of Real Estate, there were those who disputed the negative effects of competition from non-lawyer suppliers:

> You know, it's interesting… because there are paralegals encroaching on Real state work. They said the advent of title insurance would mean the downfall f Real Estate files and we just do more and more Real Estate, for example, our practice does. So, I think there's always going to be doom and gloom out there bout factors that are encroaching on lawyers work, but people still use lawyers.

6.2 Legal Aid Fees

For Lawyers taking a relatively large proportion of Legal Aid clients, the problem was not so much direct market competition as the limitations and controls imposed by Legal Aid.

In our focus groups criticism of Legal Aid was most often heard from lawyers working in the areas of Family and Matrimonial Law, Child Welfare, and Immigration. From this group, there was consensus that Legal Aid rates were simply "too low and too slow", "unrealistically low" and arbitrarily administered. One sole practitioner alone, whose practice was both successful and gratifying, described the irritants of the Legal Aid system as follows:

> Too much administrative work that is not covered by Legal Aid. Too few hours on a Legal Aid certificate and time wasting letters must be drafted to beg for more. Very, very, very slow payment.

Low Legal Aid rates were also blamed for restricting the number of clients sole practitioners and small firms could afford to take on: " If Legal Aid rates would go up, there's no shortage of clients." For those who had not taken the decision to avoid Legal Aid entirely, the margins were so low that it threatened their overall viability: " It nearly bankrupted our firm when I had five lawyers. We did quite a bit of Legal Aid and we stopped taking them." An employee/associate in Sudbury pointed to the obvious reason for the limited availability of lawyers who accept Legal Aid: "And because of the disparity in the rates, you find that there are not a lot of lawyers who are willing to take on that agency work for the people."

Participants indicated that the Legal Aid system imposes systemic constraints on the delivery of legal services which bears some similarities to the instances of under-funded demand. Many

lawyers had simply ruled out accepting Legal Aid certificates entirely because they were unacceptably low or simply inadequate to cover overhead costs. But with few exceptions even those who relied on Legal Aid, indicated they risked doing so at their peril. In their view the demand for services from all those potential clients who qualified for Legal Aid is not being fully satisfied because lawyers are forced to accept dangerously narrow margins and very low income even when they are only partially dependent on Legal Aid clients. The result is a limiting of the capacity of sole practitioners and small firms to fully meet the demand for legal services through the existing system.

6.3 The Costs of Running a Law Practice

The counterpoint of market pressures to keep fees low, was a high degree of concern about meeting, limiting or reducing overhead costs. In their list of the key financial challenges they faced, participants repeatedly cited the problem of "overhead", "limiting and controlling costs," "increasing expenses, especially for [information technology]," "keeping office overheads as low as possible" and "meeting all my financial commitments."

Aspects of overhead costs that received frequent mentions included the costs of professional, government and service fees, including several mentions of the high cost of those of the Law Society. But more frequently sole practitioners referred to the general problem of upward pressure on a host of costs and downward pressure on revenue flow: "…in a word, rising fees and diminishing income." Overhead problems were also associated with the problems of paying support staff who were generally acknowledged to be essential supports.

References to large new expenses were most commonly reserved for discussions about information technology. One London lawyer working in association with others identified what she perceived to be a structural disadvantage for small firms in the area of information technology, namely the extent to which "products" were built for the larger firm environment, at the expense of smaller firms.

> We pay a lot of money for products that are built for larger firms… yeah they're scaled down a little but they're not really adapted to a smaller environment at all. You have to adapt to that rather than the other way around.

A participant in the same group outlined a variation of the problem, and it's consequences in higher costs for his practice:

> Increasing IT costs are a problem. I pay $1000 and the bigger company is charged the same as me. That's becoming a huge burden on small firms… not having any break on technology costs.

And in our arrangement I'm the only who uses it. We're sharing expenses but not software stuff. A sole practitioner in Sudbury noted not only the dramatically rising costs of equipment but the requirement of very expensive and specialized software as a necessary pre-condition for the general practitioner to remain competitive:

> $10,000 worth of computer equipment, software. If you're doing a Real Estate deal you need all sorts of software to interface with banks, and now other law firms and the registry itself. It's going to become formidable to start up a Real Estate practice and if you have one already ongoing, you can float with the knowledge and adapt to the new

> curve. Expecting to be a generalist when each specialty requires hardware, software and specialized knowledge that wasn't there before; it's going to be very difficult.

A Toronto associate listed some overhead costs and then zeroed in on the same issue, the need for increasingly specialized equipment and software:

> But actually with us it's more like the technical upgrades that are required in terms of, like, you pretty much have to get a new computer every two years. We have -- because of the nature of our practice -- we have about three or four competing software packages that we need …yeah… and the upgrades required for them can be quite costly and also having a computer technician on call is basically… For a small office with three people that can actually really affect
> the bottom line.

For some Toronto lawyers rent was also an important overhead issue. One associate with a small firm described the rent her firm paid for a downtown location as twice the cost of moving further out. Another associate located further from the downtown observed that while local rates were not especially high, "rents are going up all over the city for quality office space."

6.4 Summary: The Emerging financial challenge

Discussion in the focus groups suggested that the nature and severity of the problem of overheads may vary according to practice context, the legal market place and the community. However, most agreed and no one disputed the general consensus that overhead costs -- fees of all descriptions, office costs and technology -- were all rising and needed to be controlled. Moreover the problem of overheads was at least as much a matter of rising costs in relation to very slowly increasing, flat or even declining revenues. For some, cutting costs was clearly an essential part of the strategy to hold the line on declining incomes. In short, many sole practitioners and employees/associates find themselves caught in the squeeze between upward pressure on all costs and downward pressure on all revenues.

As a consequence it may be the case that sole practitioners and lawyers in small firms are forced, for reasons of short and medium economic necessity, to adopt a strategy that will make them less financially viable in the long run. Whereas the market is forcing many lawyers to reduce their fees, they are in turn being forced to reduce expenses or at least limit expenses in all areas. It may be that this will result in the further erosion of key administrative, staff and technology supports that will in turn reduce capacity to compete for work at higher levels of specialization and fee rates. What we heard from lawyers, particularly sole practitioners alone, describing all the challenges to efficient and competent practice management, was the crying need for additional resources including other lawyers, more support staff and more professional services. And yet, they are simultaneously under pressure to further streamline all aspects of their practice. As one Toronto lawyer who listed "controlling costs" among the key financial challenges of the future put it: "If you don't keep a tight rein on them, it's too easy to just say, 'Well we need it, just get it.'" While this may indeed make good short-term accounting sense, it may also be true that sole practitioners and small firms really do need the resources they are currently sacrificing in order to rise to emerging competitive challenges and maintain their long-term viability.

7.0 Current and future challenges

This report has identified factors that shape the future challenges and viability of sole practitioners and small firms in the immediate future and perhaps over the long term. These include:

- Continued preference of some lawyers for the small firm environment, and the continued necessity of some to choose sole practice as their only employment option;
- The growing demands of practice management in small firms, especially for the sole practitioner alone, and the pressures of increasingly specialized legal knowledge and business management skills;
- Fundamental shifts in the market place, intensifying competitive pressures, which have in turn limited the resources available to practitioners in the small firm environment and eroded their overall capacity to compete against lower priced non-legal services, as well as more specialized and/or larger legal firms.

In this section we look first at how participants assessed the future of small firms and sole practitioners in the context of these and other changes. We then look closely at two specific issues: specialization and access to legal services.

7.1 Resources That Are Important

Table 7 summarizes the results of a bank of seven questions that explored the relative importance of different resources across the target and non-target groups, men and women and the five practice descriptions in the target group. In contrast to some other comparisons, notably

Table 4 (support) and Table 5 (dissatisfaction), the summary of important resources in Table 7 shows very similar rankings of the importance of different resources across all the subgroups measured.

Both groups of sole practitioners and employees/associates ranked the “Internet” as the most important among the resources listed. Interestingly the Internet was rated more important by women than men with a mean of 5.93 compared to 5.47 on a scale from 1 (“not important at all”) to 7 (“extremely important”). This may reflect the fact that women are on average seven years younger than men in the target group, and may therefore have greater facility with the Internet. Both groups of sole practitioners ranked “access to other lawyers with expertise” as the second most important of resources listed. Women also assigned somewhat greater importance to this support with a mean response of 5.81 compared to 5.17 for men. Associates ranked “administrative support staff” first on the list of seven supports with a mean of 5.75, whereas sole practitioners alone and sole practitioners with others ranked administrative support third overall with mean responses of 5.03 and 5.20 respectively.

The importance assigned to key resources by different sub-groups is strikingly similar. This suggests that while the challenges facing the sole practitioners, and those working in the small firm environment, may change and intensify, the solutions are likely to be associated with the effective deployment of key existing resources -- the Internet, interaction with and access to the expertise of other lawyers, administrative support and continuing legal education.

7.2 The Survival of Small Firms and Sole Practitioners

Following the lead of the Task Force itself, focus group participants were asked if they believed the survival of sole practices and small firms was *threatened.* On the negative side, many were quick to concede that the financial environment had never been more challenging. A sole

practitioner practicing alone in Toronto compared the challenges he faced when he began practicing in the early 1980s with those that the prospective sole practitioner faces today:

> I think it's 95% financial. And yes there are greater risks now than 25 years ago. It's largely financial. There are students coming out of university with huge student loans. [There are] enormous challenges. I didn't make any money the first two years of practice. I was paying more to my landlord and accountant. It is more difficult now. I think people say they make the choice. It isn't always the case. It becomes a way of life.

TABLE 7 RESOURCES THAT ARE IMPORTANT*

(see table in Convocation Report)

One Sudbury lawyer declared that it was easier to practice law in Sudbury when she had begun in the 1970's than for a younger woman starting out today, because there was "less competition", "not as many administrative trials" and fewer women, which had meant "you got noticed." A London lawyer described the advantages he enjoyed having developed a "wide base" of clients over many years, and declared: "I can't even imagine people starting out in the first couple of years of a sole practice." On a different tact, a London participant suggested that small firms faced increased disadvantages in competing against the "brand awareness" of larger firms.

As we have already noted for some Real Estate, and Wills, Trusts and Estates lawyers the ongoing penetration of their traditional market by non-lawyer suppliers of legal services, was a source of profound pessimism:

> But if the banks ever combine with those types of insurance centres and closing centres, that could really be the death of what I do. I deal a lot of Real Estate. That's my practice. I feel quite threatened.

But while acknowledging the intense competitive environment and even upheaval in some areas of practice, a majority of our focus group participants declared themselves "mildly" "moderately" or "cautiously" optimistic about the future. For this group of admittedly biased lawyers, there is an established clientele whose needs continue to be better and more fully satisfied by the small firms and sole practitioners than the large ones. One Toronto sole practitioner alone expressed disbelief that sole practitioners could ever disappear, simply because they were the only providers to a clientele that was largely ignored by the larger firms: " I can't understand the question. Firms that my family worked for won't touch the stuff that we handle in this room." Many stressed that there continued to be a place in the market for the sole practitioners with lower, more competitive overheads than the larger firms: " Big firms can't handle, and middle-sized firms can't handle certain things, and it makes sense to go to a sole practitioner. Various kinds of deals that don't have the overhead."

The optimists for the future of the sole practice stressed several aspects of the successful sole practitioner. Notwithstanding the growing advertising reach and other advantages of larger firms, computer technology and the internet -- as a source of advertising, networking and research -- was widely viewed as an equalizing factor, improving the competitive position of the single lawyer, in relation to their larger and more specialized competitors.

As a key to future success, many participants stressed the importance of client relations, building a client base and maintaining it by offering a higher level of personal service and

"accessibility" than competitors in larger firms could deliver. A number of equality-seekers, including several Toronto men from different ethno-specific groups, stressed the benefits of having some clients from their respective communities, as a valuable and stable base from which to build their practice. A Toronto associate from a small European country reported that her national/language community comprised her entire practice, a fact that gave her a great deal of confidence about future options. By way of contrast and underscoring the importance of a client base or at least a network from which to build, a young associate in Sudbury commented: "I'm not from here so I would have no contacts at all. So it wouldn't have been viable for me to set up my own practice."

7.2.1 Optimism, Enthusiasm and Grim Determination

Younger lawyers and more recent calls to the Bar are substantially underrepresented within the target group of sole practitioners and small firms, in comparison to the non-target group of firms with more than five lawyers. But notwithstanding what may prove to be a larger trend away from sole practice and the small firm practice milieu, the younger lawyers who participated in our focus groups generally expressed a high degree of optimism about their own future prospects in this demanding practice environment. The following sample of four comments come from a London associate called to the Bar in 2001, a London sole practitioner called in 2002, a Toronto associate called in 1994 and a Toronto associate called in 2001:

> But in any event what you have to do is prove to the consumer and Joe Toronto that you can provide good or better service. You garner your own niche in your own community and eventually I think you'll see a turnaround.
>
> I didn't have expectations. When you're starting with nothing, anything above nothing is great. I made a three-year plan hoping to make a living by the third year. I'm not complaining. I'm a young guy. You just have to work harder to get clients. I know 10 years down the road I'll be farther ahead.
>
> People still use lawyers. I mean it doesn't mean they like lawyers or are happy with their lawyer or whatever, but they still use them to do stuff. And I think the work is out there, however you want to get it and it's just a matter of whether you can get it and whether you want it.
>
> You gotta realize that the sole practitioner is not the dinosaur, because of human nature. People will always want to work for themselves. And having that sense of owning your own business, and that sense will never go away, that sense of being the one. It's your own business and doing that and that's human nature so we make it work.

As another indicator of both optimism and ambition, three of the associates in this group were actively planning to set up sole practice or prepared to consider it as one career option. Another Toronto associate similarly expressed an interest in establishing a sole practice, as soon as it became a practical option. And another recently called associate in the focus group of Toronto men, also expressed interest in setting up a sole practice:

> I still think about it. Why do I think about? I guess it depends on what kind of employment arrangement you have you know…I mean there certainly are real good aspects of self- proprietorship.

Thus while a larger proportion of the employees/associates in our focus groups were not at the time drawn or driven to sole practice alone, it continued to appeal to some amongst the range of options available in the small firm environment.

Optimism about future prospects was not limited to younger lawyers and/or recent calls. But for older and earlier calls to the Bar, optimism was often tempered by an element of what can best be described as grim determination. One Sudbury lawyer identified his biggest challenge as remaining "physically and mentally well" in order to sustain the burden of practice. A Toronto lawyer described his own situation as a challenge to maintain his self-motivation: "keeping high energy. If I can do that, then I can have a high confidence level. I can do it… energy, motivation and focus. I'm capable of doing it." Finally, the following exchange between sole practitioners in the Sudbury group captures the feeling that many of our participants conveyed, that the struggle to sustain a sole practice is a mighty one which may periodically be more about surviving than thriving:

> Voice #1: But I think that the biggest thing that faces the sole practitioner is pushing the rock up to the top of the hill and watching it roll down.
> Voice #2: And pushing it up again.
> Voice #3: Month after month.
> Voice #1: And watching it roll down again.

7.2.2 Lawyers who are Struggling

This report has described sole practitioners and employees/associates as appearing to be competently negotiating the many challenges of the small firm environment. However, as we have also noted, a smaller group may be more dissatisfied and facing more serious, and in some cases unmanageable challenges.

Chart 7 summarizes some of the most significant quantitative indicators that respondents were facing problems in their law practice. It shows that 30% of the target group spent more that 20% of their work time on non-billable administrative activities, 28% reported their income had fallen behind the average in the last five years, 25% reported they were isolated from other lawyers, 20% reported they needed to "make a change" in their "mix of practice areas", 18% face serious challenges in maintaining financial viability, and 10% reported they are somewhat or very dissatisfied with their practice.

Cross-tabulation of each question in Chart 7, and calculation of means indexes, as we have done in Tables 4, 5 and 6, indicated that respondents who gave positive responses to each of the questions were significantly more likely to register a higher dissatisfaction index and a higher difficulty of financial viability index. "Dissatisfaction with practice" registered the highest overall dissatisfaction index at 34.90, followed by those who reported they needed to "make a change" in their mix of practice areas at 32.59. These indexes compared to a substantially lower 26.27 for the target group as a whole. "Dissatisfaction with practice" also registered highest on the difficulty of financial viability index at 32.71 followed by "fallen behind average" incomes at 31.36, compared to 27.87 for the target group as whole.

Some general characteristics of the sub-groups represented in Chart 7 should be noted.

- Five of the six sub-groups have a higher percentage of sole practitioners alone than the target group as a whole. Percentages ranged from 64% who are isolated, 52% who are

dissatisfied, 50% with more than 20% time spent on administration, 47% falling behind the average incomes, and 45% who need to make a change in practice area. In contrast sole practitioners alone comprised just 39% of the target group as a whole. Interestingly, those reporting difficulties with financial viability are distributed in similar proportions across all practice descriptions.

CHART 7 INDICATORS OF PROBLEMS WITH PRACTICE

(see chart in Convocation Report)

- All these groups report a higher than average percentage with annual incomes less than $50,000. Percentages reporting low income range from 34% who reported they had fallen behind average incomes, to 30% who needed to make a change in practice areas, 26% who were isolated and who spent more than 20% of their time on administration, 25% with problems of financial viability and 24% who are dissatisfied. In contrast 18% of target group participants reported earning less than $50,000 (from their practice in 2002).

- Of those reporting they needed to make a change in their mix of practice areas, 67% mentioned Real Estate, 53% Civil Litigation, 47% Wills, Estates and Trusts and 42% Corporate-Commercial among their main areas of practice. This compares to the lower figures of 46%, 39%, 35% and 33% respectively for the target group as whole. Of those reporting overall dissatisfaction, a higher than average percentage also mentioned Real Estate and (61% compared to 46% overall), Wills, Estates and Trusts (46% compared to 35%) and Corporate Commercial (44% compared to 33% overall), among their main areas of practice. Of those reporting problems of financial viability 56% mentioned Real Estate, 43% Wills, Estates and Trusts and 38% Family Matrimonial, compared to 46%, 35% and 26% respectively for the target group as a whole. These findings may be indicative of dissatisfaction in these specific areas of practice, but as we discuss in the following Section (7.2), it may also reflect problems associated with general practice, that is lawyers practicing in multiple areas of law.

- Across the six groups identified in Chart 7, relatively few demographic differences emerged. A higher proportion of women reported problems of financial viability (28% compared to 21% in the target group as a whole). 17% of those 18-34 years of age also reported problems of financial viability, compared to an average of 12% in the target group. Among those who reported they were isolated from other lawyers 39% were over 55 years of age compared to 31% in the target group. In contrast 48% of those in the 35-54 age group reported they were isolated compared to 58% in the target group.

In an effort to further pinpoint the attitude, practice and demographic characteristics which might be associated with more general practice problems, extensive cross-tabulations selected two small sub-groups from those identified in Chart 7: Dissatisfied/Viability Problems (n= 39) and Isolated /Need to Make A Change (n=32).

- The Dissatisfied/Viability Problems group included higher percentages reporting Real Estate (69% compared to 46% overall), Wills-Estates and Trusts (51% compared to 35%) and Corporate-Commercial (46% compared to 33%). 56% of this group was sole practitioners alone, compared to 39% overall. 33% reported an annual income lower than $50,000 compared to 18% overall. And generally, much higher than averages percentages also reported they had fallen behind average incomes (54%), need to make a change (49%) and were isolated from other lawyers (44%). A higher percentage of this group was

women (26% compared to 21% overall) and in the 18-34 age group (23% compared to 12% overall). A lower percentage of this group was in the 55 and over age group (23% compared to 31% of the target group).

- The Isolated/Need to Make A Change group included a higher percentage reporting Real Estate (78% compared to 46% overall), Civil Litigation (53% compared to 39%), Wills, Estates and Trusts (51% compared to 35%), Corporate-Commercial (47% compared to 33%). 66% percent of this group was sole practitioners alone, compared to 39% overall. 29% reported an annual income of less than $50,000 compared to 18% of the target group. In contrast to the dissatisfied/viability problems group, this group did not have a higher than average percentage reporting their incomes had fallen behind. Similar to the above group, a higher percentage of this group fell in the 18-34 age group (22% compared to 12% overall), a slightly higher percentage of those over 55 (34% compared to 31%) and a lower percentage of the 35-54 age group (44% compared to 58%). There was no meaningful difference in the percentage of women in this group compared to the target group.

Further cross-tabulation to isolate a single group associated with three or more key factors was not possible because the number of the sub-group was too small to analyze. What emerges from a comparison of these two groups is that practice problems appear to be associated with some specific areas of practice or possibly general practice which includes mentions of Real Estates, Wills, Estates and Trust, Corporate-Commercial and Civil Litigation. Practice problems are also associated with a significantly higher than average percentages of sole practitioners practising alone. Similarly a higher than average percentage across both groups mention comparatively low annual incomes. And although demographic differences are not strong and should be interpreted cautiously given the small samples, it would appear that younger lawyers are somewhat more likely to report satisfaction/viability problems, as well as isolation from other lawyers and the need to make practice change. Women are somewhat more likely to report satisfaction and viability problems.

Findings from cross-tabular comparisons suggest one other important insight that was highlighted throughout the focus groups. The small firm environment is extremely diverse in terms of the practice context, mix of practice areas and communities served, not to mention the demographic characteristics, needs, interests and skills of individual lawyers. And while it became evident that there are several important issues which are both cause and consequence of practice problems, the small firm environment is too complex to isolate either a single hierarchy of issues, or pinpoint a single demographic profile which can be readily associated with practice problems.

7.2.3 Lawyers who are Struggling: Focus Group Findings

The findings of the focus group research tend to confirm the findings of our earlier survey research. Lawyers in the target group generally report a fairly high level of satisfaction tempered somewhat by all of the practice problems discussed above and dominated by the struggle to sustain financial viability. As we investigated the issue more intensively and allowed sole practitioners and employees/associates to speak for themselves a strong picture emerged of the considerable stresses and challenges of the small practice environment.

Our survey results also suggested an overall assessment of financial challenges that was not dissimilar from respondents in the non-target group of firms with more than five lawyers. And overall the same or a very similar message emerged from our focus group respondents. They

reported that their work was difficult and stressful, working hours were too long, income was lower than expected and it was increasingly difficult to make a living. Nevertheless, many in the group expressed a measure of enthusiasm about the profession in general and their practice context in particular. Most definitely viewed continued private practice as sustainable and desirable.

However, as we suggested in our earlier research a small percentage of lawyers in the target group may be unable to meet the many challenges of the small firm environment and are increasingly unable to sustain their practice. Although it is difficult to develop an accurate assessment in the focus group context, it appeared that perhaps six or seven of the 62 focus group participants were not succeeding in their law practice. These individuals admitted that they were earning substantially less than expected, might not be successfully covering expenses, were overwhelmed by practice management issues and in some cases considering other employment options.

Some described the problem of having failed to adapt or advance and, in middle age, finding a situation in which the options had narrowed and the energy required to continue was no longer there. One Toronto associate added this to her description of declining work in the firm where she was employed:

> I think I have lost confidence. Like I used to sound like [names another participant] …Bring on more files! I can handle it. And now I'm old and I've just been plodding along and I have had the benefit of being able to look after other things besides work and now I'm going 'Oh my God, you'll never retire if you don't get down to it. And that's scary."

Another sole practitioner with others indicated she was considering a change of profession and provided this description of problems, which created the impression of that she had lost control of the organizational and technical management of her work:

> I see my income going down each year and I just got a nice new package from Legal Aid. …it looks like a life long thing, 'you can download [it] from our website'. Well number one, I don't know if my overhead will take the Internet. Secondly if I download from the Internet they are 8 x 14 double-sided paper and I have to figure out how to print it.

Another woman in the same group declared that she became "poor" when she entered law and had remained so ever since. Men in each of the sole practitioner alone groups also admitted that their revenues had fallen, to the point that they might no longer sustain their practice. A newer call, practicing alone, described a situation in which she was frantic for additional support, unaware where to start. Animated by her anxiety, she made a number of unrealistic demands of the Law Society.

The focus group discussions illustrated that in an increasingly pressurized work environment there are individuals who are currently unable to meet the challenges of the small firm environment. Our findings suggest that this is likely to be more common amongst sole practitioners alone, many of whom have, in varying degrees, been forced into their current practice context and are too under resourced and isolated to meet the daily demands of practice management.

7.3 Specialization versus General Practice

In previous survey research we asked respondents to "indicate your main area or areas of practice," and recorded up to five responses. Chart 8 shows the top six areas of practice and "other" mentions, based on whether respondents reported one, two, three, or four or more areas of practice. For example, at the top of the page, the small chart labeled "1 area of practice mentioned" shows that individuals who reported only one area of practice were most likely to practice Criminal law (27%), followed by Civil Litigation (16%), Family Law (16%). Among those reporting only one area of practice just 6% reported practicing Real Estate law and just 2% mentioned Wills and Estates. At the bottom of the page, the small chart labeled "4 or more areas of practice" shows that individuals who reported four areas of practice or more were most likely to mention Civil Litigation (87%), Real Estate (70%) and Wills, Estates and Trusts (57%).

Survey research also asked respondents, "Are you satisfied with the current mix of practice areas or do you feel you will need to make a change." Overall, 20% of target group respondents indicated they felt the need to make a change in their area(s) of practice. As Chart 9 shows the likelihood that respondents would report they needed to make a change in their practice mix increased with the number of practice areas mentioned. Among those who mentioned one practice area, just 9% indicated the need for a change, whereas among those who mentioned four or more areas of practice the percentage who indicated they needed to make a change increased by over four times to 37%.

The differences in "need to make a change", shown in Chart 9 may be accounted for in part by the dissatisfaction with specific areas of law. For example, 28% of lawyers who mention practicing Real Estate law indicated they needed to make a change, followed by 22% practicing in Civil Litigation and 22% in Wills, Estates and Trusts. However, since these are also the areas of law most frequently mentioned by general practitioners, it would be difficult to quantify the extent to which the desire for change arises from problems with specific areas of law or problems associated with practicing in many areas of law. At any rate the findings reported in Chart 9 suggest that lawyers specializing in one or two practice areas are much more satisfied with their areas of practice, than lawyers who work more as general practitioners, providing service in four or more areas of law.[9]

The findings in Chart 9 are particularly important because as discussed in section 7.2.2, "need to make a change" was one of the indicators of overall dissatisfaction and problems of financial viability. For those who reported the need to make a change, the index for overall dissatisfaction rises to 32.59 compared to 24.58 for all others in the target group. The financial viability index rises to 31.36 for those who report they need to make a change compared to 26.86 for all others in the target group. In short the 37% of general practitioners who reported they needed to make a change in the mix of practice areas was much more likely to report greater overall dissatisfaction and greater challenges to financial viability.

CHART 8 AREAS OF PRACTICE MENTIONED (BY NUMBER OF AREAS OF PRACTICE MENTIONED)

(see chart in Convocation Report)

[9] The term specialist does not refer to the Law Society's formal designation of certified specialist, under the Specialist Certification Program. It is used here and throughout this report to distinguish those lawyers who may be limiting their practice to one, two or three areas of law as opposed to those who are offering the wider range of services of a general practitioner.

CHART 9 SATISFIED/NEED TO MAKE A CHANGE IN AREA OF PRACTICE (BY NUMBER OF AREAS OF PRACTICE MENTIONED)

(see chart in Convocation Report)

7.3.1 For and against specialization

Several participants raised the problem of meeting the "knowledge demands" of their profession, and of "being a generalist in an increasingly specialized world of law practice". They noted that the problem of "staying on top" of different areas of law had become increasingly time consuming. Time spent catching up and researching could not realistically be billed to clients and was therefore inefficient. One Toronto specialist explained his difficult past struggle to maintain an increasingly unsustainable general practice:

> If they walked through the door I [dealt with] them and the object of the exercise was to keep reading enough law so that when somebody came through the door and explained a problem I would be able to say, "Yes, I can deal with you." And I'd go back and the trick was to be able to remember that topic and at least I'd know where to go look to figure out what the heck the guy's talking about, and what I should be talking about. Then I would get back to them later and that's why I don't think it's economically viable for a single person...

Another sole practitioner in Sudbury explained her decision to specialize in terms of time saved, a more efficient practice and improved work life balance:

> That's why I specialized, because if you are a generalist then you have to keep abreast of so many areas of law. And trial work is very demanding. I'm in court every day but at the same time I have achieved balance with my family that all of us seek. I keep on top of one area.

One Toronto associate saw the option to specialize as a way to focus his energy and make more constructive use of his time, but also as a potentially more satisfying approach to his profession:

> …specializing in a field would hold a certain appeal to me rather than trying to be the master of none right now… I think there's a certain satisfaction that comes with being not necessarily an expert in your field, but achieving a certain level of confidence in your field.

In a particularly intensive discussion of specialization in one Toronto group of associates, the former general practitioner quoted above, argued more broadly that the loss of economic viability for the sole practitioner/general practitioner was also a result of competition from non-lawyer legal suppliers. In this case it was not specialists who were undermining the general practitioner but instead their professional knowledge was no longer sufficiently specialized. What had formerly been expert knowledge provided by lawyers was now available to some potential clients through low-cost, non-lawyer legal services. As a result, the monopoly over the delivery of professional services had been breached, and lawyers could only respond effectively and re-establish their professional monopoly through increased specialization:

> If you don't have a professional level of expertise why exist? And that's why there's a wavering of the profession in some areas. So, you have in immigration… a whole range

> of people going off and doing immigration type legal work. You have a range of other types of paralegal doing Real Estate types of work and no real operation now exists without using them. Economically you're driven to use them. So the economics and professionalism are Siamese twins. They're always tied together.

The logic of this general argument was implicit in the comments of others who described the ever-tightening economics of the small firm, struggling to charge what the market will no longer bear:

> It's a lot of clients. It's a lot of turnaround because you spend a lot of time on each individual file. Am I satisfied? It's fine, but you know, you're always on the edge …

Elsewhere the same lawyer summed up the underlying problem of his Real Estate practice, describing his services as a matter of selling a "commodity" and observing that, "there's really no difference in choosing me over some one who is cheaper." A Toronto associate working as a general practitioner in a "neighbourhood firm" described the economic limitations of her firm's general practice -- "Real Estate and really, really basic corporate commercial work… basic estate work" -- as follows:

> There's a real limit to how much money you can make doing it and, you know, the fact of the matter is, we open more files with less sort of money attached to each file and that's, I think in the long run … you're never going to make a lot of money that way. You need to kind of do more sophisticated work to make more money.

Participants tacitly acknowledged that the competitive market on the one hand and the scope of "knowledge demands" on the other was forcing lawyers to greater degrees of specialization. But there were exceptions. In all three cities where we convened focus groups it was pointed out that in smaller communities, the combination of a stable client base and less competition gave lawyers greater latitude to continue delivering their services as a general practitioner and conversely less incentive to specialize. One Sudbury participant, who suggested that in the North many clients expected their lawyer to meet the full range of their needs, offered a variation on this point:

> Here's a dimension that is a Northern Ontario phenomenon. I found that when you develop a relationship with a client here you often take on a number of things for that client unlike somebody in Toronto who goes to you for one thing. My clients come in for a Real Estate deal and then a will and then you do this and then you do that, so I think there's another dimension here. The expectation of the client.

Others also pointed out that a stable or established client base mitigated against the pressure to specialize. Nor were the mechanisms of competition and the erosion of general practice necessarily at work uniformly for all communities, areas of law or individuals. For example we heard from successful general practitioners in London, Toronto and Sudbury who did not feel the negative effects of competition and generally reported good financial success.

One newly called Toronto lawyer, who had moved from an area of specialization to work as an associate in a general practice, argued that the sole general practitioner continued to be viable, in part due to the leveling effects of modern technology:

> And you know, you learn very quickly and I'm of a generation that utilizes computer research religiously, and you very quickly learn what needs doing and what the laws are, what the position is….

In the end the argument that the sole practitioner/general practitioner was capable of responding to multiple demands for increased knowledge specialization, did not directly challenge the consensus opinion that there was ongoing pressure to specialize. It simply countered that a nimble general practitioner aided by modern technology could respond to contemporary knowledge demands and thereby at least slow the process of increased specialization.

One focus group participant identified that the complexities and demands of the current practice of law, increased expectations for greater expertise on the one hand, and the erosion of the "professional monopoly" in many areas of practice on the other, are undermining the economic viability of the sole practitioner/general practitioner, fueling specialization. At the same time however, participants noted there are a variety of exceptions to this general rule. The availability of technology, research and software tools allows individuals to work more efficiently and to a higher standard of specialization. The existence of an established client base, or an ongoing connection to a "community" of clients continues to place a premium on trust and professional service, even while "a change of attitude" in the market place erodes the larger practice context.

7.3.2 Specialization and Networking

Discussion in the focus groups touched only briefly on the implications of specialization for the type of practice context lawyers might be obliged to develop. It was generally assumed that sole practitioners were, almost by definition, general practitioners who, at least in principle dealt with every client who "comes through the door." But as one London lawyer suggested, specialization necessarily implied the increased development of referral networks:

> It's difficult to stay on top of the different areas of the law. What I'm saying is some practitioners can help each other in that if they can't [provide an] answer for their client... I don't have a difficulty referring someone. And what goes around comes around.

Increased specialization implies the expansion of existing networks or possibly the development of new forms of networking and referral based on increasing the collective delivery of services hitherto provided by the single general practitioner.

7.4 Shortages of Legal Services

In previous research we reported that 35% of the target group answered "yes" to the question, "Are there shortages of legal services in whatever community you serve?" Reported shortages of some types of legal services rose from 24% in Toronto, to 28% in the rest of the GTA, 34% in Other Urban Regions and 64% in Non-Urban Areas of Ontario. Among the most frequently cited shortages were access to Legal Aid (26%), Family-Matrimonial Law services (22%) and affordable rates for low and middle income individuals and small businesses (12%).

The commentary of focus group participants reinforced our previous findings and conclusions. Several participants drew attention to the problem of a generalized or systemic shortage of legal services. As one Toronto associate put it: "There are huge categories of people with legal problems that, in theory they're supposed to have access and they don't. It just doesn't happen."

A sole practitioner in one of the equality-seeking groups offered this familiar description of a system of legal services that are beyond the means of many people who need them:

> … both levels of government and the courts have created systems that are so expensive and complicated that no one can afford to go to trial … So in my practice I see people who will not have their day in court, unless I subsidize it.

Others pointed to general shortages of legal services for the "the middle income person", "small and medium enterprises", the "little guy" and small business.

Participants noted shortcomings in Legal Aid, observing that the "threshold" for payment had failed to keep pace with the client population that needed assistance, and that it was inadequate as a means of delivering legal services in the criminal context, to those who could not afford to pay privately. An immigration lawyer in one of the equality-seekers groups commented: "In my opinion the whole Legal Aid system has to be re-worked and maybe it has to be restructured to get it funded properly. Maybe the whole thing has to be rethought."

Participants in all three cities cited problems with shortages in Family- Matrimonial Law. One London lawyer with extensive experience, noted problems with impending shortages of lawyers in the area:

> There are fewer younger lawyers going into Matrimonial Law and what they're finding is that litigation is not replenishing itself. There are people getting out of it because it's a high stress area.

A Toronto lawyer working in the same area pointed to the shortages of Legal Aid for families, noting that many of the child welfare cases in the courts lacked legal representation: "I am concerned [that] children in the system and parents fighting for their kids, don't have representation. I see that happening a lot and we have a problem."

Other specific areas of shortage mentioned included WSIB, Mental Health, and Residential, Landlord and Tenant.

Regional Shortages

Focus group participants in all three cities also noted current or impending shortages in or around their region. A Sudbury lawyer reported there were "definitely" shortages of legal services on Manitoulin Island: "I get calls for 3rd party application and basically you have to be on a panel and they're calling me in Sudbury because they can't get anyone on the island." A Toronto lawyer noted shortages in the areas of pensions and CPP and expressed surprise that he had received client referrals from London, "and I asked don't you have lawyers there? 'No'." Another lawyer, working north of Toronto declared: "In… we have shortages of everything. In York Region we go up 40,000 a year. There are hardly any lawyers in terms of population growth."

An employee/associate practising in a small town outside London, pointed to the problem of stagnation and potential decline of the small town lawyer population, a phenomenon common to many areas of the province:

> I think a lot of work gets done by a larger firm in London, and two or three county areas. There are going to be a few small town lawyers in St. Thomas and … where my office

> is. There have been two firms that have been there for some time… it hasn't declined but it certainly hasn't grown a lot.
>
> A Sudbury lawyer noted that shortages in Timmins had prompted special offers to entice lawyers to that city: "… they were offering free office space, with phone service, fax services, photocopier because there weren't lawyers on Legal Aid or basic family, so everything was under-serviced."
>
> Community Shortages

Finally several participants flagged the need for additional or special services in various ethnic or languages communities. One Toronto participant noted the need to disseminate more basic information about the law in the Chinese community. A Toronto associate commented:

> I think some lawyers are in demand for certain languages. There can be shortages. I notice Vietnamese for example. There can be a shortage there. As well, for example, in personal injury there is no shortage of lawyers per se. There is a shortage in terms of quality of service that should be reflected more fairly for each file…

A Sudbury lawyer also drew attention to the under-serviced aboriginal community observing that many lawyers, "don't know much about them and we should learn. That's important."

8.0 Interacting with the Law Society

8.1 Discussion about the Law Society

Mention of the Law Society often prompted lively discussion about the role of LSUC, its mandate, and its services. In this section we briefly review some of the issues that emerged and the opinions offered by focus group participants.

Perceptions or attitudes toward the Law Society ranged from supportive but wary to critical and in a few instances vociferously so. Wariness was expressed, among other things, in the cautious approach that many participants took toward the focus groups themselves. Asked what was generally on his mind these days regarding his profession, one London employee/associate quipped: "Nothing is freaking me out except the phone call from the Law Society to volunteer." Another employee/associate from Toronto expressed the same anxiety:

> Like I was saying, whoever called me to do this focus group or whatever I was 'like thank God it's not an audit because in the six years I've been practicing the guy that I work with has been audited twice and I've been audited twice when I was…. I had been in practice for less than six months.

The Law Society was generally perceived with a measure of respect and caution in relation to its regulatory powers. Lawyers did not see the Law Society as their "friend". Moreover, some indicated it could be "heavy-handed," "bureaucratic" and time-consuming in the exercise of its various policing functions.

At the far extreme of feelings, were those who viewed the Law Society as the source of their problems. One London sole practitioner alone, working primarily in Real Estate, offered this unprompted critique in responses to the general query about his professional concerns: "My only concern is that I don't trust the Law Society…One day I'm going to wake up and I'll be out

of a job because some dork in Toronto changed a rule." A recently called sole practitioner alone in one of the Toronto focus groups was highly critical of the Law Society for its failure to provide advice and support, citing her problems with the Law Society as the key source of difficulty in her practice: "I need some support. That's why I came here. But nobody will give me ideas of where to go for support."

In contrast to the other seven focus groups, the role of the Law Society was raised unprompted and discussed at length, in both groups of sole practitioners alone (London and Toronto). In each case a minority of participants criticized the Law Society repeatedly and in quite harsh terms. The fact that these discussions erupted only in the two groups of sole practitioners alone, may be mere coincidence. On the other hand, the content of the criticisms of the Law Society suggest that they were an expression of the pressures of competition and the stresses of practice management that sole practitioners alone feel more acutely than others working in the small firm environment.

8.1.1. What Lawyers Expect from the Law Society

For many of our participants, expectations toward the Law Society were largely conceived in terms of avoiding regulatory problems. Positive expectations were not voiced or deeply felt. On the other hand, before we introduced policy ideas or probed for suggestions of possible future actions to be taken by the Law Society, participants articulated three types of expectations:

- The Law Society should actively intervene to protect lawyers from the competition of legal services being delivered by non-lawyers and institutions;
- The Law Society should provide more active support for sole practitioners;
- The Law Society should be "addressing the public" with a two part message about what to expect in legal services and the benefits of using a lawyer.

Advocates that the Law Society take a stronger role in protecting lawyers from competition cited examples from the areas of Real Estates and Wills, Estates and Trusts. One sole practitioner alone complained that instead of supporting Real Estate practitioners the Law Society had taken the role of endorsing "paralegals" or the "Real Estate side of the business". Instead the Law Society should step in to "protect society" and preserve the Real Estate lawyer: "They are our governing body. They're the ones who protect us. We can't do it individually."

Along similar lines a lawyer in the same focus group advocated that the Law Society should take a role in setting fair prices for various legal services:

> They could do anything they want for us if they were looking out for us, and they're not. If they would say, 'This is a fair price for wills, divorce, whatever', I would be able to take in less work at a decent standard of living, and I would be able to go to conferences, go and study.

In a similar vein another participant declared: "Law should be practised by lawyers, not by insurance companies and paralegals. So once we get rid of the trash that's practising law… we can set our rates." Others in the same group disagreed, suggesting that having the Law Society "put price tags" on services "would not help anybody at all." Another newly called sole practitioner declared: "The arguments against what he's saying are so obvious…" Still others pointed approvingly to specific measures taken by the Law Society:

> But on the other hand, they have been doing things. They did get into title insurance, which was wonderful to combat the influx from the U.S. They've been sticklers in maintaining rules of lawyer involvement in certain things. I hate to sound like the only one in the room who's on the Law Society's side…

In the other group of sole practitioners alone, the newly called lawyer, mentioned briefly in the previous section, insisted that the Law Society should reduce its demands and provide more support:

> I think the Law Society must pay attention to the extinction of sole practitioners… I have to do everything. The way I have arranged my office is so that I can answer the telephone, typing on my computer, faxing and printing. The Law Society expects this. How can you document everything? People have found themselves in hard positions to survive by pressure from the Law Society.

Although few defended Law Society practices explicitly, several pointed out that the kind of support being demanded was well beyond the mandated role of the Law Society, recommending instead other appropriate information sources, software and possible options for mentoring.

A somewhat milder criticism was that, within its mandate, the Law Society should be more actively promoting the services of the legal profession for the public good. One London participant touched on a popular theme, comparing the effective promotional efforts of another profession:

> I'm jealous of organizations… A friend is a chartered public accountant and whenever I'm watching TV I get a slick ad for CPAs. I guess I get a pang of jealousy because we don't promote ourselves as a profession very effectively at all. I know the Law Society…has a mandate to protect our clientele, but I don't know why they don't [have a] program against things like the Canadian Wills Kit.

The defender of the Law Society quoted above also conceded the point that the Law Society could more actively promote the legal profession, within the bounds of its mandate: "But you're right. It would be nice if the Law Society said 'This is what a lawyer can do for you'. And they don't do that."

In one case this was the tenor of a response to the list of possible policy actions participants were invited to respond to:

> This is something that bothers me, that they don't educate the public. I know that their role is to protect the public and not assist us and that's fine. I don't have a problem with that. However to me part of educating the public is, what they should be looking for. 'What is a reasonable fee to be charged for things? If you are involved in this kind of situation this is what you should be expecting.'

In the relatively vigorous debates which took shape in both of the sole practitioners alone focus groups it was apparent that some participants had little or no knowledge of the mandate of the Law Society of Upper Canada or its implications. One participant responded to a brief clarification of the Law Society mandate by simply declaring: "Who says? I want to know."

More typically, the lawyers in our focus groups did understand the Law Society mandate and in some instances demonstrated their understanding by endorsing the role of the Law Society in regulating the legal profession, stopping "fraud" and auditing lawyers to make certain the profession was not "tainted by bad people." One Toronto associate approvingly described two instances of effective regulation by the Law Society, one of which dealt with the defrauding of a client by another lawyer.

In other instances it was clear that while the lawyers understood the mandate of the Law Society, they chose to debate its interpretation and implementation. Many participants saw room for a more "practitioner friendly" approach to regulating the profession, including a more public role in promoting the profession, lawyers and their contribution to the public good.

Although relations with the Law Society was not among the key themes being explored in this focus group research, this research demonstrated that sole practitioners and employees/associates are in some cases and varying degrees at odds with the Law Society. While acknowledging the Law Society's mandate to regulate the profession in the public interest, a sizeable proportion of our focus group participants believe the mandate could be differently interpreted or implemented in a way which served lawyers in the small firm environment. Others distrust the Law Society and still others do not understand its purpose for existence.

8.2. Policy Recommendations from Focus Group Participants

In the final exercise of the focus groups we asked participants for their written and verbal responses to six broadly defined policy ideas which, it was suggested, could conceivably be undertaken by the Law Society, the Government or some other appropriate agency. In Attachment I we have summarized responses from the nine focus groups and three long interviews, dividing responses by our three sub-groups: sole practitioners alone, sole practitioners with others and employees/associates.

As the preceding discussion suggests, many participants had an uncertain grasp of the role of the Law Society and what types of policy initiatives might be appropriate. Some were unsure about how the range of support functions being suggested might mesh with the current "policing" functions of the Law Society. And for those least familiar with the Law Society there was undoubtedly confusion about what support services already existed. Indeed, one valuable outcome of this discussion about policies and services was the insight that many practitioners in the small firm environment have only a very limited knowledge of existing services and how to access them.

The responses tabulated in Attachment I show that a substantial majority of participants across the three sub-groups endorsed all six of the general policy ideas put forward. There were some differences across the sub-groups and some individual objections to specific ideas, because they were perceived as impractical, inopportune or outside the mandate of the Law Society.

All three groups endorsed the principle of making legal services more affordable and the specific suggestion to expand Legal Aid. In each sub-group there were additional suggestions to develop a legal insurance plan for the public. One Toronto associate rejected the idea of expanding Legal Aid on the grounds that it was unlikely to garner meaningful support in the current public policy environment. At any rate it was clear that, building from their direct experience this group of lawyers was strongly supportive of the need to increase the public capacity to pay for legal services.

As might be expected, employees/associates gave the strongest endorsement to “A pro-active approach to counseling the profession, new lawyers and law students about working as a sole practitioner or in small firms,” and “Expanded practice management support.” Although sole practitioners alone generally endorsed the principle of a pro-active approach to counseling the profession, two objections suggested some sensitivity to support measures that might also assume the character of closer supervision of sole practitioners by the Law Society.

All three groups endorsed the principle of “Developing a model or template for the sole practitioner and small firms,” although some were skeptical about the feasibility. In conversation several participants challenged the idea that a single template could be effectively developed when flexibility and adaptability to specific circumstances, and hence many different models of success, were the hallmark of the effective sole practitioner.

Sole practitioners alone and sole practitioners with others both endorsed the principle of increased access to personal financial services for lawyers in the small firm environment. Employees/associates were less enthusiastic, which may have been a reflection of their younger average age and less concern for adequate retirement supports.

Finally, among the small list of recommendations which focus group participants volunteered, recommendations included promoting the “legal industry”, exploring financing for new lawyers and promoting “group practice” with sole proprietors sharing space.

9.0 Conclusion

This focus group research project confirmed the main findings of earlier survey research. Sole practitioners and employees/associates registered moderately high levels of satisfaction, viability, and confidence in the future, although there was strong evidence of an increasingly challenging competitive environment.

While reinforcing the general findings of our survey research, focus group research created a strong impression that while generally stable, the small firm environment is operating at high stress levels. A widening gap between the price and affordability of a broad range of legal services, a competitive upheaval in some traditional areas of lawyer-provided legal services, and a technological transformation in acquiring and selling legal expertise have created a demanding small firm environment. Focus group participants contributed a rich and detailed picture of how these forces manifest themselves in the day to day stresses of sustaining a law practice.

The focus groups participants, 44% of whom were sole practitioners alone, strengthened and deepened earlier tentative conclusions that sole practitioners alone are facing the most serious challenges. Sole practitioners alone, who are most likely to be general practitioners are also most likely to be subject to pressures from both sides of the market - specialists and competition from non-lawyer individuals and institutions. In a competitive climate the sole practitioner is at a great disadvantage in terms of marshalling either the financial resources or the legal expertise to respond effectively to the changing environment. Moreover, isolation from contact with other lawyers in the same office is almost certainly a severe limitation on organizational capacity and intellectual flexibility.

Our survey research and even more so the focus group findings lead to the conclusion that a minority of sole practitioners are currently presiding over an unsustainable practice which

cannot survive over the long run. Just how large this group is depends, as one sole practitioner alone in Toronto explained, on how you define survival. But at any rate some proportion of sole practitioners alone will probably be unlikely to meet the standards of management, efficiency and competence required in the new competitive environment. This was evident in the focus groups.

The survival of the balance of sole practitioners and small firms, and especially sole practitioners alone will depend on:

- Overcoming the increasingly large structural barriers which currently limit access to legal services for large parts of the population, a substantial portion of whom are most likely to use the services of sole practitioners and small firms.
- Developing a marketing strategy that actively cultivates and sustains the various and potential communities, comprised mainly of individuals, who represent the natural client market of small firms and sole practitioners.
- Developing an effective strategy to achieve greater expertise and specialization, and the preservation of professional status in the market place.
- Overcoming the several limitations of the isolated practitioner by developing new forms of association which can provide the benefits of collective marketing and service delivery while retaining the low overhead and flexibility of the sole practice
- Marshalling the resources necessary to furnish the technical and organizational infrastructure that is a pre-condition to efficiently and competently competing in the new environment.

Finally, as we have tried to suggest throughout this paper the forces affecting the small firms and sole practitioner environment are societal in their scale. The process of developing and implementing a policy response should take this into account.

ATTACHMENT I RESPONSE TO POLICY IDEAS

(see Attachment I in Convocation Report)

ATTACHMENT II MODERATOR'S GUIDE

(see Attachment II in Convocation Report)

Law Society Focus Groups
Moderator's Guide
Mixed Sole Practitioners
Tuesday May 11, 2004 5:30 PM

First Draft – Confidential

Tuesday May 11, 2004. Mixed sole practitioners. Confirm 11 participants. If possible, at least four women, and four participants with less than 10 years (1995 or later) since they were called to the Bar. Seven sole practitioners alone and four sole practitioners sharing office space.

Timing: 119

1.0 Introduction (3 minutes)

Good evening. My name is David Kraft. I work for Strategic Communications, a firm that conducts independent opinion research. We have been commissioned by the Sole Practitioner and Small Firm Task Force of the Law Society to conduct research, exploring issues affecting sole practitioners and lawyers in small firms. The first phase of this project - an opinion survey and individual long interviews - was completed in March. The final report is posted on the Law Society website.

Purpose

In the second phase of research, we have designed a series of focus groups so that we can hear directly from sole practitioners and lawyers in small firms (five lawyers or fewer), about the issues that concern you. This research will be presented in a separate report to the Task Force. Together the research reports will inform the development of specific recommendations to Convocation, which I understand will be submitted before the end of the year.

How it works

A focus group is a structured conversation, in which we will touch on a number of different topics – in this case all related to your profession.

Taping and Mirror, Confidentiality

We are recording this session on audio and videotapes. There are also representatives of the Task Force following this discussion from behind that mirror over there. The tapes and notes will be used to prepare reports, but your name WILL NOT be associated with anything you say here or with any written materials submitted to the Law Society. So I hope you will feel comfortable to speak freely.

My role, your role

My role here is to ask questions and listen. I hope you will also feel free to talk to each other. We have placed name cards around the table to help you remember each other's names. I will try and encourage all of you to participate. As the discussion gets going please feel free to jump in, express your thoughts and feelings, and also make room for others to participate. There are no wrong answers here and I'm not looking for you to agree with anything in particular so please just speak your mind. We are especially interested in your opinions and your feelings, not what you think others might think.

Also if you have a cell phone or pager, please turn it off, if you can, for the duration of the focus group, which will be about two hours (end at 7:30/10:00 PM).

You may have had a chance to get a drink or a snack before we started. There are also drinks here in the room. Feel free to help yourself during the discussion. *[Provide directions to the washrooms and specify that they should feel free to use them]*.

2.0 Warm Up (4 minutes)

> Let's start by introducing ourselves. As we go around the table please tell me your first name, and a little about yourself, your practice, areas of specialization and how long you

have been practicing in the Toronto area, or the community where your practice is based.

3.0 Most important Issue (10 minutes)

I'd like to begin with a general question. As a practicing lawyer, what's on your mind these days? What do you think about with respect to your job and the profession?

[Probe] Do you feel differently now than you felt two or three years ago? What has changed?

[Moderator notes/records comments for reference later in the discussion]

Sole practitioners: Overview

4.0 Reasons for being a sole practitioner (25 minutes)

All of you were invited to this focus group because you are sole practitioners.

Was your decision to become a sole practitioner a matter of choice or necessity?

[Probe]
Did you choose sole practice over other private practice options?
What were those other options?
Why did you choose sole practice?

I'm going to ask you some more questions about being a sole practitioner. But before I do that I'd like you to turn to Worksheet #1 in the workbook I am passing out and complete the two separate sentences on that page.

[Moderator explains the exercise, stressing the need for each participant to answer in terms of his or her own <u>personal</u> experience. Also underlines emphasis on <u>quality of life</u> as opposed to more limited monetary concerns]

Worksheet #1

Thinking about my own personal quality of life and the other forms of private practice that might be available to me, the <u>benefits</u> of being a sole practitioner are …
Thinking about my own personal quality of life and the other forms of private practice that might be available to me, the <u>drawbacks</u> of working as a sole practitioners are …

Please take a few minutes to complete each of those sentences and then we'll talk about what you wrote down.

Benefits of Sole Practice

Let's start with the <u>benefits</u> of sole practice. What did you write down? *[Probe for - freedom/no boss, control over work schedule, professional satisfaction, client satisfaction, contribution/connection to community, choice of community]*

Are there specific benefits or advantages to being a sole practitioner that you don't get working in other private practice environments?

Does being a sole practitioner make it easier to decide where you want to practice?
[Probe for link between sole practice and choice of community]

Do you have more freedom to decide what areas of law you want to practice in?

Does being a sole practitioner affect how you provide legal services?
Does it affect who you provide services to?

Which of these benefits we have just discussed is important to you?
Why?

Drawbacks of Sole Practice

What about the drawbacks of being a sole practitioner? What did you write down?

[Probe for – lack of support, client dissatisfaction, cost and revenue issues, isolation, motivation?]

Are there specific drawbacks or disadvantages to being a sole practitioner that you might not have to deal with in other forms of private practice?
[Probe – listen for mentions of firm size, resources, staff support].
If you were in a larger firm, how big would it have to be to solve that problem?]

Which of these drawbacks we have discussed do you feel is the most serious? Why?

Equality-seekers

The Law Society defines members of "equality-seeking communities" as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation, or gender. In the opinion survey I mentioned earlier we found that just over 25% of lawyers in private practice in Ontario, defined themselves as equality-seekers.

Do any of you think of yourself as an "equality-seeker" for any (or all) of the reasons I listed *[read criteria again]?*

[If Yes], Is your experience of the benefits and/or the drawbacks of being a sole practitioner distinctive because you belong to an equality-seeking community? In what ways?

[If No] Although it is not part of your direct experience, do you have any observations about how belonging to an equality-seeking community might affect a lawyers' experience as a sole practitioner, such as a friend or colleague you might know? *[Probe for observations of friends, colleagues]*

General

Is your job as a sole practitioner working out as you originally expected or hoped?

What were your biggest surprises or disappointments?
Overall, would you say you are satisfied or dissatisfied with your current work as a sole practitioner? [*show of hands]*

The Future

Are you optimistic or pessimistic about your future as a sole practitioner? Why?

[Probe both responses]

What do you expect will be positive or attractive about your future as a sole practitioner?
What do you expect will be negative or unattractive about your future
as a sole practitioner?

Do you expect to be working as a sole practitioner three years from now?
[Probe yes and no responses. Show of hands]

[If not] What do you think you might be doing instead three years from?

Viability

5.0 Is survival an issue? (12 minutes)

There is a perception that sole practitioners and small firms may be facing challenges to their survival. Hence the name of the Law Society task force: *Task Force Examining the Ongoing Survival of Sole Practices and Small Firms.*

Is the survival of sole practitioners threatened? *[show of hands]*
[Follow-up probes]
[If yes] In what ways do you feel your survival is threatened? *[Probe for direct personal experiences]*

[If no], What makes you say the survival of sole practitioners is not threatened? [*Probe for direct personal experiences]*

Unique/distinctive services of sole practitioners

Apart from the importance of keeping your own job, does it matter if sole practitioners survive?

[No] Why? Can lawyers in larger firms provide all the legal services and serve all the communities that sole practitioners presently serve?

[Yes] Why? Is there something that sole practitioners do that is distinctive compared to lawyers in larger firms? [Note: This is important]

[Prompt as necessary] Do they/sole practitioners provide unique kinds of legal services, serve specific groups of clients or communities?

Survival of sole practitioners alone

The research we have already carried out suggests that it might be even harder to maintain a sole practice if you are practicing alone, without other lawyers in the same office.

Do you agree? Does that fit with your experience?
Is the survival of the sole practitioner who is entirely on their own more threatened than other sole practitioners?
Why? What is the difference between the two types of sole practitioners, that is soles who are alone and those sharing space with other lawyers?
[Probe for difference in capacity e.g. Legal aid]
Again, apart from the importance of keeping your own job, does it matter if sole practitioners alone survive?

[Prompt] Are there specific legal services they deliver communities or clients they serve?

Income

[Note: limit the discussion about income. Focus on feelings of sole practitioners]
How do you feel about your income? Are you earning what you had expected? Less? More?

Is it is harder to make a living as a sole practitioner compared to other lawyers in private practice? Why?
Is there an income gap between sole practitioners and other lawyers in private practice? Why? Which lawyers are doing best? Worst?
How do you feel about the income disparity?

Is the income gap widening between sole practitioners and others?
Based on your experience, do you think sole practitioners are falling behind?

6.0 Financial Viability (25 minutes)

[Moderator passes out workbooks]
I want to ask you some questions about the financial viability of sole practices. But before I do that I'd like you to turn to Worksheet #2 in the workbooks I am passing out and complete the two sentences on that page.

Worksheet #2

The first sentence reads, "The biggest challenges I am facing in sustaining the financial viability of my practice are…"
The second sentence reads, "The biggest opportunities available to me to sustain the financial viability of my practice are…"

Please take a few minutes to complete each of those sentences and then we'll talk about what you wrote down.

Financial Challenges

Okay, let's start with the biggest financial challenges. What did you write down?

[Follow-up probes following participant comments]
What's the main reason why sole practitioners have difficulty sustaining financial viability?
[Follow-up probes following participant comments. Probe for affordability of services, market pressure to keep fees low, inability/unwillingness of clients/potential clients to pay for legal services, competition from non-lawyers and lower priced legal products, overhead costs]

Is this different now than it was in the past? How?

Are problems of financial viability caused mainly by a lack of revenue or by the cost of financing your practice?

[Probe for details in both areas. Important]

Do you have enough work?

What are the most serious sources of *competition? [Probe for banks doing mortgage renewals in-house; title insurance products; paralegals; will kits; self-representation,etc.*]
What areas of practice are most vulnerable to these kinds of competition?

Are these challenges to financial viability serious?
Which ones are the most serious?
Are they driving lawyers out of business? Who? Where?
Are there specific areas of practice which have become less financially viable? Specific areas/communities?

Financial Opportunities

Okay, and what about the biggest opportunities available to you in your practice?
What did you write down?
[Follow-up probes following participant comments]

Are there Areas of Practice that have become more financially viable?
Specific areas/communities that offer opportunities for sole practitioners?

For the purpose of our analysis we have established a working definition of a General practitioner as anyone providing legal services in three more areas of law (such as real estate, corporate commercial, family and matrimonial). Conversely a specialist would be someone working two areas of law or fewer.

Who here would define yourself as a general practitioner? [show of hands] Specialist? [show of hands]

Should sole practitioners be specializing more? Is it more efficient and therefore financially viable to be a specialist? Conversely, is it more difficult and less financially viable to be a general practitioner?

Comparing soles alone and soles working with others

Some of you are working entirely on your own, not sharing office space with other lawyers, while others are in sole practice but sharing office space with other lawyers. Is there a difference, either in terms of financial challenges or in terms of financial opportunities?

[Probe for positive and negative comparisons with representatives of both groups]

What about differences in the level or type of support you receive? Does having support staff make you more efficient? How? What about the view that having more support staff increases overheads by too much?

Does everyday contact with other lawyers in the same office affect how you manage your practice? In what ways?

The successful/unsuccessful sole practitioner

We have talked about threats to survival and/or challenges to financial viability for sole practitioners, and many of you have agreed that these are very serious.

So, what makes a successful sole practitioner?
[Probe extensively for areas of practice specialization, geography/community, specifics of practice management, use of technology, work habits]
Is the size of the community and the mix of legal services a factor in whether sole practitioners are successful?

And what makes an unsuccessful sole practitioner?
[Probe extensively for areas of practice specialization, geography/community, specifics of practice management, work habits]
Is it harder to be successful if you are practising alone without other lawyers in the same office?
[Probe for lack of administrative support, less efficient, isolation, harder to retain clients with a variety of needs]

Are the various pressures we have discussed changing the profession, and more specifically changing what it means to be a sole practitioner?
How?

Access

7.0 Access: Clients and Communities Served (10 minutes)

Here is a question we asked in the opinion survey: Do you think there is currently a shortage of any kinds of legal services in whatever community you serve?

[Probe for shortages, description of the community where shortages are occurring and the clients or potential clients who are experiencing shortages]

What are the main areas of law where you see shortages?

What [type, location, size] communities are experiencing shortages?

In those communities that are experiencing shortages what is the reaction?
Are there public demands/expectations to maintain legal services?
Indications of inconvenience/hardship?

What clients/groups of clients are most severely affected?

Should the [collective] legal profession be taking a position/making public statements for the maintenance of a "reasonable" level of services?

Considering Solutions

8.0 Policy Options [25 minutes]

As I mentioned at the beginning of this discussion the goal of the Sole Practitioner and Small Firm Task Force is to generate specific recommendations which the Law Society of Upper Canada or possibly some other agency could undertake.

Some of what came out of the survey lends itself to an opportunity to brainstorm….

Worksheet 3 is a list of some possible areas for policy action. Please note it is printed on both sides. These are not decisions that the Task Force has taken. These recommendations have not even been discussed by all of the members of the Task Force. These ideas are intended as a starting point, presented here mainly to stimulate discussion and get your input.

Before we discuss these potential areas for action, read them over and in the appropriate space in the right hand column write down your initial impression of the suggested action as well as any specific suggestions or recommendations that come to mind. At the end of the table there is blank space for you to make additional suggestions, from scratch as it were. I'll give you a chance to add your suggestions there before the end of the discussion. But for the moment please read the list that is there, and write down your impressions and any related suggestions that you may have.

[Moderator allows time for written exercise]

Okay, does anybody want to start with any particular suggestion they liked?

[Moderator proceeds through as many items as possible, with the following probes]

Is this a good idea? Why? What is the benefit?
[Re: Item 5 in worksheet #3]: Aren't there a lot of supports already? Do you use the supports that are available? What do use? How often would you say you use the LSUC website? What for? What do you find useful?]
Is it workable?
What can you add this?
How would it work?
Who should carry this out? [The Law Society? Bar Association? Government?]

Please add any further suggestions or comments as they come to mind.

[Following discussion, moderator asks participants to rank each policy area]

Okay, before we complete this exercise please take a moment and in the blank spaces provided for additional suggestions, please add any policy suggestions or recommendations for action that don't fall under any of the areas described in the table.

And finally, in the narrow column all the way on the right hand side I would like you to rank these suggestions with "1" for the idea you liked the best and "7" for the idea you like the least. As I mentioned these ideas are quite general, so I will leave it to you to interpret them or add
detail in whatever way you like.

[Note: Before wind-up ask participants to complete survey on worksheet #4. Moderator explains context]

9.0 Final Thoughts [5 minutes]

Before we finish tonight, I'd like to ask if anyone has any final thoughts on this topic?

Thanks again for taking the time to attend tonight. Your contributions were very helpful.

Report to the Task Force Examining the Ongoing
Survival of Sole Practices and Small Law Firms

Sole Practitioners and Employees/Associates from Equality-Seeking Communities: Benefits, Drawbacks, Financial Challenges and the Future of Practising in the Small Firm Environment

October 6, 2004
Strategic Communications, Inc.
David Kraft, Stephen Arsenault,
Olga Ialanskaia, Gillian Strange

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Executive Summary

Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in May 2004, to conduct focus group research as the follow-up to an earlier phase of primarily survey research which was completed in April 2004.

The survey research explored differences and similarities between lawyers in sole practices and small firms (the target group) and lawyers in firms with more than five lawyers (the non-target group). The subsequent phase of focus group research, comprised of nine focus groups and three long interviews, explored similar themes within the target group. Findings from the focus group research, combined with additional analysis of the survey research data, have been presented in *Sole Practitioners and Employees/Associates in Small Firms: Benefits, Drawbacks, Financial Challenges, and the Future of Practising in the Small Firm Environment (Sole Practitioners and Employee/Associates in Small Firms Report)*, submitted in August 2004.

This report focuses on the lawyers who considered themselves to be a member of one, or more than one, equality-seeking community: 139 survey respondents, comprising 26% of the survey target group, and the participants in two of the nine focus groups referred to above. This report compares equality-seekers with others in the target group, exploring the extent to which equality-seekers experience the practice of law differently than do others in the target group, because of their membership in an equality-seeking community.

Methodology

In the survey of lawyers in private practice, we asked respondents the following question:

> The Law Society has defined members of 'equality-seeking communities' as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual, orientation or gender. Do you consider yourself a member of an equality-seeking community?

As noted, 26% of target group respondents (n=39) answered yes to this question, which also served as a screen to recruit participants for two focus groups. Throughout this report we describe this sub-group of sole practitioners and small firm employees/associates as "members of equality-seeking communities" or "equality-seekers."

Both quantitative research results from the survey and qualitative focus group data collected from members of equality-seeking communities were incorporated into the larger survey and focus group research, results of which have been presented in *Sole Practitioners and Employees/Associates in Small Firms Report*. Much of that report explored differences and similarities between lawyers working in different practice contexts. This report takes a different approach. While continuing to note differences that may be specific to different practice contexts, it places greater emphasis on those themes and issues that may be unique to some or all equality-seekers.

Some important aspects of the category of "equality-seeker" should be noted. Since membership in an equality-seeking community is defined by subjective assessments that may change with specific circumstances, individuals who meet the objective criteria may or may not identify themselves as equality-seekers. Further, there is not necessarily any comparability of experience between different groups of equality-seekers. For example, the experience of belonging to an equality-seeking community by virtue of a disability may have little to do with the experience of equality-seekers who self-identify on the basis of race or gender. And further still, terms like disability, race, ethnicity, gender and language each cover vastly different experiences that may be ignored or understated when the broad-brush term of equality-seeker is applied. It therefore bears emphasizing that much of what equality-seekers have in common is defined in negative terms, that is, in relationship to others in the target group who do not define themselves as equality-seekers.

The decision to separate women and men in the recruitment of equality-seekers was based on previous analysis that indicated substantial differences between women and men in the target group as a whole. However, in other respects, the criteria for recruitment to the equality-seeking focus groups was limited to identifying membership in any equality-seeking community. Consequently, each of the equality-seeking focus groups took on a specific character. In the focus group made up of seven women, of whom just one participant belonged to a racialized group, gender was the primary axis of the discussion about the experience of being an equality-seeker. In the focus group of seven men, four who belonged to racialized groups, ethnicity and race was the primary axis of the discussion about the experience of being an equality-seeker. Given the great diversity of equality-seekers, we assume throughout this report that the findings of these focus groups can offer only a partial insight into the more complex and diverse experience of equality-seekers as a group.

Characteristics of Equality-Seekers

This report compares demographic, practice characteristics, main areas of practice, practice stability and income between equality-seekers and others in the target group.

Key findings in these areas include:

- Women comprise a higher percentage of equality-seekers than they do of the target group as a whole;
- On average, men and women in the equality-seekers group are slightly younger and more recently called to be bar than their counterparts in the rest of the target group;
- Equality-seekers are more likely to offer their professional services in languages other than English;
- A higher percentage of equality-seekers report accepting Legal Aid clients, and for those individuals, Legal Aid comprised a higher percentage of their work than it did for others in the target group who also accept Legal Aid clients;
- Among their main areas of practice, equality-seekers cited Family and Matrimonial and Criminal law more frequently, and Wills, Estates and Trusts, Civil Litigation and Real Estate less frequently, than others in the target group;
- Among equality-seekers, as in the target group as whole, women cited Family and Matrimonial law as a main area of practice much more frequently than men, while citing the other top six areas of law less frequently;
- A higher percentage of equality-seekers than others in the target group reported earning annual incomes of less than $75,000 (75% compared to 55%). A higher percentage than

others in the target group also reported earning less than $50,000 (28% compared to 15%).

Choosing their Current Practice Context

For about two-fifths of those equality-seekers surveyed, belonging to an equality-seeking community was an important or very important factor in their choice of practice context. A similar proportion reported that their equality-seeking status was a factor in their choice of area or areas of law practiced.

Equality-seekers in our two focus groups shared many of the opinions of others in the target group regarding the benefits of sole practice and the small firm environment. In particular they stressed the positive aspects of control, flexibility, independence and freedom characteristic of the sole practice and small firm environment. They emphasized flexibility with respect to the organization of work and the work day, the freedom to adapt work schedules to accommodate family and life style needs, and control over the choice of clients and the type of lawyer-client relationship developed.

Most participants reported a larger element of choice than necessity in the chain of decisions that had resulted in their current practice context. But for some, circumstances or the pressures of economic necessity, played a role. As we noted in the previous report that analyzed the findings of all nine focus groups together, the choice of practice context was sometimes shaped by factors of gender, ethnicity and race. Individuals in the equality-seekers reported instances of both overt and subtle bias based on gender, race or ethnicity, which had resulted in missed articling, job and career opportunities.

Several accounts of bias detailed negative experiences associated with larger law firms. Although none of the women participants explicitly attributed gender bias to their choice of practice context, several mentioned what they perceived as negative aspects of the larger firm environment.

For some of the participants in both groups the connection to the equality-seeking community of which they were themselves members, was an important factor in shaping their practice context, the composition of their client base, and informing their own rationale for practising law. For these individuals, the specific characteristics of the community they served, that community's needs for legal services, their cultural expectations, language and relationship to the dominant culture, all contributed to the shape and character of the individual's law practice.

Drawbacks of the current practice context

Comparison of both quantitative and qualitative research showed that equality -seekers generally identified the same problems or drawbacks in their practice as others in the target group. Written and verbal comments from the equality-seekers highlighted the problems of low income, too much time spent on nonbillable administration, and the difficulties of maintaining the balance between work and the rest of their lives. As they had in the other seven focus groups, sole practitioners alone in both groups of equality-seekers, flagged the problem of isolation from other lawyers.

Gender

Participants in the women's group of equality-seekers reported much lower annual income than did their counterparts in the men's group. This may partly have accounted for differences in men and women's perceptions of the nature and scope of problems associated with their current practice.

Gender differences were perceived by the women participants to be fundamental in shaping perceptions related to managing work and life. In the women's group, the conversation about specific drawbacks of the practice context spontaneously gave way to a discussion about the many disadvantages that women faced in practising law. The women all agreed that practising law in a sole practice or small firm environment imposed very serious restrictions on the viability of having children.

Discussion in the women's group about the constraints imposed on having children were intertwined with a larger discussion about sexual harassment and condescension toward women within the law profession. Citing various examples and experiences, most women reported that sexual harassment was pervasive in the legal profession. Those who did not agree that sexual harassment was pervasive nevertheless conceded that women are frequently the targets of condescending attitudes and biased treatment from men in the profession.

What emerged from the conversation with seven women equality-seekers was a unitary description of the legal profession as a place where being a woman is itself a drawback to practising law.

Race, Ethnicity and Religion

The theme of the equality-seeking discussion in the men's group was ethnicity/race. However, because some participants were outsiders to this discussion and because issues of race and ethnicity may be more difficult for men to discuss than are gender issues for women, the conversation was generally more circumspect than the women's discussion described above.

But beyond the effects of greater diversity within this group, participants were less homogeneous in their views and less likely to report having suffered professional drawbacks because of their membership in equality-seeking communities. For this group, which generally acknowledged elements of bias and discrimination within the legal system and the profession, the negatives were often balanced, and sometimes outweighed, by the perceived advantages. Benefits included both preferred access to one's own equality-seeking community, and the opportunity to serve the wider potential client community in a social milieu in Toronto, where ethnicity and race were often unimportant or irrelevant considerations.

Financial Challenges and Opportunities

Comparisons of the overall "financial viability index" (Table 6, pg. 56) suggested that for equality-seekers, maintaining financial viability is perceived as a more serious challenge than it is to others in the target group.

Three women in the equality-seekers were unequivocally pessimistic about their financial future. In each case, it was also clear from other comments that these women were facing general challenges to their future viability. Women who depend on Legal Aid billing reported serious

problems with rates that were “too low” and payment schedules that were “too slow.” For some, overhead costs were a serious problem in a context where revenue flow was very limited. Still others reported either a chronic or a cyclical shortage of clients.

With the single exception of a newly called employee/associate who was between jobs, participants in the men’s group reported moderate to high satisfaction with their income, appeared to be generally satisfied with the state of their law practice and expressed optimism about the future.

Although many men listed maintaining their client base among the financial challenges they faced, six of the seven participants in this group also listed their client base among the biggest opportunities available to sustaining the future viability of their practice. Three of the four individuals who were members of visible minorities explicitly acknowledged the benefits of preferred access clients from their own equality-seeking community.

Many of the themes that emerged in the two equality-seekers focus groups were similar to those identified from the analysis of the other seven focus groups. However, what emerged as distinctive between these two groups, were the differences in the severity of the financial challenges facing the men and those facing the women. Whereas the men reported general satisfaction with their income, prospects, and particularly the stability of their client base, the women were much less satisfied with their income, and reported facing more serious financial challenges. In some cases, women reported financial challenges that appeared to be undermining the viability of their practice.[1]

Shortages of legal Services

Equality-seekers were somewhat more likely than others in the target group to report shortages of legal services in the communities they served.

Discussion in the focus groups confirmed the conclusions of the survey research and echoed many of the contributions of participants in the other seven focus groups. Participants in both groups identified systemic shortages of access to legal services, which were contributing to reduced access to legal representation for a large population of middle income earners. Individuals identified specific problems with inadequate criminal representation, as well as a civil litigation process that had become prohibitively expensive. Some participants described the Legal Aid system as unworkable in virtually all its aspects. One individual also noted impending shortages of legal services in small towns and another identified a general problem of inadequate representation for those with mental health problems.

Interacting with the Law Society

In the final exercise of the focus groups, we asked participants for their written and verbal responses to six broadly defined policy ideas which, it was suggested, could conceivably be undertaken by the Law Society, the Government or some other appropriate agency.[2] Like their

[1] The gender differences observed in the equality-seeking groups were consistent with the gender differences we noted in the analysis of the quantitative and qualitative findings for the target group as a whole.

[2] In both the two equality-seeking focus groups and the other seven focus groups, written responses were generally favourable to all six-policy ideas put forward. In the *Sole Practitioners and Employees/Associates in Small Firms Report*, we have summarized all responses of

counterparts in the other seven focus groups equality-seekers were generally favourable towards the six policy ideas put forward. Participants in both groups endorsed the idea of increased support to sole practitioners and small firms, particularly in the form of increased access to courses and expertise through the web, but also in the form of pro-active counseling. The need for more advice on how to set up and manage sole practice was mentioned frequently. However, many participants felt that existing services were priced too high and designed to meet the need of larger firms rather than small firms. Some participants also questioned the quality and the timeliness of some services, suggesting again that more should be done to adapt service, price and delivery to the needs of those in the small firm environment. One sole practitioner, who enjoyed a very positive mentoring experience as a result of a Law Society referral, recommended the development of an "in-depth mentoring" program.

Conclusion

This analysis of limited quantitative (n=139) and qualitative data (two focus groups) has provided some useful insights into defining equality-seekers as a subset of the target group of sole practitioners and lawyers in small firms.

The comparisons in Section 3.0 of this report suggest some important differences with respect to gender composition, income, areas of practice, and reliance on Legal Aid. At the same time equality-seekers and others in the target group share a common framework of experience defined by the small firm environment. Tables 4, 5, 6 and 7 illustrate some differences, as well as the overarching similarities between equality-seekers and their counterparts in the sole practice and small firm environment. On the one hand, the data suggests that equality-seekers -- men and women -- may be slightly more dissatisfied, face more serious challenges to their financial viability, and place greater value on specific supports and resources. On the other hand, these differences occur within a framework in which equality-seekers and those who are not equality-seekers, generally perceive very similar challenges and solutions to the problems of sustaining a viable private practice and a healthy work-life balance.

Analysis of the qualitative data generated in two focus groups attempted to pinpoint the extent to which individuals who self-identified as equality-seekers perceived their equality-seeking status as an important element or mediation in experience as lawyers. This analysis was complicated from the outset by the fact that the designation of equality-seeker is both objective and subjective, and serves as an umbrella term, grouping a wide diversity of sociological characteristics and experiences under a single heading. One consequence of this is the fact that our two equality-seeking focus groups inevitably excluded or under-represented at least as many types of lawyers representing equality-seeking communities as they included. However, allowing for the fact that equality-seeking communities were not fully represented in our two focus groups, the findings of these groups nevertheless offered some important insights into the issues, as well as suggesting some guidelines for future research.

Comparisons between men and women reinforced the conclusions of previous research that suggested gender is a major factor distinguishing the experience of women in the small firm environment. Unprompted, women provided a detailed and largely shared accounted of

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participants in all nine focus groups. Responses are further broken down by the three main practice contexts of focus group participants (sole practitioners alone, sole practitioners practicing with others, and employees/associates).

fundamental difficulties of having children and a family while practising law in the small firm environment. A closely related concern was that women in private practice were subjected to widespread if not pervasive sexual harassment and discriminatory treatment because they are women.

Neither the limited survey sample size nor the composition of the women's focus group, permitted an extensive exploration of the specific experience of equality-seekers who are defined by both gender and race/ethnicity. However, the contribution of two focus group participants suggested that many of the negative experiences of women are almost certainly compounded when race, ethnicity, language or religion enter the equation.

In contrast to the women's group, the men comprised a majority of individuals who belonged to racialized groups. In comparison with their counterparts in the women's focus group, this group of men reported greater overall satisfaction, higher incomes and more optimism about the future. In addition, many expressed both satisfaction and a positive strategy toward balancing work and family life. This group of men offered insights into the benefits of being closely connected to an ethno-racial community that provided them with a reliable client base. In a social milieu where increased ethnic diversity may have modified traditional prejudices, these individuals also reported enjoying the advantage of relatively open access to other communities as well. At least in the case of this small sub-sample, an ongoing association with their respective equality-seeking community appeared to offer distinct advantages to these sole practitioners and lawyers working in the small firm environment.

Further research could continue to explore useful ways of pinpointing and defining different sub-groups currently grouped under the umbrella term of equality-seekers. Generating more detailed and specific research findings will depend in part on developing a more refined typology of the different factors, and combinations thereof, that may result in individuals experiencing a disadvantage or an equality deficit, or in some cases an advantage, in practicing law.

1.0 Introduction

The Task Force Examining the Ongoing Survival of Sole Practices and Small Law Firms, commissioned Strategic Communications in May 2004, to conduct focus group research as the follow-up to an earlier phase of, primarily, survey research which was completed in April 2004.

The survey research explored differences and similarities between lawyers in sole practices and small firms (the target group), and lawyers in firms with more than five lawyers (the non-target group). It compared demographic and practice characteristics between the target and non-target groups, satisfaction/ dissatisfaction and financial viability within the target and non-target groups, and identified members of "equality-seeking communities" in the two groups.

The subsequent phase of focus group research comprised of nine focus groups and three long interviews, explored similar themes within the target group, including, participants':

- Reasons for choosing a specific practice context;
- Perceptions of the benefits and drawbacks of their chosen practice context;
- Perceptions of the financial viability of practising as a sole practitioner or as an employee/associate in a small firm;
- Views on the future of sole practices and small firms;
- Responses to policy ideas.

The findings of this focus group research, combined with additional analysis and interpretation of the survey research data, have been presented in the *Sole Practitioners and Employees/Associates in Small Firms Report.*

This report focuses on the lawyers who considered themselves to be a members of one, or more than one, equality-seeking communities: 139 survey respondents, comprising 26% of the survey target group, and the participants in two of the nine focus groups referred to above. This report compares equality-seekers with others in the target group, exploring the extent to which equality-seekers experience the practice of law differently than do others in the target group, because of their membership in an equality-seeking community.

2.0 Methodology

2.1 Research Design

In the survey of lawyers in private practice, we asked respondents the following question:

> The Law Society has defined members of 'equality-seeking communities' as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation or gender. Do you consider yourself a member of an equality-seeking community?

As noted, 26% (n=139) of target group respondents answered yes to this question, which also served as a screen to recruit participants for two focus groups. Table 1 presents the number, gender composition and practice description of the participants in two focus groups convened in Toronto on May 13, 2004 each group. Throughout this report we describe this sub-group of sole practitioners and small firm employees/associates as "members of equality-seeking communities" or "equality-seekers." Tables compare equality-seekers and others in the target group, men and women, and smaller subgroups of equality-seekers who identified gender, race, or ethnicity/religion /language as their first or only reason for belonging to an equality-seeking community.

TABLE 1: FOCUS GROUP CRITERIA AND COMPOSITION

(see table in Convocation Report)

2.2 Analysis of the Different Sub-Groups

In the survey and focus group phases of research, we identified five sub-groups within the target group, based on differences in practice description:[3]

- Sole practitioners practising alone in an office without other lawyers *(sole practitioners alone)*;
- Sole practitioners practising with other lawyers in the same office *(sole practitioners with others) ;*
- Sole practitioners who employ other lawyers *(Sole proprietors);*
- *Partners* in firms with five or fewer lawyers;
- *Employees/Associates* in firms with five or few lawyers.

[3] Terms listed in italics indicate how the accompanying practice description will be represented throughout this report.

These distinctions were the basis for comparisons of quantitative and qualitative data within the target group. They also provided the main criteria for recruitment to seven of the nine focus groups conducted in May 2004. These included two groups of sole practitioners alone, two groups of sole practitioners with others, and three groups of employees/associates. As Table 1 shows, the two groups of equality-seekers were also comprised mainly of individuals from one of these three practice description areas, including seven sole practitioners alone, three sole practitioners with others and two employee associates, totaling 12 of the 14 participants in these two focus groups comprised exclusively of equality-seekers.

The transcripts from the two equality-seeking groups were analyzed along with those of the other seven focus groups and three long interviews. The contributions of the individuals in the equality-seekers' groups, on non-equity issues, were incorporated into the larger analysis, presented in detail in the *Sole Practitioners and Employees/Associates in Small Firms Report.*

This report takes a different approach. While continuing to note differences that are specific to different practice contexts, the analysis and interpretation places greater emphasis on those themes and issues that may be unique to some or all equality-seekers.[4]

2.3 Defining Equality-Seekers

Some important aspects of the category of "equality-seeker" should be noted here.

First, the definition of equality-seekers is based on both objective and subjective criteria. Although the definition refers to the commonly used objective characteristics of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation or gender, it also requires that the individual self-describe in order to establish their inclusion in an equality-seeking community. So, for example, though women in the target group could be equality-seekers on the basis of their gender, just 37% of the women in the target group identified gender a reason for belonging to an equality-seeking community. Along similar lines, roughly one third of target group respondents who identified themselves as belonging to one or more visible minority groups did not define themselves as equality-seekers.[5] In these and other cases, similar objective measures for membership in an equality-seeking community did not necessarily result in the same conclusion on the part of the individual respondent.

This shows the extent to which membership and non-membership in an equality-seeking community may be defined by subjective assessments that may change with specific circumstances. This fact was illustrated by some of the participants in the seven focus groups where membership in an equality-seeking community was not among the criteria for recruitment. In one such Toronto group, an African Canadian rejected the idea that he belonged to an equality- seeking community because he perceived many professional advantages arising from his relationship to his own the ethno-racial community. In the same group an individual

[4] Discussion and analysis of qualitative research findings refers to results from the two equality-seekers focus groups, unless otherwise specified.

[5] All survey respondents were asked the following question: "Census Canada provides the following membership options in certain communities. Would you please indicate which membership opinion or options apply to you. "This was followed by 13 ethno-racial community descriptions, including "other.". Of all those respondents who indicated membership in one or more communities other than "white", one third did not self-identify as a member of an equality-seeking community.

from a group originating in south Eastern Europe described his equality-seeking status as "half-and-half." In another group, one woman reported that she would not identify herself as a member of an equality-seeking community because being a woman was "irrelevant" to her current work situation. However, she did acknowledge that as a woman she was subjected to "almost discrimination" in the large firm environment where she had worked previously. In each case, these respondents weighed the reasons for and against describing themselves as equality-seekers.

Second, it is equally important to stress that there is not necessarily any comparability of experience between different groups of equality-seekers. For example, the experience of belonging to an equality-seeking community by virtue of a disability may have little or nothing to do with the experience of others who self-identified as equality-seekers because of race or gender. Moreover, terms like disability, race, ethnicity, gender and language themselves cover vastly different experiences, distinctions that may be ignored or understated when the broad-brush term equality-seeker is applied. It bears emphasizing that much of what equality-seekers have in common is defined in negative terms, in relation to others in the target group who do not define themselves as equality-seekers.

Although the limited size of the survey sample (n=139) did not permit extensive comparisons between all the possible sub-groups of equality-seekers, we have attempted to explore differences between the larger sub-groups. In the quantitative analysis, in addition to dividing the sample of equality-seekers between men and women, we have also explored differences and similarities between equality-seekers whose first mention was race(n=42) or gender (n=21), and those whose first mention was ethnicity, language or religion(n=45).[6] (See Tables 4, 5, 6 and 7.)

Equality-seekers were invited to specify one or more reasons why they considered themselves members of an equality-seeking community. All mentions were recorded. Chart 1 records the percentage of respondents who cited each of the potential equality-seeking criteria. 47% of all target group respondents mentioned ethnicity, 37% race, 28% gender, 18% language, 18% religion, 6% disability, 2% sexual orientation, and 5% other. The number of mentions per respondent ranged from one to five. As noted above, the quantitative comparisons rely on first mentions to avoid counting each individual more than once. However, Chart 1, which lists all mentions, offers a different measure in which equality-seekers can choose more than one criterion. These results provide an indication of the overall importance of specific equality-seeking criteria within the equality-seeking group as a whole. It is however, important to note that for many individuals, terms like ethnicity, race, language and even religion may have considerable overlap.

CHART 1: MAIN REASONS FOR MEMBERSHIP IN AN EQUALITY-SEEKING COMMUNITY (MULTIPLE MENTIONS)

(see chart in Convocation Report)

[6] Language and religion were combined with ethnicity because the number of individuals who cited one of these as the *first* reason for belonging to an equality-seeking community was too small to allow for meaningful analysis (n=10 in both cases).

2.4 Composition of the Equality-Seekers' Focus Groups

The decision to separate women and men in the recruitment of equality-seekers was based on previous analysis that indicated substantial differences between women and men in the target group as a whole. Otherwise the main criteria for recruiting equality-seekers was limited to identifying membership in any equality-seeking community. Consequently, each of the equality-seeking focus groups took on a specific character. In the focus group of seven women, just one of whom belonged to a racialized group, gender was the primary axis of the discussion about the experience of being an equality-seeker. In the focus group of seven men, including four who belonged to racialized group, ethnicity and race was the primary axis of discussion about the experience of being an equality-seeker.

Given the great diversity of the equality-seekers population, we assume throughout the report that the findings of these focus groups can offer only a partial insight into the more complex and diverse experience of equality-seekers as a group.

3.0 Characteristics of Equality-Seekers

3.1 Demographics

Table 2 shows some demographic comparisons between equality-seekers and those who were not equality-seekers in the target group and between men and women in both groups.

Whereas women made up just 21% of the target group as a whole, they comprised 37% of equality-seekers. In contrast men made up 79% of the target group as a whole but just 63% of equality-seekers. To put this another way, 44% of all women compared to just 20% of all men in the target group identified themselves as equality-seekers. In short, women were more than twice as likely to identify themselves as members of equality-seeking communities.

In one respect the greater percentage of women identified as equality- seekers was not surprising. Gender was among the criterion listed as a reason for equality-seeking status, and no men cited gender among their reasons for membership in an equality-seeking community. At least for our target group "gender" was synonymous with "women." On the other hand, and as focus

TABLE 2 DEMOGRAPHIC COMPARISONS

(see table in Convocation Report)

group discussions confirmed, respondents did not assume the label of equality-seeker lightly or casually. Allowing for differences of interpretation, "equality-seeking" was generally perceived to signify an equality deficit or some aspect of disadvantage in relation to other lawyers in private practice. It is therefore noteworthy that 44% of all women identified themselves as equality-seekers and almost four fifths of this group listed gender among the reasons for doing so. This is one indicator of the extent to which a very sizeable percentage of women who are sole practitioners or working in the small firm environment perceive themselves to be at a disadvantage at least in part because they are women.

Table 2 also shows that equality-seekers reported a lower average age compared to those who were not equality-seekers (45 compared to 50) and fewer average years since they were called to the bar (14 compared to 20). This is partly accounted for by the much higher percentage of

women among equality-seekers and the fact that women in the target group are younger and report fewer years since they were called. However, both men and women in the equality-seeking group reported slightly lower average ages and fewer years since they were called than their counterparts in the target group as whole.

Forty-eight percent of equality-seekers reported offering services to clients in a language other than English, compared to 34% of the target group as a whole. A higher percentage of women than men in the target group offered services in other languages (42% compared to 32%). The reverse was true in the equality-seekers group, where 51% of men and 43% of women reported offering services in languages other than English.

3.2 Practice Description

As Chart 2 shows, the distribution of the five sub-groups based on practice description is similar among equality-seekers and others within the target group. A lower percentage of equality-seekers reported being a partner in a small firm (14% compared to 20% of others) and a slightly higher percentage reported being associates/employees (19% compared to 15%).

CHART 2: DISTRIBUTION OF PRACTICE DESCRIPTIONS BETWEEN EQUALITY-SEEKERS AND OTHERS

(see chart in Convocation Report)

The differences between women and men in the equality-seeking groups corresponded roughly to the differences between men and women in the target group as a whole. In both cases (target group and equality-seekers), the percentages of sole practitioners alone, sole practitioners with others and sole proprietors were very similar between women and men. In both cases women comprised about twice as high a percentage of employees/associates. In the equality-seekers group about 25% of women compared to 14% of men were employees/associates. In the target group as a whole 28% of women compared to 15% of men were employee/associates. Among equality-seekers just 6% of women reported they were partners compared to 19% of men. This compared to the target group where 11% of women and 20% of men reported they were partners in a firm with fewer than five lawyers.

3.3 Practice Characteristics

Table 3 compares practice characteristics between equality-seekers and non-equality- seekers in the target group, as well as men and women equality-seekers and men and women within the target group as a whole.

TABLE 3 COMPARING PRACTICE CHARACTERISTICS

(see table in Convocation Report)

Comparisons of the average percentage of billable legal work, and the average percentage of time spent on non-billable administration, client development and marketing, suggest only very slight differences between equality-seekers and the target group as a whole. Women equality-seekers reported the highest percentages of pro bono work (16%), followed by women in the target group as a whole (14%). These two groups of women also report the highest proportion

of clients who are individuals, 86% for women equality-seekers and 85% for women in the target group. As a group, equality-seekers reported a slightly higher percentage of clients who were individuals, and a slightly lower percentage of clients who were businesses, than target group respondents who were not equality-seekers.

Whereas 37% of the target group of sole practitioners and lawyers in small firms reported taking some Legal Aid clients, 53% of equality-seekers reported taking some Legal Aid clients. This included 50% of men who are equality-seekers and 59% of women who are equality-seekers (not shown). As Table 3 shows, for those equality-seekers that take some Legal Aid clients, Legal Aid constitutes 47% of their work. For women equality-seekers, almost three fifths of whom reported taking some Legal Aid clients, Legal Aid constitutes 62% of their work. In short, a majority of women equality-seekers is dependent on Legal Aid for half or more of their work.[7]

3.4 Areas of Practice

In the survey research we asked respondents to indicate their main areas of practice, recording all mentions. Chart 3 lists the top six areas of practice most frequently mentioned, comparing equality-seekers and others within the target group.

There is a more balanced distribution of main areas of practice mentioned by equality-seekers than by other respondents in the target group. Areas of law mentioned more frequently by equality-seekers included Family and Matrimonial Law (35% compared to 23% for others in the target group) and Criminal (22% compared to 16%). Areas of Law mentioned less frequently by equality-seekers included Wills, Estates and Trusts (29% compared to 37%), Civil Litigation (34% compared to 40%) and Real Estate (40% compared to 48%). In both groups 33% of respondents listed Corporate-Commercial among their main areas of practice.

CHART 3: MAIN AREAS OF PRACTICE (ALL MENTIONS)

(see chart in Convocation Report)

Chart 4 lists the top six areas of practice, comparing men and women within the equality-seekers group. Women in both the equality-seeking and target group mentioned Family and Matrimonial Law roughly twice as frequently as men, while mentioning the other five areas of practice substantially less often. In the equality-seekers group, just 25% of women mentioned Real Estate compared to 48% of men. Similarly, 20% of women compared to 41% of men listed Corporate-Commercial among their main areas of practice.[8]

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[7] In the *Sole Practitioners and Employees/Associates in Small Firms Report* we noted that comparatively high percentages of women in the target group (47%), sole practitioners practicing with others (45%), and employees/associates (43%), reported taking some Legal Aid clients. For these sub-groups who take Legal Aid clients, Legal Aid work constituted 55%, 43% and 62% of their work respectively. As a group, a higher percentage of equality-seekers, particularly women equality-seekers, depend on some Legal Aid work. Almost three fifths of women equality-seekers (59%) are dependent on Legal Aid billing for more than three fifths (62%) of their work. This represents the greatest overall dependence on Legal Aid work among all the sub-groups we have analyzed in our research.

CHART 4: TOP 6 AREAS OF PRACTICE FOR EQUALITY-SEEKERS (ALL MENTIONS)

(see chart in Convocation Report)

3.5 Practice Stability

In the survey research we asked respondents if each of their main areas of practice was "growing", "stable" or "declining." Chart 5 summarizes all mentions for all areas of practice, comparing practice stability between equality-seekers and others in the target group. These comparisons suggest that there may be very slight differences between the two groups, with equality-seekers describing 45% of their main areas of practice growing compared to 47% of all mentions among others in the target group. A slightly higher percentage of equality-seekers mentioned their main areas of practice as stable, 45%, as compared to 43% of all mentions among others in the target group. Equality seekers described just 11% of all practice areas mentioned as decreasing, compared to 10% of all mentions from other respondents in the target group.

CHART 5: IS YOUR PRACTICE AREA GROWING, STABLE, OR DECREASING? (ALL MENTIONS)

(see chart in Convocation Report)

3.6 Income

Previous research compared incomes between the target and non-target groups. It noted that in the target group 18% of respondents (sole practitioners and lawyers in small firms) reported earning less than $50,000 annually from their practice in 2002, and a further 41% reported earning less than $100,000 annually. Further comparisons within subgroups, defined by different practice descriptions, showed that sole practitioners alone reported the highest percentage of individuals earning less than $50,000 from their practice in 2002 (25%).

Chart 6 compares income levels of equality-seekers and others in the target group, showing that equality-seekers report significantly lower income levels than other lawyers in the target group. 75% of equality-seekers reported an annual income from their practice of less than $100,000 compared to 55% of other respondents in the target group. At the lower end of the income scale, 28% of equality-seekers reported earning less than $50,000 annually, compared to 15% of other respondents in the target group. Similar percentages of men and women equality-seekers reported annual incomes lower than $50,000 (29% and 27% respectively).[9]

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[8] As reported in the *Sole Practitioners and Employees/Associates in Small Firms Report* there are also substantial differences in the main practice areas between men and women in the target group as a whole.

[9] As Table 2 shows, on average equality-seekers are somewhat younger than their other members of the target group. This may be one factor which contributes to the comparatively lower incomes reported in Chart 6. However, given the relatively small differences in age and the comparatively large differences in distribution of income it seems likely that other distinctive

CHART 6: INCOME

(see chart in Convocation Report)

4.0 Choosing the Current Practice Context

4.1 Measuring Satisfaction of Equality-Seekers

As reported in *Sole Practitioners and Lawyers in Small Firms* (April 2004), when they were asked to rate their overall level of satisfaction with their practice, 75% of target group respondents compared to 88% of non-target group respondents reported they were somewhat/very satisfied. Just 10% of target group respondents and 2% of non-target group respondents reported they were dissatisfied. Within the target group, satisfaction with their practice rose to 82% for employees/associates, and dropped to 73% and 66% respectively for sole practitioners with others and sole practitioners practising alone. Just 5% of employees/associates reported they were dissatisfied, compared to 10% of sole practitioners with others and 14% of sole practitioners alone. Thus, while the level of overall satisfaction in the target group was quite high, it was nevertheless lower than overall satisfaction in the non-target group, and declined somewhat further among sole practitioners.

In comparison, a higher percentage of equality-seekers than others in the target group reported they were dissatisfied (12% compared to 9%) and conversely a lower percentage reported they were satisfied (70% compared to 76%). However, these are small differences. In addition, as we noted with respect to the target group and the sub-groups based on the five practice descriptions, the level of overall satisfaction was relatively high. Conversely, the percentage of respondents who are explicitly dissatisfied is relatively low in all of these groups.

4.2 General Benefits of the Current Practice Context

In the focus groups we asked participants to complete the following statement:

> Thinking of my own personal quality of life and the other forms of private practice that might be available to me, the benefits of being a [sole practitioner or employee/associate] are…

As reported in Table 1, our 14 participants in the two focus groups of equality-seekers included seven sole practitioners practising alone, three sole practitioners practising with other lawyers, two employees/associates, one sole proprietor and one partner in a small firm. The opinions of individuals in these two groups tended to mirror those of their counterparts in the other seven focus groups. In both cases, participants stressed the control, flexibility, independence and freedom, which are among the most cherished benefits of the sole practice and small firm environment.

Participants in both groups of equality-seekers emphasized flexibility with respect to the organization of work and the work day, the freedom to adapt work to accommodate family and life style needs, and control over the choice of clients and the type of lawyer-client relationship developed. As we also heard in all of the other focus groups, participants in these two groups valued the freedom to make the rules about who would be served and the standard of

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factors including race, ethnicity, language and gender play a larger part in determining income for equality-seekers.

service they would receive. One participant in the women's group, a sole practitioner practising alone, stressed the importance of being able to set and maintain high ethical standards, which she was not able to do when she worked in a larger firm. A man in the other equality-seekers group stressed the benefit of being able to accept pro bono cases when he wanted and to reject clients when he chose to do so.[10]

4.3 Choosing Practice Context and Areas of Practice

In the survey we asked equality-seekers "how important being a member of an equality-seeking community was in your decision to practise as you are now, by which [we] mean practising alone or with others in a small firm." Chart 7 summarizes responses and shows that among those who responded to the question, 18% identified their equality-seeking status as the "most important" reason and a further 25% described it as an "important" reason for their choice of practice context. A higher percentage of women than men (48% compared to 38%), indicated that membership in an equality-seeking community was the most important or an important reason affecting their choice of practice. On the other hand, 38% of the whole group reported that membership in an equality-seeking community was "not important at all" and a further 13% reported it was "unimportant".

CHART 7: HOW IMPORTANT WAS BEING A MEMBER OF AN EQUALITY-SEEKING COMMUNITY IN YOUR DECISION TO PRACTISE AS YOU ARE NOW

(see chart in Convocation Report)

A further question asked equality-seekers if being a member of an equality-seeking community was "an important factor, one consideration among many, or not a relevant consideration" in choosing their area or areas of practice. As Chart 8 shows, equality-seeking status was an "important factor" for 18% and "one consideration among many" for 27%. A higher percentage of women than men (53% compared to 41%) reported that membership in an equality-seeking community had some influence over their choice of practice area or areas (not shown).

CHART 8: HOW IMPORTANT WAS BEING A MEMBER OF AN EQUALITY-SEEKING COMMUNITY IN CHOOSING YOUR AREA OR AREAS OF PRACTICE?

(see chart in Convocation Report)

For those respondents who indicated that being an equality-seeker had affected their choice of practice area or areas (n=63), an open-ended question asked *how* membership in an equality-seeking community had affected their decision. Chart 9 summarizes the reasons given by this subset of equality-seekers. It indicates that 29% were motivated to choose a specific area or areas of practice to help people in marginal social positions, 20% to deal with shortages of services and client demands, 14% to provide services in languages other than English, and 12% to exploit market opportunities.

[10] For a more detailed discussion of the benefits of the sole practice and small firm environment which incorporates the comments of the two focus groups comprised of equality-seekers, the reader is referred to the *Sole Practitioners and Employees/Associates Report.*

CHART 9: HOW DID YOUR MEMBERSHIP IN AN EQUALITY-SEEKING COMMUNITY AFFECT YOUR DECISION TO CHOOSE THE AREA OR AREAS IN WHICH YOU NOW PRACTISE? N=63*

(see chart in Convocation Report)

Finally, among the quantitative measures that explored the effects of equality-seeking status on choices of practice context and areas of practice, we also asked respondents what percentage of their clients was from the same equality-seeking community as they were themselves. Overall 36% of respondents reported that more than 50% of their clients were from the same equality-seeking community and a further 20% reported between 26% and 50% of their clients were from the same equality-seeking community as they were. Among women equality-seekers reported more than 50% of their clients were from the same equality-seeking community as them, compared to 30% of men. When we compared equality-seekers by first mentions (race, ethnicity/religion/ language, and gender) differences were slight.

4.4 Choice versus Necessity

We asked participants if the decision to work in their present practice context, as opposed to other possible private practice options, was a matter of choice or necessity, or to what extent it was a combination of both. The responses of our two groups of equality-seekers corresponded roughly to the balance and the composition of opinions we heard in the other seven focus groups. Most participants reported a larger element of choice than necessity in the chain of decisions that had resulted in their current practice context. But for many, circumstances or the pressures of economic necessity, also played a role. As noted in the previous report that analyzed the finding of all nine focus groups together, the choice of practice context was sometimes shaped by factors of gender, ethnicity and race.

For some, the choice of sole practice was a deliberate one, representing the best opportunity to achieve specific career objectives. One participant in the women's group explained that the decision to practise alone was "absolutely a choice" based on the strong desire to control the ethical issues associated with cases. Along similar lines, another participant declared she had chosen and was happiest as a sole practitioner alone because, "other lawyers didn't practise up to my standard and I didn't want to be responsible for them anymore."

More typically, participants in these two groups of equality-seekers described having arrived in their current practice context as the result of making choices within the available range of options. As one participant in the men's group explained he had "made a conscious decision to move" from a larger firm, to specialize mainly on immigration, in part to ease the pressure of work: "I want to live longer." Two other participants in the men's group both spoke of the choice of their current practice context as the result of having weighed the advantages of sole practice over the larger firm context and chosen the former.

One participant in the women's group described her decision to start a sole practice as part choice and part necessity: "My area is a niche. There was a firm where I practised and I outgrew that practice and so there was nowhere for me to go other than on my own." In the men's group a recent call to the bar explained that like another recent call in the group he had initially looked exclusively for employment in a larger firm and ended up by circumstance as the partner of a small firm:

> When it came to looking for a job it only occurred to me to look for a larger firm because that was the basis of my experience. And then this offer came along and I didn't have a good reason to say no and it turned out to be a very happy accident. It was not at all what I was looking for. It was not what I had in mind, but in the long run I'm probably much better off than I would have
> been.

As we had also heard from participants in the other seven focus groups, for some, the choice of sole practice or small firm employment was the result of economic necessity and having had no other private practice employment option. In each of the two groups the single employee/associate participant reported having tried unsuccessfully to find employment in a larger firm but ultimately having to settle for the only job available. A sole practitioner alone described her current practice context as a case of "default." Caught in what she perceived as an unsustainable practice but without other private practice options she was considering leaving the profession altogether.

In the analysis of the larger sample of participants in seven focus groups conducted in London, Sudbury and Toronto, we reported that some individuals decided to work in particular practice contexts as a result of gender, religious or race bias within the profession. From the participants in our two equality-seeking groups we heard similar accounts.

One women of colour reported that she had always intended to become a sole practitioner but that she would have preferred a "couple more years" working in a large firm context. She described the process of hiring back students who had completed articling with a large firm, in which she felt that both her colour and her gender accounted for her failure to be chosen: "Call it whatever you want… I say that it did not help me that I had the colour of skin that I did. You know if I was one of the white boys I would have been hired."

The same woman described a separate hiring process in which her race was perceived as a potential obstacle to dealing with clients:

> I had gone for an interview, and a partner said: ' This is a family law firm and you understand that we deal with clients of very high worth here'. And he looked at me and I looked at him and I knew what he was telling me and he knew what he was telling me and actually I told him up front. Does everybody understand what I'm saying?… Black people are poor was his view… So I didn't answer him because I thought, 'Do I want to work with someone like you?'

Others described similar situations where they felt religion, race or ethnicity was a factor in the hiring decision. One sole practitioner called to the bar in 1973 described his experience applying for a job in a large firm, which employed a senior lawyer he regarded very highly:

I went back there for about three interviews and finally he said to me, 'We can't decide right now.' I said 'why not?' He said, 'We've hired several Jewish boys in the past. We lose money on them in the first two or three years while we teach them the tricks of the trade and then after they learn it, they leave and set up their own shop. Now that wasn't anti-Semitism. It was a reflection of a certain tendency -- Jews tend to be entrepreneurial perhaps. That was perhaps the most benign recognition that there are differences among people. I suspect those differences are there today, but you know at my stage I don't really run across that anymore.

An East Asian employee/associate speculated about some more subtle instances of discrimination and wondered if they may have affected hiring decisions in his case:

> I find in interviews I have to prove myself when others don't. They go over your transcript [and ask] 'Did you really get this mark?' [You answer] 'Yes, it says so there.' You don't really pick up on it until after the interview. You think: 'Will someone else be asked that?'

A successful South Asian sole practitioner practising alone, described being "matched out", that is not finding any offers among the law firms where he hoped to article. He attributed this outcome to his ethnicity, and offered the following explanation for what he perceived was a general bias on the part of larger firms:

> Put yourself in the senior partner's shoes. You're concerned about continuity. I'm not justifying it. I'm rationalizing it. You're concerned about what perception you're giving to the world… It's wrong. So I think with the larger firms there is an issue. I ended up articling with a small firm. I would have much more cash value with a small firm because I can bring a certain ethnic community.

The benefit of race and ethnicity to the sole practitioner and small firm was a theme we heard throughout the discussion in the men's group. In contrast, there was at least a tacit assumption that the large firm environment was less favourable to equality-seekers of distinctive religion, ethnicity or race.

Although the women's group generally agreed that there was widespread sexual harassment and gender bias against women in the legal profession, none explicitly attributed gender bias to their choice of practice context. However, as we discuss in Section 5.4 some women were inclined to see the problems of gender politics and male dominance as more severe in the larger firm environment. One woman pointed out that she was somewhat protected from sexual harassment because as a sole practitioner alone she was not in a subordinate power position to either other lawyers or other clients. Another woman explained that:

> I avoid law firms. My sense is that [sexual harassment] happens with larger firms because the stakes are higher. I don't like the lifestyles of larger firms.

Thus while none of these women explicitly attributed gender bias to the decision to practise in their current context, several alluded to the negative aspects of the larger firm environment. Although the percentage of women in the target group of sole practitioners and small firms is lower than in the non-target group (20% compared to 33%), there may nevertheless be a subset of women who have avoided or left the large firm environment as the result of negative gender politics.

4.5 The Community Connection

In our two focus groups of equality-seekers -- one group of women and one of men -- we heard accounts which generally confirmed the quantitative findings from our small survey sample of equality-seekers. Many equality-seekers stressed the connection to the equality-seeking community of which they were a part. They referenced that community as a reason for choosing law and as a key motivator in their daily practice, affecting their financial viability as well as having positive personal benefits.

In the equality-seekers group of seven women, a majority indicated their specific, and in some cases, very strong connection to the community of which they were a part. One woman working in the field of family law was explicit that she served a clientele of "women and some kinds of men". Another woman described her own role as serving women and vulnerable older men in a large language community. And another woman explained her main reason for going to law school as a matter of improving the quality of legal services available to her community:

> I sat in courtrooms for a lot of years and watched what I thought was just abominable representation. As a black woman I watched black people being represented in a way that I thought… Let's just say that I put in my own money for five years and struggled through law school. I went to law school because I thought black people were not being represented fairly…

In the men's focus group, several participants expressed a specific commitment to the community of their origins. One East Asian sole practitioner described his commitment to his ethno-racial community as follows:

> In my situation as a sole practitioner I have full control of my time and I can do what I want to do and I do a lot of community work, which probably would not be possible if [I was] in a big or mid-sized firm environment.

A South Asian individual endorsed the same view, stressing that he was committed to serving individuals from his community even though "if they talk longer with me I make less money from them."

But whereas some participants in both the men's and women's groups referred to the specific gender, language, ethnic and racial community to which they themselves belonged, others defined their own involvement in equality-seeking communities in broader terms, beyond any specifically defined community. One South Asian sole-practitioner alone put the issue in the following terms:

> In terms of doing anything with respect to a particular ethnicity, I think it's not that I underplay that or hide that. But I don't give it as much importance as trying to ensure that there is equality when in fact there are situations when minorities may be disadvantaged. I find that if I have a client who has language issues or a client who doesn't understand concepts or ideas, I make sure that I am very thorough with them.

Another man, who described himself as not being part of a visible minority, defined his own relationship to an "equality-seeking" community in even broader terms:

> I don't have a Philipino or a Bangladesh community. What I get are clients right across the spectrum, who are either Canadians or immigrants. What we try to do is level the playing field between the individual and the state so there is equality for everyone regardless of whether they're a visible minority or otherwise… So it's a very different focus in that regard. You cannot practice Criminal [Law] if you are not an equality-seeking person. You simply can't do it. And if you don't care about each person vis-a-vis the state, then you just burn out completely.

A participant in the women's group expressed similar sentiments with respect to her commitment to serving psychiatric patients for whom there was little or no access to legal services. In this instance, the issue of serving an equality-seeking community was subsumed by

the larger issue of working, within strict financial limits, to deliver access to justice to a specific community of interest.

For some of the participants in both groups the connection to the equality-seeking community of which they were themselves members was an important factor in shaping the practice context, the composition of their client base, and informing their own rationale for practising law. In this sense, professional interaction with the equality-seeking community could be said to have defined or at least influenced most or all aspects of their law practice. For these individuals, the specific characteristics of the community they served, that community's needs for legal services, their cultural expectations, language and relationship to the dominant culture, all contributed to the shape and character of the individual's law practices.

4.6 Supports That are Important

Table 4 summarizes the results of a bank of survey questions that explored the importance of various supports to an individual's law practice. Higher numbers in each cell indicate greater overall importance assigned to that particular issue. The shaded row across the bottom of the table totals the mean responses for all eight questions. It provides an overall support "index" which provides an indication of the relative importance of this basket of supports for different groups.

Both equality-seekers and others in the target group ranked "good secretarial and administrative support", a "network of informal contacts…", and "a group of lawyers who can take on your work in case of family or other emergencies," first, second and third respectively. All of the equality-seeking sub-groups also ranked these supports among the top three, although women equality-seekers assigned the highest importance to having support from other lawyers in the case of family or other emergencies.

The similarities in Table 4 suggests that when it comes to identifying key supports, equality-seekers and others in the target group share more similarities than differences, although equality-seekers generally assigned slightly greater

TABLE 4 SUPPORTS THAT ARE IMPORTANT

(see table in Convocation Report)

importance to most of the supports listed. The only marked difference between equality-seekers and others was the importance assigned to having "a network of colleagues belonging to the same community by virtue of your ethnicity, or cultural background, race…" In this case the mean response of equality-seekers was 3.68, and 4.19 for those whose first mention was race, compared to 1.97 for others in the target group. But while the connection to community is clearly of higher importance to equality-seekers, and may be paramount in some instances, overall it does not displace any of the key supports which lawyers across the whole target group identify. This may be one indication that notwithstanding the importance of gender, race, ethnic, linguistic and other differences, sole practitioners and small firm lawyers face fundamentally similar issues with respect to the key supports they require to sustain their practice.

5.0 Drawbacks of the current practice context

Table 5 summarizes the results of a bank of survey questions that explored sources of dissatisfaction among target group respondents.[11] Higher numbers in each cell indicate greater overall importance assigned to that particular issue, in this case indicating more dissatisfaction. The shaded row across the bottom of the table records the "dissatisfaction index" or overall level of dissatisfaction for the sub-group being measured.

Equality-seekers registered a higher overall level of dissatisfaction (27.40) compared to others in the target group (25.90). Similar to the target group as a whole, equality-seekers ranked "earning a lower income than expected" and "spend too much time on administration" first and second among sources of dissatisfaction. In both cases a slightly higher mean response may be indicative of greater concern over these issues among equality-seekers as a group.

TABLE 5 SOURCES OF DISSATISFACTION*

(see table in Convocation Report)

Interestingly, "financial risks of maintaining practice are too high" ranked third among equality-seekers ahead of "hours of work are too long". As the table shows, this was a greater concern among men than women equality-seekers (mean of 3.94 compared to 3.40 for women). The highest mean response on this question was among those who mentioned ethnicity/religion or language as a first or only reason for their status as an equality-seeker (4.19). Greater concern over financial risk is discussed at greater length in Section 6.0 Financial Challenges.

As might be anticipated from the comparison of results summarized in Table 5, focus group participants' description of the drawbacks of "working in my personal practice context" mirrored much of what their counterparts in the other 7 focus groups reported. Written and verbal comments from the equality-seekers frequently stressed the problems of low income, too much time spent on administration and the difficulties of maintaining work-life balance. Sole practitioners alone in both groups flagged the problem of isolation from other lawyers.

5.1 Low Income

Written comments highlighted the general problem of low income compounded by "lack of income stability", the "unsteady income stream", "boom and bust," and the ever-present stress of having to take total personal responsibility for generating revenue. For two women participants who relied on Legal Aid for a large part of their revenue, unreasonable restrictions on what could be billed, fees that were "too low" and payments that were "too slow," all added up to low income and high stress. For another woman who had changed careers to become a lawyer, six years after being called to the bar, very low income remained a major source of concern:

[11] For each separate question respondents were asked to indicate if they disagreed or agreed on a scale from 1 to 7. The results are summarized as mean or average responses. In this case, where dissatisfaction is being explored, the higher the number the greater the level of dissatisfaction. For example the mean response or ranking for "earning an income that is lower than expected" for equality-seekers is 4.14 (top cell in the second column from the left), indicating that it ranks first for equality-seekers among nine source of dissatisfaction. The final row is a dissatisfaction index totaling all the means in each respective column.

> Let me make this statement. I came into Law and I became poor, okay? And that explains it. And it is not getting any better. I am not anywhere near what I was making before I went to law school.

The issue of low income was a much more serious concern among the group of women equality-seekers. In this group reported income levels generally conformed to the income distribution of equality-seekers which is summarized in Chart 6 (Section 3.6). Of the six participants in the women's group who answered the question about annual income, three reported before tax annual income of between $50,000 and $74,999, including two women with over 15 years at the bar, while just one reported earning more than $100,000. Comments from the only participant who did not answer the question suggested she was earning less than $50,000 annually from her practice. Moreover, two of the seven participants clearly indicated in discussion that their income level was so low it threatened their ability to sustain the practice.

In rather sharp contrast, four of the six men who answered the question about annual income, reported earning between $100,000 and $199,000 annually, and the only individual who did not answer the question appeared to be earning an annual income in this range or higher. One man reported earning between $50,000 and $74,999 annually and another man reported earning less than $24,999 in annual income from his practice. Both individuals were recent calls to the bar, with one and two years respectively. Reflecting their relative economic security, and allowing for the fact that unsteady and unpredictable revenue flow was a source of concern for some, only one participant in the men's group complained explicitly that his annual income was too low.

The differences between our two groups of men and women equality-seekers should be interpreted cautiously. Focus groups are not a statistically reliable sample of the population from which they are drawn.[12] In this case, the apparent income differences between a group of men and a group of women are considerably greater than the slight income differences that emerge from the quantitative analysis of 139 equality-seekers identified in the survey research.

At the same time, the differences between the men's group and women's group may offer an insight into the different of experiences of some men and some women in the equality-seekers group. In this case, a group of women, most of who identified themselves as equality-seekers on the basis of gender, reported fairly strong concerns over low income. Income uncertainty included at least two lawyers with many years in private practice. By contrast a group of men, who had identified themselves as equality-seekers on the basis of race, ethnicity, religion and disability, reported less concern over low income. In contrast to the group of women, two of the respondents in this group who expressed general satisfaction with their income were very recently called to the bar.

The differences in income between the women's group and the men's group of equality-seekers reinforces a point we have stressed elsewhere in this report. Whereas equality-seekers share

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[12] The larger the number of focus groups, selected from one or more communities, the more reliable the results. In this case extra caution should be applied to interpreting or extrapolating from the findings since just two groups were held and both were from the same geographic community. Moreover, since we divided the groups into men and women, there were no "pairs" of either group. As a result, it was more difficult to separate the inevitable idiosyncrasies of any small group from the substantive similarities or patterns that typically emerge more clearly in comparisons of two or more groups of people selected using the same criteria.

some characteristics as a group, it may be that there are substantial differences within this group, based on gender, race, ethnicity, religion, disability and many other factors in combinations and circumstances which contribute to distinct and unique experiences.

5.2 Administration, Resources and Business Management

As Table 3 (Section 3.3) shows, equality-seekers reported a slightly higher percentage of time spent on non-billable administration, client development and marketing (18% compared to 17% for others in the target group). Reflecting the same pattern as the target group as whole, men in the equality-seekers group reported a slightly higher percentage than women (19% compared to 16%).

Using language similar to their counterparts in the other seven focus groups, the equality-seekers complained of "time-consuming administration," "wasting a lot of time on administration" and "too much grunt work." As we noted in our previous report, problems with time spent on administration were also linked to larger issues of having the capacity -- resources, skill and organization -- to effectively manage a law practice. One very successful lawyer who had been practising law in Canada for just two years pointed to problems of financial management and the absence of guidance in his first year practising. Another very recent call to the bar, who was a partner in a small firm described the problem of "being the point man on all matters, being unable to escape those pressures and demands." A woman sole practitioner sharing space with others complained of the general lack of cost efficiency in her practice. Another woman, practising alone, touched on the issues of balancing the practice of law with the management of a business, a theme that we heard in many of the other focus groups as well:

> You must be a professional and a businessperson and I think that's something that lawyers forget. Those of us who own our own business, we're so busy practising law that we forget we're running a business. They are two different things and you need different skills. Sometimes they go together, but you need different skills.

5.3 Work-life Balance

Along the same lines as their counterparts in the other seven focus groups, the equality-seekers also pointed out that notwithstanding the flexibility of sole practice and the small firm environment, it was nevertheless a challenge to negotiate the demands of the work place. For many, the pressures of work threatened to spill over into their personal life. As Table 5 shows, the mean score of excessive hours worked was slightly higher among equality-seekers than it was among others in the target group (3.64 compared to 3.48), possibly indicating greater overall concern with the problem. Within the group of equality-seekers, the problem of long work hours was considered more serious by women than by men (3.88 compared to 3.55).

Hours of work received only limited attention in both focus group discussions. One lawyer reported that although generally satisfied with his practice, he continued to work 65 to 70 hours a week, even as he approached retirement. A more recently called lawyer who was also a new Canadian, complained mildly of long hours but went on to suggest that working 11 hours a day helped reduce the pressure for his wife to work. He added that as an immigrant he felt obliged to work 12 hours for every six a long-established Canadian might be willing to work. Although hardly representative of the diverse group of immigrants and new Canadians who are lawyers, his story may nevertheless be illustrative of a work ethic which is more common to new Canadians, as well as men and women who are the sole earners in their families.

Respondents in both groups, but particularly the women, flagged the problem of not being able to take any vacation or being limited to a very short vacation. One participant described the "perennial difficulty of taking vacation time", while another described juggling vacation plans with the unpredictable demands of "the one or two clients who just know when you're going away and they just cannot stand the fact that you are out of the city." Yet another participant described taking a rare break only to find herself conducting business long-distance: "[The phone] was always for me." Concern over the problem of taking a vacation was present but perhaps less strongly expressed by the participants in the men's group.

5.4 Work-life Balance: Gender Differences

Gender differences proved to be fundamental in shaping perceptions related to managing work and life. In the women's group, the conversation about specific drawbacks of the practice context, spontaneously gave way to a discussion about the many disadvantages that women faced in practicing law.

One sole proprietor pointed out the serious barriers that her current practice context presented to having children:

> There's one [drawback] for me. I'm… years old. There's no maternity leave. If you want to have a baby then you really need to be able to get some employment benefits. So for anyone who doesn't have a partner or is a sole income earner… It's a real problem for someone wanting to have a baby because we're talking about not being able to leave your practice for ten days, and you'll probably need more than ten days.

These comments prompted nods of approval around the table. The same participant posed the issue even more sharply in describing the extent to which she and other women lawyers confronted the choice to continue practising or have children since in many circumstances the two activities simply could not be sustained together:

> The maternity issue is a big thing. I work and I remain single. And I think that I'm probably single because of the quantity of work I do…The law takes up a big part of my life. So, that's the personal aspect of being female… Most women who have children leave private practice in my experience... I've been called for ten years now and most women who've gotten married and had children that I know have somehow altered their practice arrangement. They've either gone in-house or have left practice altogether and they are staying at home with children because the law doesn't mix well with it.

As if to confirm these arguments a quick poll of participants revealed that just one of the seven women in the group – a self-described "sole support mom" -- had children. As further confirmation, another participant declared her intention to adopt an older child, in part because her sole practice did not allow the time necessary to have a baby and raise an infant. All the participants in this group conceded that the decision to have a child meant serious sacrifices with respect to their capacity to practise law.

5.4.1 Sexual Harassment and Condescension

Discussion in the women's group about the constraints imposed on having children were intertwined with a larger discussion about sexual harassment and condescension toward women within the law profession. One participant described pervasive sexual harassment within the legal profession:

> Most women who I know who practise with firms have been sexually harassed in those firms… and despite the Law Society's efforts… I have yet to met a woman who's actually had a satisfactory remedy… and I'm one of them. I was sexually harassed both at the smaller firm I was at and where I articled. And it's something you just dealt with… [but] it doesn't make for a good work environment. So I think that's probably shaped my approach to things.

One participant reported:

> I had a lawyer kiss me… Some of the girls in the office warned me so I thought 'How do I get out of this so he doesn't do it again?' So I screeched the first time he did and then apologized all over the place saying 'I startle easily'. But he had a habit of doing this with all the female articling students.

While conceding that sexual harassment was widespread, not all the women in the group reported having themselves been sexually harassed. One woman preferred to use the word "condescension" in describing the collaborative efforts between an older and a younger lawyer in court to humiliate her. Another participant described her experiences in this area as limited to mild condescension and "teasing", suggesting that sexual harassment was more likely to occur in larger firms:

> It's a generalization but my sense is that these kind of things [sexual harassment] happen more in larger firms, where the stakes are higher, incomes are higher… [It's a] male bastion.

Another woman who reported limited direct experience with sexual harassment described how women judges were "treated differently":

> I remembered how I observed how some female judges were treated and how some male lawyers I know will tell them off and be disrespectful in ways that I've never seen them act toward male judges. But they will challenge women judges and I feel that some of the women judges don't feel free to be as strong in some judgements as they feel.

The only woman of colour in the women's focus group described her experiences of discrimination in which both race and gender played a role. In responses another woman commented:

> It's a conservative profession. It's always behind the times in everything. Now they know enough not to say it. You should have seen back in 1979, the nightmare I went through being [non-racial ethnic group identified] and female and trying to get a job. And now I find there's not a problem being [non-racial ethnic group] and female, but I imagine being black and female…

Asked specifically if things were "worse" in the legal profession with respect to the type of discrimination they had been discussing, the seven participants all raised their hands in agreement.

What emerged from the conversation with seven women equality-seekers, including one person of colour and one member of a large non-English language group, was a picture of the legal profession as a place where being a woman is itself a drawback to practising law. This group of

women agreed that sexual harassment was common if not pervasive, and that women also risked encountering various forms of bias, condescension or different treatment in virtually any interaction with other lawyers. Although the discussion about the intersection of race and gender was limited to one person's accounts and the response of the others in the group, all the women in the group held the view that bias based on race or a combination of race and gender was endemic to the profession. Finally, although comparisons between the sole practice/small firm environment and the larger firm environment were limited, this group conveyed the general view that the discriminatory treatment of women was likely to be more overt in the larger firm environment.

5.1 Race, Ethnicity and Religion

In varying degrees all the women saw themselves as equality-seekers because they were women and, as described in the previous section, the axis of the discussion about equality-seeking among women focused primarily on gender. In contrast, the men's group was more heterogeneous: comprised of four individuals of different national and ethnic origins, two who identified as equality-seekers due to religion, and one with a disability.

Reflecting the overall composition of the group, the theme of the equality-seeking discussion in the men's group was ethnicity/race. However, because some participants were outsiders to this discussion and because issues of race and ethnicity may be more difficult for men to discuss than are gender issues for women, the conversation was generally more circumspect than the women's discussion described above. But it would be a mistake to extrapolate from these discussions that issues of race and ethnicity are less pronounced or less pervasive than those of gender within the law profession.

For one newly called employee/associate of East Asian background the issue of race was something of a double-edged sword. He enjoyed the advantages of being a "trailblazer" and the status accorded to him within his own community. Yet he also felt the effects of stereotyping because of his close professional association with the community of which he was member:

> On the other hand there's a certain stigma to what you're doing. I was working for a Chinese firm where they served Chinese [clients], so it looked like that's the only thing I could do… For myself I don't like being identified in terms of group dynamics instead as an individual.

This comment illustrates what may be a professional dilemma for some equality-seekers who, on the one hand, benefit from their community connection, but in others respects feel professionally constrained by it.

As noted elsewhere, participants in the men's group were as likely to describe the benefits of their equality-seeking status as they were to highlight drawbacks. Asked about how being an equality-seeker shaped his professional practice, one East Asian lawyer, a general practitioner whose main areas of practice were Immigration, Real Estate and Criminal Law, described the benefits of accessing two separate client bases. He explained that, while attracting "a lot of people from my community" he also served clients from the rest of the Canadian population who "don't care about your colour, don't care about your ethnic background". This group represented an important part of his larger client base:

> I can see that as a phenomena happening in Canada. So us [gestures to another participant] with our cultural background, ethnic background, we would naturally attract

> those from our own community. But there are Canadian consumers who do not belong to our community who go to us… happily… We're looking at 20, 25 to 30% of my workload comes from people not of my ethnic background.

Another participant of South Asian background, expressed qualified agreement with this view, noting that he had some clients who were not part of his own ethno-racial community.

Asked more directly if race, ethnicity and religion "are issues in the profession" some participants spoke more directly to negative experiences. One lawyer, called to the bar in 1973, conceded that, "being Jewish for example, has prevented me from being a lawyer in the way I wanted to be." He related an experience early in his career that had eliminated an opportunity to practise in a large firm. But this participant prefaced his remarks by suggesting that the multi-cultural transformation of metropolitan Toronto in the 30 years that he had been practising, had created a "smorgasbord of minorities" and in the process diluted the effects of older prejudices directed at one or two minority groups.

One East Asian participant was more forthright, reporting that issues of race affected both him and the clients he represented from his community:

> When you are starting your practice it [race] is always at the forefront. Say I'm presenting a client's case before a Refugee Board or making submissions before these offices and the person on the other end is not from my ethnic background, race is definitely a factor. I think there was a study made about race, colouring our perspective -- especially the decision-makers. They stereotype: 'People from this country are generally lacking in candour so we don't take submissions at face value, we have to triple check, well… you know.

In this comment and elsewhere, this lawyer underlined the phrase "lacking in candour" as his best description of how race issues mediated the relationship of his community as well as his own professional relationship to the justice system.

> We've experienced it on a daily basis as immigration lawyers. I feel everyday I have to acquit myself… to be able to show my clients are not 'lacking in candour'. It's always there. The minute you make a representation, there's always that initial threshold: 'You're not believable. Convince me.' That's a hurdle.

In addition to illustrating an example of the workings of discrimination within the legal system, this description also suggests that while ethnocentricity or bias against visible minorities may have some common or generic features, it also has specific characteristics associated with specific ethno-racial groups.

In an interesting exchange that followed these comments another participant suggested that lack of trust was inherent in the legal system and lawyers were obliged to earn the trust and respect of judges. The same lawyer also conceded that at least within the criminal justice system there was a "thin veneer of tolerance" which often gave way to intolerant attitudes and assumptions "not just about clients, but [about] large groups." But while conceding the point that tests by fire were part of the process of being a lawyer, the East Asian participant stressed that his experience of bias was systematic and moreover, directed at "me and my client."

Although none of the other participants disputed these general claims, no one, including the other three members of visible minorities, offered comparable examples. Another South Asian

participant observed that "it would be naïve to think that people don't have stereotypes of each visible or cultural ethnicity." However, he went on to cite an example from Brampton, where "I see a lot of [South Asian] lawyers who have a good reputation and a very good practice". Echoing the comments we heard from one participant in the women's group, he suggested that race and ethnicity was not likely to be a professional drawback or barrier in the small firm environment, while conceding that "there is an issue" in the larger firm.

Participants in the men's group of equality-seekers were less inclined than their counterparts in the women's group to share a single overarching view of how their status as equality-seekers shaped their professional experience. As noted, this was in part a reflection of the greater diversity within the men's group. So for example, in a discussion that developed largely around the themes of race and ethnicity, the participant who reported a disability commented as follows:

> My experience is totally different. I'm hearing impaired and the only effect that it had on my practice is that I went into solicitor work rather than courtroom stuff because it was much easier… but I don't want to assign any value to that. It's just the state of things.

Thus while this individual's equality-seeking status had indeed shaped his professional experience, he rightly observed that it was difficult to equate or compare his experience in this respect to that of others around the table.

But beyond the effects of greater diversity within this group, participants were less homogeneous in their views and less likely to report having suffered professional drawbacks because of their membership in equality-seeking communities. For this group, which generally acknowledged elements of bias and discrimination within the legal system and the profession, the negatives were often balanced, and sometimes outweighed, by the perceived advantages. Benefits included both preferred access to one's own equality-seeking community, and the opportunity to serve the wider potential client community in a social milieu in Toronto, where ethnicity and race were often unimportant or irrelevant considerations.

6.0 Financial Challenges and Opportunities

Table 6 summarizes the results of a bank of eight survey questions, and one additional separate question, that explored challenges to the financial viability of respondents' practice.

Substantial differences in the overall "financial viability index" between equality-seekers (30.53) and others in the target group (26.73), suggest that for equality-seekers, maintaining financial viability is perceived as a more serious challenge than it is to others in the target group. This higher index consistent across the sub-groups who mentioned gender, race and ethnicity/religion/language first among reasons for being an equality-seeker. As in the target group, the problem of "increased overhead costs of running the practice" was ranked highest by women, (a mean response of 4.72 compared to 4.53 for men) and higher still by those women whose first mention was gender (mean response 5.00) [13]

The greater concern of women with overhead costs and their lesser concern with "market pressure to keep fees low" (mean 4.15 for women compared to 4.70 for men) may be explained

[13] This was the highest mean response to any question in Table 5 (Sources of Dissatisfaction) and Table 6 (Challenges to Financial Viability), for any of the sub-groups tested in this or the *Sole Practitioners and Employees/Associates in Small Firms Report*.

in part by the comparatively greater dependency of this group of equality-seekers on Legal Aid billing. For the higher percentage of women (59%) relying for more than three fifths of their work on the very low but fixed Legal Aid rates, the problem of managing overhead costs may appear more serious than market pressures that have no direct effect on Legal Aid rates. As Table 6 shows, equality-seekers registered a much higher concern over low Legal Aid rates (a mean of 4.03 compared to 2.76 for others in the target group). And women equality-seekers ranked the

TABLE 6 CHALLENGES TO FINANCIAL VIABILITY*

(see table in Convocation Report)

"low rate of Legal Aid fees" second among the list of challenges to financial viability (a mean response of 4.35). This was followed by the "costs of new technology" (4.21), "market pressure to keep fees low" (4.15) and the "increased difficulty or risk of financing your legal practice" (3.69).

In contrast to women, men in the equality-seeking group ranked market pressure to keep fees low first among their concerns (4.70) followed by "increased overhead costs" (4.53). This was the same ranking as in the target group. For men in the equality-seeking group, "competition from paralegals and other non-lawyer suppliers of legal services" was ranked third among the financial challenges, compared to fourth in the target group (mean of 3.84 compared to 3.37 in the target group).

The financial challenges that are ranked in Table 6 have been discussed in the previous report that analyzed all nine of the focus groups, and data from survey research. Themes which are identified in that report -- under-funded demand for legal services, changes in the market for legal services accompanied by increased competition and the crisis of Legal Aid services -- were all referenced in the discussion of the two groups of equality-seekers. But as we have noted throughout this report the differences between each of the equality seeking groups were quite pronounced.

6.1 Women Equality-seekers: Threats to Financial Viability

Asked if they were "pessimistic" or "optimistic" about their future, three of the women participants reported they were pessimistic and one declared: "For me it depends on what day it is. Sometimes it's good, sometimes it's bad." In each case, it was clear that these women were facing challenges to their future viability.

As noted, concerns over Legal Aid figured prominently in the written and verbal comments of women participants. Two of the women were dependant for much more than half of their income on Legal Aid, and one reported relying on Legal Aid for between one third and one half of her annual income. All three identified the problem of fees not covering administrative time spent on Legal Aid, too few hours of legal service allowed in Legal Aid certificates and extremely slow payments.

For two of these lawyers, the problems associated with Legal Aid represented a threat to their capacity to work for the client community that they had chosen to serve. As one woman explained, the decision to run a "low margin" law practice, with 70% Legal Aid clients, was the

only way to practise in her chosen area of law: “I’ve never sought to have 100% private paying clients, because I might have to give up the areas of work that I love.”

For another sole practitioner alone, the biggest problem of Legal Aid was associated with adapting to changes in the existing system, which might involve upgrading office equipment, coupled with the feeling that larger changes were coming for the Legal Aid system as whole.

For two of the women participants, overhead costs were a major source of concern. One woman, who criticized the Law Society for thinking “large firm”, complained about the problem of controlling overheads in the following terms:

> When we talk about the overhead we have to pay, we’re not just talking rent. [We’re talking] Law Society, LPIC, all the courses, all the equipment – we have to buy all that stuff.

Others concurred, particularly with criticism of the costs of Law Society services, complaining that the costs of courses and materials were “not serving us,” and that costly courses were beyond the reach of lawyers relying on Legal Aid.

The other participant who expressed the most serious concern about overhead costs stressed that as a sole practitioner sharing space, there were few “economies of scale”. For her the costs of rent and office equipment coupled with the fact that, “ I’ve never learned to work without a secretary”, had created a situation where she faced a declining income.

Asked if they faced a shortage of work, one of the two lawyers who relied primarily on Legal Aid, reported that she could always use more private clients. Of the remaining six, three of the focus group participants -- two sole practitioners alone and one sole practitioner sharing space with others -- reported a need for more clients. One described the problem as more or less chronic while the other two characterized their shortage of clients as a cyclical phenomenon.

Concerns about client shortages may have been the underlying reason for a lively discussion about the Law Society’s client referral service. Five of the participants appeared to have used the referral service, and all or most of this group complained that it yielded poor client prospects and demanded too much free service from lawyers. All concurred that a fee should be charged to prospective clients, and the offer or presumption of any “free consultations” with lawyers should be eliminated.

6.2 Men Equality-seekers: Striving for Balance

Discussion in the men’s group of equality-seekers regarding financial challenges and opportunities presented a sharp contrast to the women’s group. Although participants acknowledged a variety of challenges to financial viability, this group was generally more optimistic. With the single exception of a newly called employee/associate who was between jobs, the group of men expressed moderate to high satisfaction with their income and appeared to be generally satisfied with the state of their law practice and optimistic about the future.

Written comments about financial challenges corresponded to some of what we heard more generally across the nine focus groups. Participants identified the challenges of “competition within the profession in terms of rates for work performed” and the need to maintain “a steady stream of clients” and constantly “building up” the client base. One individual approaching

retirement touched on the familiar theme of the need to maintain his “physical stamina” as a necessary condition for maintaining his income.

Although many listed maintaining their client base among the financial challenges they faced, six of the seven participants in this group also listed their client base among the biggest opportunities available to sustaining future viability of their practice. As we noted earlier, three of the four individuals who were members of visible minorities acknowledged the benefits of being able “to make my own decision to attract clientele”, exercising a “monopoly” or having an “ethnic background” which ensured preferred access to a client community. Another participant compared these types of advantages with his own large and reliable client base:

> I essentially get a lot of manufacturers, a lot of trades who are shy of the larger firms … I’m in a very favourable position … There’s half a dozen firms that refer all their litigation to me… I’m their civil barrister and so my networking or advertising isn’t with the public but with other lawyers, and the rest of it is generated by word of mouth.

It was perhaps a reflection of their favourable financial circumstances that the discussion in the men’s group of equality-seekers focused on ways to improve the effectiveness of their existing marketing efforts, and finding or maintaining the skilled support staff they needed to be successful.

In ironic contrast to the women equality-seekers’ discussion about the incompatibility of children and family for women lawyers, several men stressed the importance of maintaining the balance between their ambitions and financial opportunities, and the priorities of family and children. Explained one of this group of successful lawyers: “ For me there’s a certain harmony in my life that defines success -- a balance between my work and income [and] being able to spend time… with my family.” One South Asian man, who had been called to the bar for just two years, explained that his family was his first priority. He reported having an office just 10 minutes from home so that he could maximize time spent with his very young children while still putting in long hours. In response to these comments about the importance of family, the most senior lawyer in the group proudly reported that his daughter had just been accepted to law school.

6.1 Emerging Financial Challenges

As noted, many of the themes that emerged in the two equality-seekers focus groups were similar to those identified from the analysis of the other seven focus groups. However, what emerges as distinctive between these two groups are the differences in the financial challenges facing the viability of the practices of men and women equality–seekers. Whereas the men reported general satisfaction with their income, prospects and particularly the stability of their client base, the women were facing considerable challenges to sustaining their law practice.

7.0 Shortages of legal Services

In previous research we reported that 35% of the target group answered “yes” to the question “Are there shortages of legal services in whatever community you serve?” Reported shortages of some types of legal services rose from 24% in Toronto, to 28% in the rest of the GTA, 34% in Other Urban Regions and 64% in Non-Urban Areas of Ontario. Among the most frequently cited shortages were access to Legal Aid (26%), Family-Matrimonial Law services (22%) and affordable rates for low and middle-income individuals and small businesses (12%).

46% of equality-seekers identified shortages of legal services, compared to 29% of other respondents in the target group. Within the equality-seeking group, women were more likely than men to report shortages of legal services, 55% compared to 41%.

Shortages most frequently mentioned by equality-seekers included Legal Aid (34%), Family and Matrimonial Law (16%) and services in cultures and languages other than English (16%). Among those equality-seekers who reported shortages of legal services, 44% of women and 26% of men mentioned Legal Aid. Equal percentages of both groups identified shortages in Family and Matrimonial Law, and cultures and languages other than English (16%).

Brief discussion on the issue of shortages of legal services in the two equality-seekers groups, reinforced the findings of the quantitative data. Participants in both groups reported systemic shortages of access to legal services. One lawyer in the men's group referred to a "financial threshold" required to guarantee "proper legal representation" in the criminal context. He dismissed Legal Aid as an inadequate means of delivering legal representation in a criminal matter. Another maintained that the problem of restricted access to adequate criminal representation also applied in civil litigation where government and the courts had combined to create "systems that are so expensive and complicated that no one can afford to go to trial". A sole proprietor in the women's group noted it was very hard "to represent people who are in the middle" of the income scale, too wealthy to qualify for Legal Aid and of inadequate means to pay for legal services themselves.

Participants in both groups underlined the general problem of Legal Aid, citing various examples of the unworkable nature of the system. One participant in the men's group argued for a general overhaul and funding boost for the Legal Aid system.

In both groups, participants noted the often-mentioned problem of shortages in small centres. The only small town lawyer in either group described the problem in the following terms:

> My practice is very much geographically based and it's based on being a small town practice. While there isn't a shortage now there will be at [my] retirement and I don't know how young lawyers are going to come in and pick up those practices. I was very fortunate to get the exact right circumstances that I could do that.

Among specific shortages mentioned, one woman working in the area of mental health, reported a "constant infringement of people's rights" in psychiatric hospitals. She observed that, "the law is shut down in that area".

8.0 Interacting with the Law Society

8.1 Resources That Are Important

Table 7 summarizes the results of a bank of seven questions that compares the relative importance of different resources to equality-seekers and others in the target group.

As a group, equality-seekers ranked the Internet the most important resource among the seven that were tested in this bank of questions, with a mean response of 5.88 compared to 5.46 for other respondents in the target group. "Access to lawyers with expertise" and "administrative support" were ranked second and third respectively for equality-seekers. Other respondents in the target group also ranked these two supports among the top three, though in

different order.

Although women equality-seekers ranked the Internet as the most important service with a mean response of 6.12, the subset of women who cited gender as their first or only reason for being an equality-seeker, ranked the internet fourth with a mean of response of 5.57. This result should be interpreted cautiously since the gender group includes just 21 respondents and a very small number of responses within this group may account for the differences. On the other hand, it is interesting to note that both women whose first mention was gender and the whole group of women equality-seekers, ranked continuing legal education among their top three most important supports, with mean responses of 5.81 and 5.65 respectively. Although this evidence is hardly definitive, it may indicate a greater desire for Continuing Legal Education among women equality-seekers compared to others in the target group. It should also be noted that equality-seekers whose first mention was race ranked Continuing Legal Education third among their list of priority resources.

TABLE 7 RESOURCES THAT ARE IMPORTANT*

(see table in Convocation Report)

8.2 Responding to Policy Ideas

In the final exercise of the focus groups, we asked participants for their written and verbal responses to six broadly defined policy ideas which, it was suggested, could conceivably be undertaken by the Law Society, the Government or some other appropriate agency.[14] In this section we consider the written and verbal responses of the equality-seekers to the six policy ideas put forward.

Making Legal Aid Services More Affordable

Like their counterparts in the other seven focus groups, participants in the two equality-seeking groups heartily endorsed the general principal of making legal services more accessible. Expanding Legal Aid received the strongest endorsement, accompanied by the added specification that both Legal Aid rates and hours should be increased. As one sole practitioner alone put it:
"Double hourly rate; quadruple starting hours."

Tax deductibility was also generally endorsed, but individuals in both groups worried that tax deductibility would "encourage litigation", serve lawyers "but not necessarily the greater public" and could moreover, simply feed the trend toward tax cuts for a range of individual services.

One participant in the women's group recommended "tax advantages to lawyers who offer services at lower rates."

Promote the Use of Technology and Other Efficiencies in Small Firms

[14] In both the two equality-seeking focus groups and the other seven focus groups, written responses were generally favourable to all six-policy ideas put forward. In the *Sole Practitioners and Employees/Associates in Small Firms Report* we have summarized all responses of participants in all nine focus groups. Responses are further broken down by the three main practice contexts of focus group participants (sole practitioners alone, sole practitioners practicing with others and employees/associates).

Participants endorsed the policy suggestion of promoting the use of technology in small firms, but questioned both the general approach of the Law Society and expressed concerns about the possible costs;

> I like the idea of promoting the use of technology. The problem I find in every initiative of the Law Society is there appears to be a strong lack of understanding of the costs associated to the small office… I think they only cost [services] for large firms. I don't think they realize it's a major cost to a small office.

Others, particularly in the women's group, also endorsed the general idea of promoting the use of technology while worrying that "technology is expensive", and a "double-edged sword". "It helps, but the costs are often prohibitive." These comments illustrate an insight generated throughout the course of this research: that some sole practitioners and small firms are unable to afford the essential resources required to maintain efficiency and hence competitiveness.

The cost of Law Society services was a general matter of concern in both groups, with participants complaining that courses offered by the Law Society were excessively expensive and generally reflected a lack of sensitivity to the limited means, and accompanying time constraints, of the sole practitioner and small firm. In both groups, participants recommended increased use of the web to make courses more available and more accessible at lower prices.

<u>A Pro-Active Approach to Counseling the Profession about Working as a Sole Practitioner or in Small Firms</u>

Consistent with their remarks throughout the discussion, as well as those of sole practitioners and associates in the other focus groups, equality-seekers endorsed the idea of increasing the exposure of sole practitioners and particularly recent calls, to "experienced sole practitioners". As we heard in a variety of discussion contexts, this measure would be a welcome offset to the overly "theoretical" character of law school education, and the lack of practical business knowledge that so many of our participants expressed a need for. Echoing the opinions of another newly called lawyer, a partner in a small firm noted the need to increase awareness of the small firm option:

> Exposure at law school level needs to be increased, to offset big firm/boutique firm presence, to present more options which better reflect the nature of the practice.

In each of the groups one participant questioned the practicality of this idea, on the grounds that "there no set rules," that "luck" and "personal talent" are key ingredients in the success of the sole practitioner, and neither can be taught.

<u>Develop and Promote a Model or Template for the Successful Sole Practitioner and Small Firm</u>

Although some participants endorsed the general principle, others introduced various qualifications, pointing out that "every situation is different" and "there is more than one type of successful firm". One sole proprietor also questioned the ability of the Law Society to generate a useful product:

> There are some good things already (Law Pro modules and information, LSUC workshops) [but it's] hard to keep up. The LSUC was really impregnable when I needed

> info on how to start my own practice. It would save money in discipline and investigations if it were proactive.

Others complained about the quality and effectiveness of the Law Society's services, as well its responsiveness. One participant in the women's group said: "I had trouble changing my name and they said look at the rules. I don't understand that." A participant in the men's group objected to the length of time that it took to get help:

> I called the Law Society about one thing. They didn't know, so I called another lawyer and got advice. The next day the Law Society called back. In the meantime the issue was already over. If you don't have any other resource you're stuck.

On the other hand, one sole practitioner was extremely enthusiastic about the Law Society service which had referred her to a senior lawyer from whom she had received invaluable ongoing advice.

Expanded Practice Management Support

Suggestions for an improved inventory of available supports, increased access to services and development of new services were very well received. In varying degrees, all the participants in both groups, felt more help from the Law Society was necessary and desirable. Specific suggestions often referred to expanding the availability of courses, advice and support delivered through the web.

Access to Personal Financial Services

The idea of providing support for personal financial and estate planning and developing group programs was generally endorsed with limited discussion.

But as an extension of this idea, several participants in the women's group stressed the importance of business financing. Unreasonable bankers, and the difficulties of getting adequate financing for their practice was a serious concern to several women who accused banks of discriminating against women.

Other Suggestions

In each group one individual offered their own additional recommendation. The sole practitioner (mentioned above), who had reported very positive ongoing mentoring experiences as a result of a Law Society reference, recommended a much-expanded mentoring program:

> In-depth mentoring, I'd like to have had a senior lawyer come in before I opened my practice or do so as it goes along, and get lots of advice for a fee -- fair pay for their time.

Although some women, were critical of specific referrals they had received, women and men in the two groups were generally quite favourable to the idea of expanded mentoring programs.

The most senior lawyer in the men's group noted that the rapid rate of change in the law and the rules of practice were largely changes in form rather than substance, but had become extremely costly to small firms and those costs were inevitably passed on to the consumer. This was an issue he felt the Law Society should consider.

9.0 Conclusion

This analysis of limited quantitative (n=139) and qualitative data (two focus groups) has provided some useful insights into defining equality-seekers as a subset of the target group of sole practitioners and lawyers in small firms.

The comparisons in Section 3.0 of this report suggest some important differences with respect to gender composition, income, areas of practice, and reliance on Legal Aid. At the same time, equality-seekers and others in the target group share a common framework of experience defined by the small firm environment. Tables 4, 5, 6 and 7 illustrate some differences, as well as the overarching similarities between equality-seekers as a group, and their counterparts in the small firm environment. On the one hand, the data suggests that equality-seekers (men and women) may be slightly more dissatisfied, face more serious challenges to their financial viability, and place greater value on specific supports and resources. On the other hand, these differences occur within a framework in which equality-seekers and those who are not equality-seekers, generally perceive very similar challenges and solutions to the problems of sustaining a viable private practice and a healthy work-life balance.

Analysis of the qualitative data generated in two focus groups explored the extent to which individuals who self-identified as equality-seekers perceived their equality-seeking status as an important element or mediation in their experience as lawyers. This analysis was complicated from the outset by the fact that the designation of equality-seeker is both objective and subjective, and serves as an umbrella term, grouping a wide diversity of sociological characteristics and experiences under a single heading. One consequence of this is the fact that our two equality-seeking focus groups inevitably excluded or under-represented at least as many types of lawyers representing equality-seeking communities as they included. However, allowing for the fact that equality-seeking communities were not fully represented in our two focus groups, the findings of these groups nevertheless offered some important insights into the issues, as well as suggesting some guidelines for possible future research.

Comparisons between men and women reinforced the conclusions of previous research that suggested gender is a major factor distinguishing the experience of women in the small firm environment. Unprompted, women provided a detailed and largely shared account of the fundamental difficulties of having children and a family while practising law in the small firm environment. A closely related concern was that women in private practice were subjected to widespread if not pervasive sexual harassment and discriminatory treatment because they are women.

Neither the limited survey sample size nor the composition of the women's focus group, permitted an extensive exploration of the specific experience of equality-seekers who are defined by both gender and race/ethnicity. However, the contribution of two focus group participants suggested that many of the negative experiences of women are almost certainly compounded when race, ethnicity, language or religion enter the equation.

In contrast to the women's group, the men comprised a majority of individuals who belonged to racialized groups. In comparison with their counterparts in the women's focus group, this group of men reported greater overall satisfaction, higher incomes and more optimism about the future. In addition, many expressed both satisfaction and a positive strategy toward balancing work and family life. This group of men offered insights into the benefits of being closely connected to an ethno-racial community that provided them with a reliable client base. In a social milieu where increased ethnic diversity may have modified traditional prejudices, these

individuals also reported enjoying the advantage of relatively open access to other communities as well. At least in the case of this small sub-sample, an ongoing association with their respective equality-seeking community appeared to offer distinct advantages to these sole practitioners and lawyers working in the small firm environment.

Further research could continue to explore useful ways of pinpointing and defining different sub-groups currently grouped under the umbrella term of equality-seekers. Generating more detailed and specific research findings will depend in part on developing a more refined typology of the different factors, and combinations thereof, that may result in individuals' experiencing a disadvantage or an equality deficit, or in some cases an advantage, in practicing law.

ATTACHMENT 1

Law Society Focus Groups
Toronto
Moderators Guide
Equality-seekers
Thursday, May 13, 2004
5:30 and 8:00 P.M.

Confidential

Thursday. May 13, 2004.

5: 30 PM, Women. Two employee associates, two soles alone, two soles with others, and no more than one sole proprietor, one partner.

8:00 PM. Men. Target two employee associates, two soles alone, two soles with others, and no more than one sole proprietor, one partner.

Timing: 129

Introduction (3 minutes)

Good evening. My name is David Kraft. I work for Strategic Communications, a firm that conducts independent opinion research. We have been commissioned by the Sole Practitioner and Small Firm Task Force of the Law Society to conduct research, exploring issues affecting sole practitioners and lawyers in small firms (five lawyers or fewer). The first phase of this project - an opinion survey and individual long interviews was completed in March. The final report is posted on the Law Society website.

Purpose

In the second phase of research, we have designed a series of focus groups so that we can hear directly from sole practitioners and lawyers in small firms, about the issues that concern you. This research will be presented in separate report to the Small Firm Task Force. Together the research reports will inform the development of specific recommendations to Convocation, which I understand will be submitted before the end of the year.

The Law Society defines members of "equality-seeking communities" as people who consider themselves a member of such a community by virtue of ethnicity or cultural background, race, religion or creed, disability, language, sexual orientation, or gender. In the opinion survey I mentioned earlier we found that just over 25% of lawyers in private practice in Ontario, defined themselves as equality-seekers,

We invited everyone in this focus group to participate because, in addition to working as a sole practitioner or in a small firm, as the case may be, you also indicated that you are a member of an equality-seeking community. The Task Force is interested in exploring [whether and?] how you feel your experience as a lawyer has been shaped or influenced by the fact that you belong to an equality seeking community.

Our hope is that this focus group will provide you with an opportunity to describe these distinctive aspects of your experience as a lawyer in sole practice or working in a small firm.

How it works

A focus group is a structured conversation, in which we will touch on a number of different topics – in this case all related to your profession.

Taping and Mirror, Confidentiality

We are recording this session on audio and videotapes. There are also representatives of the Task Force following this discussion from behind that mirror over there. The tapes and notes will be used to prepare reports, but your name WILL NOT be associated with anything you say here or with any written materials submitted to the Law Society. So I hope you will feel comfortable to speak freely.

My role, your role

My role here is to ask questions and listen. I hope you will also feel free to talk to each other. We have placed name cards around the table to help you remember each other's names. I will try and encourage all of you to participate. As the discussion gets going please feel free to jump in, express your thoughts and feelings, and also make room for others to participate. There are no wrong answers here and I'm not looking for you to agree with anything in particular so please just speak your mind. We are especially interested in your opinions and your feelings, not what you think others might think.

Also can I ask, if you have a cell phone or pager, please turn it off for the duration of he focus group, which will be about two hours (end at 7:30/10:00 PM).

You may have had a chance to get a drink or a snack before we started. There are also drinks here in the room. Feel free to help yourself during the discussion. [*Provide directions to the washrooms and specify that they should feel free to use them].*

2. Warm Up (4 minutes)

Let's start by introducing ourselves. As we go around the table please tell me your first name, and a little about yourself, your practice, areas of specialization and how long you have been practicing in the Toronto area, or the community where your practice is based.

3. Most important Issue (10 minutes)

I'd like to begin with a general question. As a practicing lawyer, what's on your mind these days? What do you think about with respect to your job and the profession?

[Probe] Do you feel differently now than you felt two or three years ago?
What has changed?
[Moderator notes/records comments for reference later in the discussion]

Overview

4. Reasons for being a sole practitioner, or working in a small firm (25 minutes)

All of you were invited to this focus group because you are sole practitioners, sole proprietors or employees/associates or partners in a small law firm [fewer than five lawyers].

Was your decision to work in your current practice context a matter of choice or necessity? [Probe: Was your decision affected by your equality-seeking status? ie. couldn't' find a job, or conversely found an opportunity in your specific community?]

[Probe]
Did you choose your present job over other private practice options?
What were those other options?
Why did you choose to work in a small firm?

I'm going to ask you some more questions about being an employee/associate in a small firm. But before I do that I'd like you to turn to Worksheet #1 in the workbook I am passing out and complete the two separate sentences on that page.

[Moderator explains the exercise, stressing the need for each participant to answer in terms of his or her own <u>personal</u> experience. Also underlines emphasis on <u>quality of life</u> as opposed to more limited monetary concerns]

Worksheet #1

Thinking about my own personal quality of life and the other forms of private practice that might be available to me, the <u>benefits</u> of working in my current practice context are …
Thinking about my own personal quality of life and the other forms of private practice that might be available to me, the <u>drawbacks</u> of working in my current practice context are…

Please take a few minutes to complete each of those sentences and then we'll talk about what you wrote down.

Benefits of Current practice (sole practitioner, employee-associates etc.)

Let's start with the benefits of your current practice context. What did you write down?

[Probe for -, control over work schedule, limited hours of work, professional satisfaction, limited responsibility, client satisfaction, contribution/connection to community, choice of community]

Are there specific benefits or advantages that you might not have working in other private practice environments? [Probe for examples. Such as?]

Does your current employment give you more or less freedom to decide what areas of law you want to practise in and the community where you want to practise? [*Probe for link between current practice and choice of community]*

And does your current practice as a sole practitioner/employee-associates/sole proprietor or partner in a small firm have an affect on how you provide legal services? Does it affect who you provide services to? [ie does it give you the freedom to choose your clients? Is that important to you?]

Which of these benefits, or any others we haven't mentioned, is important to you? Why?

Drawbacks of your current practice

What about the drawbacks of your current practice? What did you write down?

[Probe for – lack of freedom, lack of choice in areas of practice, too much legal aid, too much boss, financial insecurity, client dissatisfaction, cost and revenue issues, isolation, motivation?]

Are there specific drawbacks or disadvantages in your current practice, which you might not have to deal with in other forms of private practice? *[Probe – listen for mentions of firm size, resources, staff support].*

[Probe]
If you were in a larger firm, how big would it have to be to solve that problem?]
Which of these drawbacks do you feel is the most serious? Why?

Equality-seekers [15 minutes]

As we have already discussed you have all defined yourselves as "equality-seekers" for one or more of a list of specific reasons.

[If Yes], Is your experience of the benefits of your current practice distinctive because you belong to an equality-seeking community? In what ways? [*Probe for differences/similarities in benefits]*

And what about the drawbacks? Are the drawbacks you face in your current practice distinctive because you belong to an equality-seeking community? [*Probe for differences/similarities in drawbacks]*

General

Is your job working out as you originally expected or hoped?
What were your biggest surprises or disappointments?
Overall, would you say you are satisfied or dissatisfied with your current practice? *[show of hands]*

The Future

Are you optimistic or pessimistic about your future in your current practice context? Why?

[Probe both responses]
What do you expect will be positive or attractive about your future in your current practice?
And what do you expect will be negative or unattractive about your future in your current practice?

Do you expect to be working in the same practice context three years from now?
[Probe yes and no responses. Show of hands]

Viability

5. Is survival an issue? (12 minutes)

There is a perception that sole practitioners and small firms may be facing challenges to their survival. Hence the name of the Law Society task force: *Task Force Examining the Ongoing Survival of Sole Practices and Small Firms.*

Is the survival of small firms, such as the one where you work, threatened? *[show of hands]*
[Follow-up probes]
[If yes] In what ways do you feel your firm's survival is threatened? [*Probe for direct personal experiences]*

[If no], What makes you say the survival of your firm is not threatened?
[Probe for direct personal experiences]

Unique/distinctive services of small firms.
Apart from the importance of keeping your own job, does it matter if small firms survive?

[No] Why? Can lawyers in larger firms provide all the legal services and serve all the communities that small firms presently serve?

[Yes] Why? Is there something that lawyers like you, in small firms, do that is distinctive, compared to other lawyers in larger firms? [Note: This is important] [Probe for link between equality seeking and the community served]

[Prompt as necessary] Do they/you provide unique kinds of legal services, serve specific groups of clients or communities?

Income

[Note: limit the discussion about income. Focus on feelings of equality-seekers]

How do you feel about your income? Are you earning what you had expected? Less? More?

Is it is harder to make a living in your current practice compared to other lawyers in private practice? Why?
Is there an income gap between you and other lawyers in private practice? Why? Which lawyers are doing best? Worst?

Can you tell me whether and how factors such as the community of clients you serve have an impact on your income?

'How do you feel about the income disparity?
Is the income gap widening between you and others? Based on your experience, do you think lawyers like you are falling behind?

6. Financial Viability (25 minutes)

[Moderator passes out workbooks]
I want to ask you some questions about the financial viability of sole practices. But before I do that I'd like you to turn to Worksheet #2 in the workbooks I am passing out and complete the two sentences on that page.

Worksheet #2

The first sentence reads, "The biggest challenges my practice faces in sustaining its financial viability are…"
The second sentence reads, "The biggest opportunities available to sustain the financial viability of my practice are…"

Please take a few minutes to complete each of those sentences and then we'll talk about what you wrote down.

Financial Challenges

Okay, let's start with the biggest challenges. What did you write down?
[Follow-up probes following respondent comments]

What's the <u>main reason</u> why you would have difficulty sustaining financial viability of your practice?
[Follow-up probes following respondent comments. Probe for affordability of services, market pressure to keep fees low, inability/unwillingness of clients/potential clients to pay

for legal services, competition from non-lawyers and lower priced legal products, overhead costs]

Is this different now than it was in the past? How?

Are problems of financial viability caused mainly by a lack of revenue or by the cost of financing your firm?
[Probe for details in both areas]
Do you have enough work?

What are the most serious sources of competition? *[Probe for banks doing mortgage renewals in-house; title insurance products; paralegals; will kits; self representation, etc.]*

Are these challenges to financial viability serious?
Which ones are the most serious?
Are they driving small firms out of business? Who? Where?
Are there specific areas of practice which have become less financially viable? Specific geographic areas/communities?

Financial Opportunities

Okay, and what about the biggest opportunities available to your practice?
What did you write down?
[Follow-up probes following respondent comments]

Are there areas of practice that have become more financially viable?
Specific areas/communities that offer opportunities for you or firms like yours?

For the purpose of our analysis we have established a working definition of a General practitioner as anyone providing legal services in three or more areas of law (such as real estate, corporate commercial, family and matrimonial). Conversely a specialist would be someone working in two or fewer areas of law.

Who here would define yourself as a general practitioner [show of hands?] Specialist? [show of hands]

Should small firms be specializing more? Is it more efficient and therefore more financially viable to specialize? Conversely, is it more difficult and less financially viable for small firms to offer general legal services?

The successful/unsuccessful small firm

We have talked about threats to survival and/or challenges to the financial viability of small firms, and many of you have agreed that these are very serious.

So, what makes a successful small law firm?
[Probe extensively for areas of practice specialization, geography/community, specifics of practice management, use of technology, work habits]
Is the size of the community a factor in whether small firms can compete successfully?

And what makes unsuccessful small law firms?
[Probe extensively for areas of practice specialization, geography/community, specifics of practice management, work habits]

Are the various pressures we have discussed changing the profession, more specifically, changing what it means to be a sole practitioner or work in a small firm? How?

7. Choosing Sole Practice (10 minutes)

[Moderator picks up from previous discussion]
[Note: Limit time in this section]

We have talked about your reasons for working in your current practice, either as a sole practitioner, and employee/associate and in one or two cases as a sole proprietor or as a partner. For those of you who are employees/associates, has anyone considered becoming [or again becoming] a sole practitioner?

[Yes] Why?
[No] Why not?

Let's start with the reasons why you might consider becoming a sole practitioner. What is it that is attractive or interesting to you about setting up a sole practice?
[Probe for freedom from boss/own boss, income, professional satisfaction choice of area of practice/specialization, community, clients]

Are there any specific factors or conditions that might 'tip the balance' and cause you to actually make the move?

If you did take the step to set up a sole practice what would it take to be successful?
Are there communities where you would be more likely to succeed?
Are there areas of practice or specialization that would increase your chances of success?
What about personal characteristics? What are the qualities or habits you would need to be successful as a sole practitioner?

Okay, what about reasons why you would not consider becoming a sole practitioner
What is it that is unattractive or uninteresting to you about setting up a sole practice?
[Probe for economic insecurity, income, difficulty of practice management, isolation, lack of professional satisfaction, doesn't fit career objectives, managing client expectations]

[NOTE: These questions are for all of the participants]

Is it less attractive or less realistic to set up a sole practice now than it was in the past? Why?

Is being a sole practitioner a realistic choice for a lawyer like you, or would you say it's no longer a viable option for private practice? [*Probe different responses]*

When you think about possible future choices you might make, are their other options to continue your career in private practice that are more attractive or appealing to you than becoming a sole practitioner? [*Probe why]*

Access

7. Access: Clients and Communities Served (10 minutes)

Here is a question we asked in the opinion survey: Do you think there is currently a shortage of any kinds of legal services in whatever community you serve?

[Probe for shortages, description of equality-seeking communities where there are shortages and the clients or potential who lack legal services]

What are the main areas of law where you see shortages?
What [type, location, size] communities are experiencing shortages?

In those communities that are experiencing shortages what is the reaction?
Are there public demands/expectations to maintain legal services?
Indications of inconvenience/hardship?

What clients/groups of clients are most severely affected?

Should the Law Society have a policy position for the maintenance of a "reasonable" level of services?

Considering Solutions

8. Policy Options [25 minutes]

As I mentioned at the beginning of this discussion, the goal of the Sole Practitioner and Small Firm Task Force is to generate specific recommendations which the Law Society of Upper Canada or possibly some other agency could undertake.

Some of what came out of the survey lends itself to an opportunity to brainstorm…

Worksheet 3 is a list of some possible areas for policy action. Please note it is printed on both sides. These are not decisions that the Task Force has taken. These recommendations have not been discussed by all of the members of the Task Force. All the members of the Task Force have not even discussed many of them. These ideas are intended as a starting point, presented here mainly to stimulate discussion and get your input.

Before we discuss these potential areas for action, read them over and in the appropriate space in the right hand column write down your initial impression of the suggested action as well as any specific suggestions or recommendations that come to mind.

At the end of this worksheet there are blank spaces for you to make additional suggestions, from scratch as it were. Once you have finished responding to the printed suggestions on the worksheet you might want to use that space with some of your own suggestions. In line with our earlier discussion you may have some specific suggestions

for policy steps that might assist lawyers from equality-seeking communities or improve the delivery of legal services to specific equality-seeking communities. Those might involve steps to be taken by the Law Society, the Bar Association, Government or some other agency. However, please start by reading the list that is there, writing down your impressions, and any related suggestions that you may have.

[Moderator allows time for written exercise]

Okay, does anybody want to start with any particular suggestion they liked?

[Moderator proceeds through as many items as possible, with the following probes]
Is this a good idea? Why? What is the benefit?

[Re:Item 5 in worksheet #3] : Aren't there a lot of supports already? Do you use the supports that are available? What do you use? How often do you go to the LSUC website? What do look for or use there?]

Is it workable?
What can you add this?
How would it work?
Who should carry this out? [The Law Society? Bar Association? Government?]
[Note: Probe throughout for initiatives or specifics that might benefit equality-seekers or specific equality-seeking communities.]

Please add any further suggestions or comments as they come to mind.

[Following discussion, moderator asks participants to rank each policy area]

Okay, before we complete this exercise please take a moment and in the blank spaces provided for additional suggestions, please add any policy suggestions or recommendations for action that don't fall under any of the areas described in that table.

And finally, in the narrow column all the way on the right hand side I would like you to rank these suggestions with "1" for the idea you liked the best and "7" for the idea you like the least. As I mentioned these ideas are quite general, so I will leave it to you to interpret them or add
detail in whatever way you like.

[Note: Before wind-up ask participants to complete survey on worksheet #4. Moderator explains context]

7. Final Thoughts [5 minutes]
Before we finish tonight, I'd like to ask if anyone has any final thoughts on this topic?

Thanks again for taking the time to attend tonight. Your contributions were very helpful.

APPENDIX 4

Summary of Tools and Services the Professional Development and Competence

Department Provides

1. The Professional Development and Competence Department ("PD&C") supports members to maintain and enhance their competence by offering a wide range of programs, products and services for substantive law and practice management needs.

2. Programs and products are accessible in a variety of ways: from the Law Society Website; live programs; interactive programs by long distance videoconferencing, webcasting and teleseminars; video replays; and print and CD-ROM materials.

3. PD&C offers a confidential Practice Advisory service responding to members' calls about Law Society legislation, Rules of Professional Conduct and policy, and giving guidance and support about ethical and practice issues. Calls for substantive law assistance are referred to experienced practitioners through the Mentoring Program.

4. PD&C is responsible for the Great Library, which provides reference and technical service and coordinates with the resources available at County and District libraries through LIBRARYCO.

5. Spot audits and practice reviews complement PD&C's preventive and proactive support. Law Society staff work closely with members to identify solutions to resolve practice management concerns.

6. Many of these resources are available free of charge (e.g. all Bar Admission Course reference materials are available on-line). The Law Society offers a bursary program. Completion of certain programs entitles members to discounts on other Continuing Legal Education courses or materials or against LAWPRO premiums.

7. PD&C actively promotes these resources to members. Information is easily accessed on the Member Resource Centre in the Lawyers Services section of the Law Society Website, or by phoning the Law Society or reviewing its pamphlets.

8. Key resources are listed. Unless shown with an asterisk, they are free of charge.

Substantive Law
- BAC materials on-line
- AdvoCAT Great Library online catalogue assists to locate print material and also provides direct access to selected law-related resources on the Internet
- Great Library tours and legal research services
- *Great Library research seminars
- *CLE programs and Materials
- A Page from CLE – posts on the Law Society Website select material from recent CLE programs
- Stay Informed – on-line service highlighting current legal developments and is fully searchable
- Mentoring Program

Practice Management
- *Practice Management Education Programs, including "Opening Your Law Practice" and the "New Lawyer Experience"
- The Bookkeeping Guide

- Practice Management Guidelines, available on the Law Society Website, are practical tools to assist lawyers to assess, maintain and enhance the quality of their service. They focus on eight areas:
- Client Service and Communication
- File Management
- Financial Management
- Time Management
- Technology
- Professional Management
- Personal Management
- Closing Down Your Practice
- Best Practices Self-assessment Tool
- * Training in Equity & Diversity
- * Training in Preventing & Responding to Harassment & Discrimination in the Workplace
- Practice Advisory Service

Other Programs

- *Lawyer Referral Service. This program, heavily promoted by the Law Society to the public, connects potential clients with lawyers.
- *Specialist Certification Program. This program allows lawyers who meet specified standards to obtain certification and represent that to the public.
- *Private Practice Refresher Program

APPENDIX 5

LEGAL ORGANIZATIONS

1. Advocacy Resource Centre for Persons with Disabilities
2. Association des jurists d'expression française de l'Ontario
3. Aboriginal Legal Services of Toronto
4. Canadian Association of Black Lawyers
5. Canadian Bar Association
6. County & District Law Presidents' Association
7. Criminal Lawyers' Association
8. Equality for Gays and Lesbians Everywhere
9. Family Lawyers Association
10. Indigenous Bar Association of Canada
11. Ontario Bar Association
12. Ontario Real Estate Lawyers Association
13. Ontario Trial Lawyers' Association
14. Rotiio> taties
15. South Asian Lawyers Association
16. The Advocates Society
17. Toronto Lawyers' Association
18. Womens' Law Association of Ontario

It was moved by Mr. Feinstein, seconded by Ms. Potter that Convocation approve recommendations 1 – 11 set out in the Report of the Sole Practitioner/Small Firm Task Force.

Not Put

It was moved by Mr. MacKenzie, seconded by Mr. Simpson, that recommendation #4 be amended to indicate that attendance at the course is an expectation of the Law Society, rather than mandatory.

Carried

It was moved by Ms. Ross, seconded by Mr. Gottlieb, that recommendation #4 be amended to require members to report whether they took the course on the Members Annual Report (MAR).

Lost

It was moved by Mr. Wright, seconded by Mr. Bobesich, that recommendation #4 be amended that members wishing to transfer into category A should be informed they would be well advised to take the course.

Lost

It was moved by Ms. Warkentin, seconded by Mr. Campion, that the Report as amended be sent out to the profession for consultation prior to Convocation voting on it and that the Report come back to Convocation in October 2005.

Carried

TRIBUNALS TASK FORCE REPORT

The Tribunals Task Force Report was deferred to the May Convocation.

Report to Convocation
April 28, 2005

Tribunals Task Force – Final Report

TASK FORCE MEMBERS
Anne Marie Doyle (Chair)
Sydney L. Robins, Q.C. LSM (Vice-Chair)
Larry Banack
Carole Curtis
Holly Harris
George D. Hunter
Gavin MacKenzie
Gerald A. Swaye, Q.C.

Purpose of Report: Decision

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

OVERVIEW OF POLICY ISSUE

RECOMMENDATIONS RESPECTING TRIBUNALS PROCESS AND PROCEDURES

Request to Convocation

1. That Convocation approves the recommended enhancements to the Law Society's tribunals process and procedures, set out in Part III of this report and in Appendix 1.

2. That Convocation undertakes an examination of different models for the composition of the Law Society tribunals, as described in Part II of this report.

Summary of the Issue

3. Convocation approved the establishment of a Tribunals Task Force in September 2004 and its Terms of Reference in November 2004.

4. In a preliminary way, the Task Force has canvassed a number of models available for the composition of regulatory tribunals. It considers that further discussion of these options is an important undertaking the Law Society must pursue. Substantially more discussion is necessary to fully explore these models.

5. The Task Force has analysed the current tribunals process and procedures and has developed recommendations to enhance them. These recommendations are set out in Part III of this report for Convocation's consideration and approval and are also set out in Appendix 1.

THE REPORT

RECOMMENDATIONS RESPECTING TRIBUNALS PROCESS AND PROCEDURES

Background

6. On September 23, 2004 Convocation established the Tribunals Task Force and on November 25, 2004 approved the Task Force's Terms of Reference, set out at Appendix 2. The Task Force anticipated reporting to Convocation in March 2005, but has required an additional month to complete its work.

7. The Task Force members are Anne Marie Doyle (Chair), the Hon. Sydney L. Robins (Vice-Chair), Larry Banack, Carole Curtis, Holly Harris, George Hunter, Gavin MacKenzie, and Gerald Swaye. Mark Sandler also participated in one meeting. Staff participants in the Task Force are Naomi Bussin, Katherine Corrick, Anne-Katherine Dionne, Grace Knakowski, Zeynep Onen, Lisa Reilly, and Lucy Rybka. Sophia Sperdakos is the secretary to the Task Force.

8. The Tribunals Task Force was mandated to examine the Law Society's tribunals process and procedures, "from Proceedings Authorization Committee authorization to the release of orders and decisions, including an examination of the hearings, appeals, decision-making and decision release process"[1] . Where appropriate, the Task Force was to develop recommendations to ensure that the process and decisions are timely, fair, transparent, consistent and accessible. The Task Force was also to identify other areas of the regulatory process that would benefit from further work.

9. The Task Force has considered,

   a. the principles that should underlie the Law Society's tribunals process and procedures;

   b. in a preliminary manner, the various approaches other regulators and professions have taken to the composition of tribunals and the issues that would require addressing under the models described; and

   c. the current Law Society tribunals process and the enhancements that would improve the current process.

10. Given the relatively short time frame in which the Task Force was to report, it determined that it could best complete its work by doing two things:

   a. Provide Convocation with an overview to the various models available for tribunal composition, leaving further study of this issue for a future discussion.

   b. Make recommendations on enhancements that should be made immediately to the current tribunals process and procedures.

PART I

PRINCIPLES THAT SHOULD UNDERLIE THE TRIBUNALS PROCESS AND PROCEDURES

11. As a first step in its work, the Task Force discussed the various principles that should underlie the Law Society's tribunals process and procedures. To do this, it first reviewed the context in which self-regulating legal professions currently function, as well as the current Law Society regulatory structure.

Context in which self-regulation functions

12. The Law Society regulates the legal profession in the public interest and has done so for over two hundred years. The government of Ontario has continued to support that role, even expanding the Law Society's decision-making authority as recently as 1999 in amendments to the *Law Society Act.*[2]

13. A positive public perception of the Law Society is essential to the government's continued support of self-regulation. The importance of public and governmental

[1] Terms of Reference. See Appendix 2.
[2] The Law Society's by-law making authority was substantially increased.

perceptions can be illustrated by examining the attitudes to self-regulation in other parts of the world.

14. Self-regulation is essential to safeguard the public's access to justice and to an independent profession and judiciary, and to protect the public from state interference. The value and strength of this principle is undermined, however, where a professional regulator's operations are seen to interfere with the best interests of consumers.

15. A catalyst for the radical reduction of self-regulation in England and Wales and Australia was regulators' inability to effectively and efficiently handle consumer complaints,[3] but these law societies had already had their discipline tribunals severed from their operations years earlier. The decision of the Law Society of England and Wales' Council some years ago to limit funds to be spent on its complaints system has been cited as indicative of a governance system that puts lawyers, not consumers, first.

16. In both England and Wales and jurisdictions in Australia the loss of consumer confidence in law society operations contributed to governments' willingness to significantly reduce the role of regulators in governing the profession. Inadequate law society handling of complaints has been a flashpoint for consumer and government discontent in those jurisdictions. These inadequate complaints processes raise larger questions about the way in which a self-regulating profession should operate.

17. Every branch of a law society's operation affects the public interest. The manner in which the Law Society discharges its conduct, capacity and competence responsibilities is critically important to how the public perceives it. The adjudicative process is an essential component of the Law Society's responsibilities.

Law Society Structure

18. The Law Society is what is known as an integrated regulatory body. It has responsibility for the complete range of regulatory activities, including standard setting, rule making, policy development and implementation, admission to the profession, investigating and prosecuting complaints against members, adjudicating conduct, competence and capacity matters and imposing and monitoring penalties.

19. Many self-regulating professions have integrated regulatory operations. Traditionally, few individuals or bodies raised concerns about the integrated approach, particularly where legislation specifically authorized it. New worldwide sensibilities about the transparency and fairness of adjudicative processes have led regulatory bodies to ensure, to the extent reasonably possible, that internal processes avoid or minimize complaints based on the appearance of bias or conflicts of interest.

20. The Law Society's own processes have undergone change in the last six years. Until the amendments to the *Law Society Act* in 1999, discipline hearings were conducted in a two-stage process. In general, a committee of benchers (usually three) presided over a hearing. The committee then made a written report and recommendations to Special

[3] It may not always be the case that a crisis is what motivates external interference or that a crisis can necessarily be foreseen. Imposed change does not have to be draconian, but can be significant nonetheless. The *Regulated Health Professions Act* imposes much greater government oversight on the health professions than lawyers face.

Convocation on appropriate disposition and penalty. Special Convocation then considered whether to accept the recommendation or make its own determination. Appeals from Convocation's decisions went to the Divisional Court.

21. The amendments to the *Law Society Act* in 1999 established the Hearing Panel and the Appeal Panel. *Rules of Practice and Procedure* were developed to support the new process. In the years since the amendments, the Law Society has made some changes to enhance both the transparency of the tribunals process and the separation of the tribunals administration from that of investigations and prosecution. These have included,

    a. establishing a Tribunals Office;

    b. providing staff dedicated to the adjudicative process;

    c. locating tribunals staff in offices within Osgoode Hall separate from those of investigative and prosecutorial department staff;

    d. shifting the reporting function for tribunals from the Secretary to the Counsel-Legal Affairs and then to the Director of Policy and Tribunals; and

    e. providing that the Chairs of the Hearing and Appeals Panels are available for assistance to tribunals staff on issues related to tribunals operations.

22. Some of the other professions, regulatory bodies and governments have gone even further in changing the integrated approach or creating further internal separations between the investigative/prosecutorial role and the adjudicative one. Some bodies have made changes voluntarily, while others have had them imposed upon them by government.

23. The Task Force considers that certain essential principles should underlie the Law Society's tribunals process and procedures. It has considered these principles in the context of both the conceptual discussions it has had about models for tribunal composition (Part II) and in developing the recommendations set out in this report (Part III). It has premised its analysis on a tribunals structure that preserves the system of peer adjudication, subject to appropriate participation by lay people.

24. The tribunals process and procedures must,

    a. ensure an appropriate separation between investigative/prosecutorial functions and adjudicative functions;

    b. be as free as possible from actual or perceived systemic bias;

    c. be as transparent as possible, with open hearings, impartial adjudication (in action and appearance), public decisions and dissemination of information to the public;

    d. operate efficiently, with both members of the public and affected lawyers able to understand how the process works, rely on its predictability and uniform application, and be informed of benchmarks for accomplishing certain steps;

e. operate fairly, keeping in mind the rights of both complainants and accused members, and balancing the public interest with procedural fairness;

f. ensure its adjudicators undergo ongoing education relevant to their functions;

g. include an adequate number of available adjudicators, competent to adjudicate a wide range of matters; and

h. develop a body of jurisprudence that is coherent, consistent and available to the public.

25. It is a given that the Law Society should regularly assess its process and procedures to ensure that they continue to reflect these principles.

PART II

POSSIBLE MODELS FOR COMPOSITION OF TRIBUNALS

Background

26. Self-regulation of the legal profession in Ontario is a long-standing privilege, but a privilege nonetheless. It rests on continued government and public acceptance that the profession, rather than government, or some other body, is in the best position to determine appropriate standards for admission, ethical rules of conduct and behaviour, and sanctions for those lawyers who breach the accepted rules and norms. In exchange for the rights that accompany self-regulation, the legal profession is expected to govern itself in the public interest.

27. As society changes so do the nature of the public interest and the perception of whether a profession is meeting its responsibilities. This is particularly true as consumers become increasingly well informed and the media more interested in professional standards and behaviour. To ensure that self-regulation remains relevant and viable in Ontario, the Law Society must be committed to regularly re-evaluating its approaches and monitoring changing norms for professions around the world.

28. By establishing the Tribunals Task Force, Convocation has demonstrated its recognition of the importance of the Law Society's adjudicative functions and the need to monitor their operation in the public interest. The Task Force has made recommendations it believes necessary to enhance the current tribunals operations.

29. Its discussion in this section, however, is intended to familiarize Convocation with the larger context within which the current system operates and to provide background information on the different models that exist for tribunals composition.

Law Society Current Tribunals Composition

30. The Law Society of Upper Canada's tribunals composition is currently established by statute. The Law Society Act provides,

s.49.21 (1) There is hereby established a panel of benchers to be known in English as the Law Society Hearing Panel and in French as Comite d'audition du Barreau.

31. Section 49.29 (1) establishes the Law Society Appeal Panel, also to be made up of elected and lay benchers.

32. The current approach is premised on the principle that only benchers (including lay benchers) should adjudicate conduct, capacity and competence matters. It recognizes only a limited exception, where there are insufficient French-speaking benchers to allow a hearing to be held in French. In such a case, the Chair of the Hearing Panel may appoint one or more French-speaking members as temporary panelists.[4]

33. An examination of the provisions for tribunal composition in the legal profession in other parts of Canada, in other parts of the world and in other professions and regulatory regimes reveals a number of different approaches. In most cases their approach to tribunals composition is somewhat more flexible than the Law Society's. In a few instances their approach is radically different.

The Possible Models

34. In considering models from other jurisdictions and professions, the Task Force noted the following factors or concerns that are relevant in the consideration of which model to adopt:

a. Whether there is an inherent conflict of interest where the regulatory adjudicators are also the regulatory policy makers. This concern may be countered by the view that, in a self-regulatory system, those most able to render relevant and meaningful decisions are the governors who understand the intricacies of that system.

b. Whether there are increasing perceptions of systemic bias in a tribunals structure, even where there is no evidence of actual bias, which may be a drawback to the effectiveness of the process.

c. Possible limitations of a large volunteer adjudicative body whose members have different levels of adjudicative knowledge, skill, experience, writing ability and availability to sit on panel hearings and appeals.

35. Looking at the experience of other jurisdictions, the Task Force identified five possible models for tribunal composition. An overview of each is provided here, with some preliminary identification of the issues each raises. While collectively the models may address all the issues that are relevant to transparency, fairness and effectiveness of tribunals composition, each individually may have some disadvantages. The choice of model becomes a process of weighing the advantages and disadvantages of each in context and in the public interest.

36. The possible models are,

[4] s.49.24(2)

a. the continuation of the current Law Society model as set out in paragraphs 30-32. Within this model, the decision could be made to make no changes to the process and procedures (the status quo) or to enhance them to make the tribunals composition more effective. In Part III of this report the Task Force recommends such enhancements, regardless of whether the Law Society explores the other models at a future date;

b. a tribunal model made up of elected benchers, lay benchers and non-bencher lawyers, the latter either for general participation on panels or for selected cases;

c. a tribunal model with a permanent Chair and one or two permanent Vice-Chairs who occupy one seat on every panel; the remaining members of each panel to be either elected lawyer benchers and/or lawyer members, and lay benchers;

d. a model that establishes a tribunals unit within the Law Society made up entirely of non-bencher lawyers and lay people; and

e. a model that establishes a tribunal that is completely independent of the Law Society.

Discussion

Model One: The Law Society's Current Model

37. The first model is the Law Society's current one. Proposed enhancements to strengthen the current model will be discussed in the next section of the report. In this section the Task Force highlights the nature of the current model.

38. The current model is based on the belief that,

a. an integrated regulatory system;

b. imbued with the proper internal safeguards to ensure separation between the investigative/prosecutorial branch and the adjudicative branch;

c. in which benchers adjudicate;

is the most appropriate and balanced model and operates in the public interest.

39. This model operates on the basis that benchers are best suited to adjudicate competence, capacity, and conduct matters for a number of reasons including,

a. they have in-depth knowledge of the legislation, rules, by-laws and Rules of Professional Conduct that govern the profession;

b. bencher involvement with policy development enriches their knowledge, thereby assisting their adjudicative functions and *vice versa;*

c. they are elected by members of the profession to govern the profession in the public interest, including adjudicating issues of lawyer conduct, capacity and

competence. The election process demonstrates the profession's confidence in the benchers' ability to perform this function; and

d. the presence of lay benchers ensures the adjudicative system is a balanced one of lawyers and lay people.

40. The system of bencher adjudication is well ingrained in the self-regulation of the profession and has not been the subject of rigorous complaint or attack.

41. The issues the model raises, however, are reflected in varying degrees in the other models set out below. These include whether,

a. a model in which the adjudicators are also the policy makers gives rise to systemic bias (perceived or actual);

b. a system premised on volunteers is increasingly less able to address issues such as timeliness, consistency, and subject expertise; and

c. in a world environment in which professions are increasingly scrutinized and consumers are less willing to accept the philosophy that professionals are best able to regulate their own, regulators should be proactive in enhancing quality and adapting their approaches.

42. Without deciding the issues, the Task Force nonetheless is of the view that, as currently structured, there is much the Law Society can do to enhance its current approach, as will be seen in the recommendations set out in Part III.

Model Two: Addition of Non-Bencher Lawyers on Panels

43. One of the issues raised under the current model (Model One) is whether an adjudicative system based entirely on bencher volunteer resources is sufficient in the 21st century as the issues that face tribunals become increasingly diverse and the demands on bencher time increases.

44. Model Two's main feature is the introduction of non-bencher lawyers to sit on panels, by way of the development of a roster of panelists.

45. Model Two could take a number of forms:

a. A mandatory system in which each panel has a lay bencher member, an elected bencher member and a non-bencher lawyer member.

b. A mandatory system in which each panel has a lay bencher member, but the lawyer members could be either elected benchers or non-bencher lawyers.

c. The development of a roster of non-bencher lawyers to whom the Chairs of the Hearing Panel and Appeal Panel could turn should they have scheduling difficulties or need particular expertise on a matter. This would mirror the current flexibility respecting French hearings.

46. A survey of other law societies and other professions demonstrates that the inclusion of non-governor members of the profession, or at least the authority to include such members, is quite common.

    a. A number of other law societies[5] have authority to name non-bencher lawyers to sit on hearing panels. Some make use of these provisions; others do not. Some have determined that only lawyers who were former benchers should be invited to sit; others make regular use of non-bencher lawyers and, on occasion, have a non-bencher lawyer chair a panel.

    b. Many other professions have adjudicative structures that include, for each hearing, a representative(s) of the governing board or council who is also a member of the profession in question, a member(s) of the profession who is not a member of the board or council, and a lay representative. Some of the professions are,

        i. The College of Physicians and Surgeons of Ontario;
        ii. The College of Nurses of Ontario;
        iii. The Institute of Chartered Accountants of Ontario;
        iv. The Certified General Accountants of Ontario;
        v. The Ontario College of Teachers;
        vi. The Professional Engineers of Ontario; and
        vii. The Ontario Association of Architects.

47. In reviewing Model Two, the Task Force noted the following:

    a. To the extent that finding benchers available to sit on hearings, continuations of hearings, or lengthy hearings is a problem, either currently or in the future, the availability of non-bencher lawyers to sit on panels could alleviate this problem.

    b. A roster of non-bencher lawyers could enlarge the availability of panelists with particular practice area expertise and who represent regional and other diversity, as well as broaden the profession's direct experience with the issues that the Law Society must address.

    c. The approach would bring the Law Society more into line with what is available to, or used by, other law societies and professions.

    d. The model is a fairly modest addition to Model One. It would not address the issues the Task Force identified above under Model One concerning possible systemic bias, the possible conflict between benchers as adjudicators and policy makers or the issue of consistency of decision-making. It might, however, been seen as a further way to enhance Model One, while retaining its value as described in paragraphs 38 and 39.

48. Any further discussion of Model Two would necessitate a consideration of a number of issues, including,

[5] These include British Columbia, Alberta, Saskatchewan, and Manitoba, Yukon, Northwest Territories, Nunavut, New Brunswick and Prince Edward Island.

a. appropriate recruitment of non-bencher lawyers;

b. whether adoption of this approach might increase inconsistency of decision making, given the increase in the number of adjudicators;

c. what form of the model should be adopted (see paragraph 45); and

d. remuneration for non-bencher lawyers.

Model Three: Appointment of a Permanent Chair and Vice-Chairs

49. Under a model that relies primarily on volunteer adjudicators, one of the criticisms might be that decision-making is not always consistent or timely. The development of jurisprudence upon which parties and counsel can rely is important to the integrity of the adjudicative system.

50. Model Three could retain the basic Model One structure, but would create the new positions of a permanent Chair and possibly one or two permanent Vice-Chair(s). Non-bencher lawyers would be appointed to these positions, probably in a part-time capacity, and would be paid. The Chair or a Vice-Chair would sit on all panels. The remaining panel members would be an elected bencher and a lay bencher. Model Three could be structured so that the Chair/Vice-Chair writes all decisions or, alternatively, other panel members might write decisions as well.

51. In reviewing Model Three the Task Force noted the following:

a. This model would necessitate acceptance of non-bencher lawyers on the panels, however, the role of the non-bencher lawyers would be different from Model Two, both in terms of numbers and purpose. The number of non-bencher lawyers would be limited to two or three. The primary purpose for introducing this adjudicative change would be to further a decision-making process that is timely, coherent, consistent and a model of quality for the benefit of all parties.

b. Given the consistent presence on all panels of either the Chair or Vice-Chair, the manner in which hearings were held would likely become fairly consistent.

c. Given that one member of each panel would be either the Chair or a Vice-chair and a second member would be a lay bencher (as is currently the case) the demand on volunteer bencher time would be reduced. Bencher time would be freed up for other policy work.

d. The Chair's/Vice-Chairs' roles could also include responsibility for adjudicator professional development.

e. It is important to note, however, that this model would preclude the broader inclusion of non-bencher lawyers on panels, unless it was possible to constitute a panel without a bencher lawyer.

f. This model would not address the issue the Task Force identified above under Model One concerning possible systemic bias and the possible conflict between benchers as adjudicators and policy makers. Like Model Two, it might be seen as

a further way to enhance Model One, while retaining Model One's value as described in paragraphs 38 and 39.

52. Any further discussion of Model Three would necessitate consideration of a number of issues, including,

a. appropriate recruitment of the Chair and Vice-Chairs;

b. the scope of the job, including responsibility for adjudicator professional development;

c. the implications of a "specialist" adjudicator in the form of the Chair or Vice-chair on the adjudicative process;

d. the possible implications of reducing the range of practice experience and diversity on each panel; and

e. remuneration for the Chair and Vice-Chairs.

Model Four: Non-bencher Adjudicative Tribunal within the Law Society

53. One of the issues identified under Model One is the fact that benchers currently act as policy makers and adjudicators, a dual role that could raise the perception of bias. This issue was raised in the recent assessment of the regulatory structure of the Ontario Securities Commission. The assessment concluded that the particular scope and breadth of the policy-making role at the OSC rendered it advisable to separate the policy function from the adjudicative one.

54. Model Four would eliminate the dual bencher role, while still keeping the adjudicative function within the Law Society. Under this model, non-bencher lawyers and non-bencher lay representatives would adjudicate conduct, capacity and competence matters. On each panel the majority of members would be lawyers. A variation of this model would be to also adopt the Chair/Vice-Chair approach in Model Three. This variation would address the consistency of decision-making issues discussed above.

55. In reviewing Model Four the Task Force noted the following:

a. Such a model frees up benchers (both elected and lay) to focus on policy issues that affect the regulation of the profession. In so doing it addresses any concerns that exist that there is systemic bias in a system in which benchers who make policy decisions then adjudicate on issues that enforce those policies.

b. While retaining the Law Society's regulatory control over all aspects of self-regulation, Model Four goes further in enshrining separation of the adjudicative branch from the investigative/prosecutorial branch.

c. Model Four broadens the profession's direct involvement in self-regulation and has the potential to better highlight to members and educate them on the adjudicative process and its consequences to them.

d. If one of the goals is to enhance consistency in decision-making, there would likely be fewer adjudicators under this model than in Model One. Adoption of the Chair/Vice-Chair component could enhance consistency even further.

56. Any further discussion of Model Four would necessitate consideration of a number of issues, including,

a. whether there is a perception of systemic bias currently that would necessitate such a change;

b. whether there are reasons to make such a change even if a serious perception of systemic bias does not exist about the current structure;

c. assessing carefully the changes that would be made to the bencher role to accomplish this shift;

d. the need for two classes of lay representatives (policy-makers and adjudicators);

e. appropriate recruitment of panel members;

f. to whom appeals from hearing panel decisions would be taken;[6]

g. the possible effect of the model on the policy making and enforcement roles of the benchers;

h. the possible implications, financial and otherwise, for the Law Society of such a model; and

i. The possible financial implications to the Law Society and to government of a change in the lay representative role.

Model Five: An Independent Tribunal

57. The Law Society of England and Wales, the Bar Council and the Law Society of New South Wales are examples of regulatory bodies that have discipline tribunals that are independent of the regulator.

58. Where barristers in England and Wales are alleged to have committed professional misconduct, the Council of the Inns of Court is responsible for the tribunals process. The Bar Council acts as prosecutor before the Tribunal. The composition of the Tribunal is approximately 29 lay representatives and 100 barristers. A judge chairs each panel. An appeal lies to "visitors" who are High Court Judges appointed by the Lord Chief Justice. Inns' Council pays for the staff. Bar Council pays for lay representatives' fees and other tribunal expenses. Barrister members are not paid.

[6] Since January 2000 discipline panels in Newfoundland and Labrador consist of two lawyers who are not benchers and a lay representative. Currently, appeals from their decisions must go to a panel of benchers.

59. The Solicitors Disciplinary Tribunal in England and Wales is independent of, but funded by, the Law Society of England and Wales (with the exception of lay members who are paid by the Department for Constitutional Affairs). The Master of the Rolls appoints the members. Anyone may apply to the Tribunal, but currently the Law Society makes most applications, following investigations. Most hearings take place before three members: two solicitors and one layperson.

60. In New South Wales the Law Society does not hear discipline matters. Instead, the Legal Services Division of the Administrative Decisions Tribunal hears these matters. A District Court Judge is the head of the Tribunal. Other members include additional judges and magistrates, barristers, solicitors and lay members. Members of the New South Wales Law Society Council do not sit on the Tribunal. Panels are made up of three members – a judicial member, a legal practitioner and a lay member. Each panel is appointed administratively, with a presiding member, usually based on seniority, and is inevitably a legally qualified member. There is no permanent Chair. The Law Society does not fund the Tribunal. The Tribunal is an umbrella organization with divisions dealing with a number of professions. The legal division is funded by money from clients' trust account income.

61. It has recently been recommended that the Ontario Securities Commission separate its policy and adjudicative functions through the creation of an independent securities adjudicative tribunal located in offices separate from those of the Commission. The Lieutenant Governor in Council would make appointments to the tribunal, which would have no more than 12 members. The tribunal would be accountable to a committee of the Legislative Assembly.

62. In reviewing Model Five the Task Force noted the following:

    a. Model Five preserves peer assessment of conduct, capacity and competence matters, which is important to the continued viability of self-regulation. Because of this, however, it may still be open to a conflict of interest argument.[7] Nonetheless it could display the greatest degree of adjudicative separation from the law society of any of the models.

    b. The model completely separates the policy and enforcement component from the adjudicative, such that there is no argument that the same people who determine rules and standards to govern the profession then enforce them against individual members.

    c. The model separates the investigators and the prosecutors of discipline matters from those who then adjudicate the matters. This separation is more than just a separation of departments within the same organization (ring-fencing). There is a structural separation. It is more difficult for anyone to allege that the regulator controls the process.

    d. Along with Model Four, Model Five can be designed to ensure,

        i. availability of panel members;

[7] This argument is based on the premise that no profession is capable of fair adjudication of its own members. The argument has not been generally accepted.

ii. adjudicator attendance at education sessions;
iii. substantive expertise on panels; and
iv. establishment of decision timelines.

e. Model Five is the most radical shift from Model One, requiring the greatest statutory and philosophical change.

f. In the case of the recommended change to the Ontario Securities Commission, Model Five was recommended, among other reasons, because "the apprehension of bias has become sufficiently acute as to not only undermine the Commission's adjudicative process, but also the integrity of the Commission as a whole"[8]. This does not appear to be a concern about the Law Society's processes.

63. Any further discussion on Model Five would necessitate consideration of a number of issues, including,

a. whether there is a perception of systemic bias currently that would necessitate such a change;

b. whether there are reasons to make such a change even if a serious perception of systemic bias does not exist about the current structure;

c. the possible implications for the Law Society's governance structure of such a model;

d. under whose auspices would such a Tribunal operate and to whom it would report;

e. whether moving the process to an outside body would result in greater formalization of that process, with more rigidity, longer hearings, and more challenges to the process;

f. to whom would appeals from tribunal decisions go;

g. the size of the tribunal;

h. appropriate appointment of panel members;

i. the impact of the model on the bencher role, both elected and lay bencher; and

j. the possible financial implications to the Law Society and to government of establishing an entirely separate entity.

Conclusion

64. There are, no doubt, other variations on the models identified here. This overview has merely skimmed the surface of the possible discussion. The Task Force's purpose here is not to recommend a new model. Rather, it is to place the recommendations it does

[8] *Report of the Fairness Committee to the Ontario Securities Commission*, March 5, 2004, p.32.

make in the next section in context and to provide Convocation with information to form the basis of further discussions it recommends Convocation should have on the different models for tribunals composition.

65. The Task Force recommends that Convocation undertake an examination of the different models for the composition of the Law Society tribunals, as described in Part II of this report.

PART III

RECOMMENDATIONS FOR ENHANCEMENT TO LAW SOCIETY TRIBUNALS PROCESS AND PROCEDURES

Background

66. The Law Society's current tribunals structure was established in 1999 and its process and the *Rules of Practice and Procedure* that govern its procedures have not be comprehensively reviewed since that time. Some aspects of the *Rules of Practice and Procedure* are more appropriately within the purview of the Professional Regulation Committee and that committee has been reviewing those aspects with a view to proposing some changes. A copy of the current *Rules of Practice and Procedure* is set out at Appendix 3.

67. If Convocation accepts the Task Force's recommendations the *Rules of Practice and Procedure* will be entirely redrafted for Convocation's consideration and approval to reflect these recommendations, and any recommendations the Professional Regulation Committee makes on those rules it is reviewing.

68. The Task Force's first step was to review the *Rules of Practice and Procedure* and the tribunals process to,

    a. identify those areas it considered within its mandate to address; and

    b. determine whether enhancements were needed.

69. The Task Force has identified the following areas for enhancement, discussed in detail below, with recommendations provided:

    a. Commencement of Proceedings

    b. Pre-hearing Case Management

        i. HMT/AMT decisions – appeals
        ii. Scheduling and adjournments
        iii. Pre-hearing conferences
        iv. Summonses
        v. Electronic hearings
        vi. Consolidation of proceedings

    c. *In camera* matters and non-publication orders

d. Reasons

i. Timing
ii. Written or oral

e. Appeals

i. Time for appealing
ii. Abandonment

f. Establishing timeline benchmarks

g. Ongoing tribunals related policy development

h. Adjudicator Code of Conduct

i. Adjudicator education/quality assurance

j. Publication of hearing schedules and decisions

k. *In camera* nature of competence and capacity hearings

COMMENCEMENT OF PROCEEDINGS

70. In creating the Tribunals Office the Law Society has taken steps to create a clear line of distinction between its investigative/prosecutorial branch and its adjudicative branch. This is important to minimize any perception of bias to which an integrated approach might be vulnerable. However, current practices and the language of the *Rules of Practice and Procedure* hinder that separation in a number of areas.

71. Currently, under Rule 4 of the *Rules of Practice and Procedure* the discipline department prepares and issues the Notices of Application in conduct, capacity, competence and non-compliance matters. The Notice sets out a date returnable before the Hearings Management Tribunal to schedule the hearing. The discipline department assigns a file number, serves the application on the member and then files the application with proof of service in the Tribunals Office.

72. The procedure is the same under Rule 4.02 concerning admission and restoration applications, re-admission applications and requalification and reinstatement applications. This is true even though the applicant in these matters is not the Law Society, but a member or student member.

73. This process leaves the Tribunals Office in the anomalous position of being only partly responsible for the administration of its processes, which undermines its separation from the prosecutorial branch. The practice also places the discipline department in an anomalous position.

74. The Task Force recommends that,

a. the Tribunals Office should issue all originating processes and assign file numbers;

b. Rule 4 should be amended to clarify and enhance the role of the Tribunals Office. The role of the Tribunals Office in administratively managing proceedings from beginning to end, should be made clear in Rule 4;

c. in particular, it should be made clear that the Tribunals Office opens and maintains the file of the proceedings and performs an administrative case management role until the final decision is released.

PRE-HEARING CASE MANAGEMENT

Background

75. The *Rules of Practice and Procedure* refer to four "tribunals": the Hearing Panel, the Appeal Panel, the Hearings Management Tribunal (HMT) and the Appeals Management Tribunal (AMT). The *Law Society Act* creates only the Hearing and Appeal Panels. The *Rules of Practice and Procedure* establish the HMT and AMT and define each as "the bencher to whom jurisdiction is assigned in procedural matters". The Task Force is satisfied that despite the language of the current *Rules of Practice and Procedure* there are only two Law Society tribunals. To avoid confusion, the HMT and AMT functions should be renamed "Hearings Management" and "Appeals Management".

76. The HMT is currently used for scheduling and pre-hearing adjournment requests. The *Rules* do not, however, specify the role of the HMT or whether there is any appeal from decisions of the HMT.

77. The AMT is granted specific authority in Rule 15.05 (2) of the *Rules of Practice and Procedure* to hear certain procedural motions pertaining to appeals. These include,

a. abridgement or extension of time prescribed in the *Rules of Practice and Procedure*;

b. location of the hearing, appeal or a motion;

c. the form of the hearing, including a request to hold a hearing in written or electronic form;

d. the consequences of non-compliance with a previous AMT order;

e. materials to be filed with the Appeal Panel;

f. procedural issues regarding motions; and

g. requests to strike out notices of appeal.

78. While decisions in some of these matters would be interlocutory, others might finally dispose of a matter.

79. The *Rules of Practice and Procedure* do not indicate whether there is any appeal from decisions of the AMT.

80. The AMT's role in interlocutory matters is intended to facilitate case management without unduly tying up full Appeal Panels. To the extent that the matter on which the AMT is adjudicating is interlocutory, that decision should be final. However, where the decision has the potential to finally decide the matter, there should be an appeal to the Appeal Panel.

81. The Task Force recommends that,

    a. the *Rules of Practice and Procedure* clarify that there are two tribunals: the Hearing Panel and the Appeal Panel;

    b. there continue to be the Hearings Management function (HM) and the Appeals Management function (AM), both renamed to remove the word "Tribunal" from the title;[9]

    c. it be stated in the *Rules of Practice and Procedure* that there is no appeal from a decision of the HM; and

    d. it be stated in the *Rules of Practice and Procedure* that the AM's order is final, except where it finally disposes of the matter, in which case there is an appeal to the Appeal Panel. The Appeal Panel's decision is final.

SCHEDULING AND ADJOURNMENTS

82. Currently, Rule 9 of the *Rules of Practice and Procedure* provides that in most instances a proceeding is first returnable before the HM to schedule a hearing date. Rule 15 requires scheduling of appeals to go before the AM. Concern has been expressed that this is not the best use of adjudicative resources, particularly given the volunteer nature of Law Society adjudicators. At a number of other tribunals and courts, scheduling in the first instance is a staff function.

83. Under a revised approach, scheduling would, in the first instance, be a staff function of the Tribunals Office, with guidelines developed for staff to apply when setting dates. Only where there were scheduling disagreements would the matter go before the HM or AM. This approach would reflect the view that the Tribunals Office should perform the administrative case management function, while at the same time preserving the parties' rights to have more contentious issues addressed by an adjudicator

84. The scheduling issue is inextricably linked with the adjournment policy, since most scheduling issues arise because of disagreement over appropriate hearing dates. The Task Force has identified a number of problems in this area, including,

    a. no clearly articulated grounds upon which the HM should grant adjournments;

    b. no clearly articulated grounds upon which panels should grant an adjournment, even when the HM or AM has recently denied it;

    c. no disincentive (or rule) against adjournment requests on the date of hearing;

[9] From this point forward in this report HMT and AMT will be referred to as HM and AM.

d. excessive deference, on occasion, to counsel's unavailability for months; and

e. failure of panels to require parties to proceed on a hearing date that is marked peremptory.

85. In determining scheduling and adjournment issues the most important underlying goal is to ensure that the adjudicative process operates in a fair and timely manner. To further this goal, many tribunals have established guidelines on adjournments. Provided the panels apply these guidelines consistently, parties and counsel accept the policies and govern themselves accordingly.

86. Developed guidelines would set out the factors to be taken into account in considering an adjournment request, including,

a. prejudice to any parties by granting or denying the adjournment;

b. the timing of the adjournment request;

c. the number of prior requests for, or actual, adjournments and by whom;

d. the public interest;

e. the costs of rescheduling;

f. the availability of witnesses;

g. evidence that the party requesting the adjournment has made all reasonable efforts to avoid the need for the adjournment; and

h. whether the adjournment is necessary to allow for a fair hearing.

87. Clearly articulating the factors to be considered on adjournment requests would assist all parties in knowing how to proceed and may reduce delay. In addition, such an approach might make it easier for adjournment requests to be more comprehensively addressed as part of a whole picture, with a view to avoiding a proceeding simply dragging on.

88. Parties should be on notice from the outset of the process that it is expected that a matter will proceed on the scheduled date. It should be clear that adjournments would be considered only in exceptional circumstances. Parties should be put on early notice that an adjournment request would be treated as a serious matter, even in some situations where the parties consent to the adjournment. Guidelines would make it clear that parties seeking adjournments might be questioned about whether a solution other than an adjournment might address the problem.

89. Guidelines could also articulate the appropriate timing for requests for adjournments. In the criminal courts there is a requirement that adjournment requests be made before the date of hearing (one week or more), on notice to all parties and in writing. This approach injects greater certainty into the process and avoids witnesses attending on the hearing date only to be sent away when the matter is adjourned. Parties are entitled to seek leave to bring the adjournment request on shorter notice in certain circumstances.

90. The Task Force believes this is a sensible approach for the Law Society to adopt. So, for example, an adjournment request would be made to the HM at least ten days prior to the hearing date. In exceptional circumstances the request could be made to the Hearing Panel on the case. The Task Force is of the view that it should be made clear to parties that inadequate notice or excessive delay of proceedings could be met with cost consequences.

91. The Task Force recommends that,

    a. Rules 9 and 15 of the *Rules of Practice and Procedure* be amended to provide that as a general rule the Tribunals Office will schedule hearings and appeals;

    b. only where there is disagreement that cannot be resolved should scheduling be referred to the HM or AM (or in some instances a Hearing Panel seized with the matter). The HM and AM will retain a case management role that would be articulated in the *Rules of Practice and Procedure.* An appearance before the HM or AM would be done on request, as necessary;

    c. to the extent that the HM and AM make scheduling determinations these should be endorsed on the record and subsequent Hearing Panels and Appeal Panels shall be made aware of and consider such decisions before they entertain any further requests;

    d. guidelines for the scheduling of hearings and appeals and considering adjournment requests along the lines set out in paragraph 86-89 should be developed for the use of staff, HM, AM and Hearing and Appeal Panels;

    e. as a general rule, adjournment requests should be brought no later than 10 days before a scheduled date.

PRE-HEARING CONFERENCES

92. Rule 10 of the *Rules of Practice and Procedure* currently provides for either party to request a pre-hearing conference. Materials for use at the conference are to be filed two days before the conference. The member is not required to file any materials.

93. The goals of the conference are to resolve as many issues as possible, narrow the remaining issues and, where possible, obtain an Agreed Statement of Facts (ASF) and other undertakings that will shorten the proceeding. The earlier in the process this conference is scheduled, the more useful it is in the effective management of the process.

94. Currently, the *Rules of Practice and Procedure* do not encourage either the early scheduling of conferences, the early exchange of hearing conference memoranda or an ASF and do not contemplate the pre-hearing conference as a meaningful component of the process.

95. There are a number of ways in which the pre-hearing conference might be used to improve the adjudicative process, including,

a. formally empower the pre-hearing conference bencher to continue to case manage a case and, where appropriate, require parties to return for a second or third conference with the goal of narrowing issues;[10]

b. where parties at the pre-hearing conference come to an agreement on the finding and/or penalty, with their consent, have the pre-hearing conference bencher become a panel of one to make the appropriate order;[11]

c. where an adjournment is unavoidable on the date of a hearing and the panel is not seized with the matter, efforts should be made to use the occasion for a pre-hearing. One of the panel members could preside over the conference to attempt to further narrow the issues or discuss the completion of an ASF. The bencher would not sit on the hearing when the matter went ahead.

96. The Task Force believes that to the extent practical and useful, greater use should be made of the pre-hearing process. In certain types of cases, the pre-hearing conference should be a mandatory component of the process. This is particularly true in the case of hearings that are expected to take longer than two days. The Task Force recognizes that increased use of the pre-hearing process may have both human (staff and bencher) and financial resource implications that will need to be monitored.

97. In addition, the Task Force does not consider it appropriate to require members to file materials as part of the pre-hearing conference. It does believe that the Law Society should be required to file such materials, without which the pre-hearing conference's usefulness would be further limited.

98. The Task Force recommends that,

a. the *Rules of Practice and Procedure* be amended to reflect the importance of holding pre-hearing conferences as early as possible in the proceeding;

b. where appropriate, parties should be made aware of the availability of pre-hearing conferences and encouraged to participate in such a conference;

c. the processes set out in paragraph 95 should be included in the pre-hearing provisions of the *Rules*;

d. a pre-hearing conference should be mandatory where the hearing of a matter is expected to take longer than two days. It should be held prior to the hearing date, as early in the process as reasonable;

e. for matters that do not fall within (d), the *Rules of Practice and Procedure* should provide that a pre-hearing conference may be ordered in the discretion of the HM or the Hearing or Appeal Panel or at the request of the parties;

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[10] Although this happens informally under the current process, it is not specified in the current Rules of Practice and Procedure.

[11] Although this happens informally under the current process, it is not specified in the current Rules of Practice and Procedure.

f. the Law Society should be required to file materials for use on the pre-hearing conference one week before the conference. The member should not be required to file material; and

g. any agreements reached on the pre-hearing conference should be endorsed on the record and available to subsequent adjudicators.

SUMMONSES

99. Rule 1.11 of the *Rules of Practice and Procedure* provides that,

> the Secretary *shall* provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness. [emphasis added]

100. Currently, the Director of Professional Regulation performs this role.

101. Given the Law Society's efforts to separate the investigative/prosecutorial functions from the adjudicative functions, the Task Force believes it is preferable to have the Tribunals Office assume the summonses role currently exercised by the Director of Professional Regulation.

102. The Task Force therefore recommends that,

a. the issuing of summonses should fall within the responsibility of the Tribunals Office, not the Director of Professional Regulation;

b. the Tribunals Office may issue summonses upon request;

c. where the Tribunals Office refuses to issue a summons a party may, on motion, request that the Hearing Panel or Appeal Panel issue the summons.

ELECTRONIC HEARINGS

103. The Rules permit electronic hearings, but, somewhat inconsistently, require the motion seeking leave for an electronic hearing to be argued in person.

104. The Task Force recommends that the Rules be amended to eliminate, where appropriate, the requirement that a motion to seek an order for an electronic hearing must be argued in person and instead permitting submissions to be made in writing.

CONSOLIDATION

105. Currently, if the Law Society has different proceedings ongoing against a single member, there is no provision to allow counsel to seek to join both matters, unless there is consent. Under section 9.1 of the *Statutory Powers Procedure Act* (SPPA), where proceedings involve the same or similar questions of fact, law or policy and the parties consent, proceedings can be combined or heard at the same time and evidence admitted in one proceeding can be used in the other proceeding being heard at the same time. Without consent, proceedings can be heard one after the other or one proceeding can be stayed until the determination of another.

106. Where the *Rules of Practice and Procedure* of a tribunal are silent, the SPPA excludes *in camera* hearings from this type of order, meaning, for example, that a conduct and competence matter could not be joined.

107. There may, however, be circumstances in which the Law Society wishes to join two proceedings, for example where a number of complaints have accumulated against a member at different times and are authorized at different times. It may be important for a panel to see the full extent of the allegations. This approach may also be the most efficient use of resources.

108. It is also possible that a member may wish to consolidate proceedings.

109. To ensure the greatest flexibility in the tribunals process, the Rules should provide the opportunity for a party to seek to consolidate proceedings where there is no consent.

110. While typically the types of matters for which consolidation would be sought would be conduct matters, there should be the opportunity to seek leave to consolidate any types of proceedings, subject, of course, to satisfying the decision maker why this is appropriate.

111. It is important that motions for consolidation be brought as early in the process as possible, not on the date set for the hearing of the matter. It should be made clear to parties that timeliness is a factor to be considered in any motion for consolidation and if granting the motion results in unreasonable delay, there may be cost consequences to a party.

112. The Task Force recommends that,

a. the Rules be amended to allow for a motion to consolidate multiple proceedings against a single member even in the absence of consent;

b. such motion should be brought as early in the proceeding as possible and not, except in exceptional circumstances, on the date set for hearing; and

c. there may be cost consequences for unreasonable delay caused by the timing of the motion.

IN CAMERA MATTERS AND NON-PUBLICATION ORDERS

113. The public, the profession and the media have become increasingly interested in matters that Law Society panels hear and in their orders and reasons.

114. Law Society conduct hearings are held in public as a matter of course. This has been the case since 1987. The orders and reasons delivered at the conclusion of the hearings are also made available to the public through publication on CanLII, QuickLaw and the Ontario Lawyers Gazette.

115. The Law Society adopted this policy of openness to reflect its public interest mandate and the requirements of the *Statutory Powers Procedure Act*. The profession has been given the authority to discipline its members, and must do so in a manner that the public

can observe. This commitment to transparency is one of the principles the Task Force has determined is essential to the tribunals process and procedures.

116. Panels have not correctly or uniformly applied the current Rules dealing with *in camera* and non-publication orders.

117. *In camera* orders apply only to the hearing. They have no application once a hearing is completed.[12] An *in camera* order does not alter the fact that the order and reasons of a Law Society tribunal are a matter of public record. Many panels incorrectly believe that once an order is made to hold a hearing or part of a hearing *in camera,* the reasons of the tribunal are not to be made public. This is not the case.

118. The Law Society does not have authority to withhold documentary evidence, an order or reasons from a member of the public, including the media, in the absence of a non-publication order. This is so even where the evidence is received *in camera* or the order or reasons are given following an *in camera* hearing.

119. A panel that wants to conduct a hearing in the absence of the public and to ensure that its reasons are not made available to the public must make two separate orders – one ordering that the hearing be held in the absence of the public, and one ordering that all or part of its reasons not be made public.

120. The Rule that conduct hearings are to be held in public is only to be departed from in exceptional circumstances. It is important that panels pay particular attention to the importance of an open and transparent process when assessing whether any portion of a hearing or any aspect of the evidence should be received in the absence of the public.

121. So, for example, panels should not automatically assume that a psychiatric report is necessarily to be received in the absence of the public.[13]

122. Eliminating the use of the term *in camera* and replacing it with clear terminology, as described below, will assist in eliminating panels' and parties' confusion about the difference between a hearing in the absence of the public and a non-publication order.

123. The Task Force recommends that,

a. the *Rules of Practice and Procedure* no longer refer to *in camera* orders. Instead they should speak of orders that a hearing, or part thereof, be conducted "in the absence of the public". This is in contrast to orders that affect publication.

b. conduct matters should continue to be held in public;

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[12] The transcript of the *in camera* hearing is, however, also *in camera.*

[13] Currently, panels often accept psychiatric reports *in camera*. Then they either refer to the report in their reasons, so the report becomes public, or they determine that their reasons cannot be made available to the public. In fact, a panel should receive the psychiatric report *in camera* if it wishes to discuss it in the absence of the public. If the panel then wishes to ensure that the report is not made available to the public, it must make a separate non-publication order.

c. this principle should be derogated from only in exceptional circumstances that should be enumerated in the *Rules of Practice and Procedure*. In assessing whether any portion of a hearing or any aspect of the evidence should be received in the absence of the public, panels must pay particular attention to the importance of an open and transparent process.

d. the current exceptions set out in Rule 3.01(b) of the *Rules of Practice and Procedure* should be reviewed to ensure that they are not overly broad.

e. panels must be educated on the limited circumstances under which a conduct hearing may be held in the absence of the public;

f. requests for a hearing to be held in *the absence of the public* should only be made by way of a formal motion, in public, subject to an order by the Hearing Panel that the motion or any part of it be held in the absence of the public.[14] The Hearing Panel should deliver reasons for its decision on the specific motion, in writing;

g. counsel for the Law Society should ensure that upon any motion that a proceeding be heard in the absence of the public or that a non-publication order be made, the Hearing Panel is informed of the relevant provisions of the *Rules*;

h. if a Panel believes that exceptional circumstances have been demonstrated, its order should cover only so much of the hearing as is necessary to address those exceptional circumstances;

i. panels should also be entitled to order that while the hearing will be in public, distribution or publication of information is prohibited. Written reasons must be given, explaining the basis for the decision;

j. a Hearing Panel may make an order that a hearing or some aspect of it is to be held in the absence of the public and it may make a non-publication order respecting some or all of the evidence, but it may never order that its order not be public; and

k. wherever possible, reasons should be public information, so that a body of jurisprudence develops and is available to all.

ORDERS AND REASONS FOR DECISION

124. The *Law Society Act* and the *Rules of Practice and Procedure* make use of three terms related to a panel's disposition of a matter. They are "decision", "order" and "reasons". These terms are not defined.

125. Operationally the Tribunals Office applies the terms as follows:

a. A Panel's determination that an allegation has been made out or not made out is considered to be its "decision".

[14] This mirrors the current Rule, the importance of which the Task Force is emphasizing.

b. If the decision is that the member is guilty of misconduct, the Panel's "order" sets out the consequences of its decision for the member (e.g. suspension, a fine, etc.)

c. The Panel's "reasons" explain its decision and/or order.

126. The Task Force considers it important for the *Rules of Practice and Procedure* to define these terms and ensure there is no conflict with the language of the *Law Society Act.*

127. Hearing and Appeal Panels do not follow a consistent approach to making orders and producing reasons for decision. Moreover, the *Rules of Practice and Procedure* are not currently structured to ensure that the most effective, fair and transparent processes are in place. In addition, the quality of written decisions varies from panel to panel.

128. A practice has grown up in which some panels give oral reasons and then, at a later date, give more extensive written reasons. There is a growing trend in the case law emerging from the courts that supports the issuing of written reasons in every case. Indeed case law has now held that tribunals such as the Law Society's have a duty to give reasons, the failure to do so being a ground at common law for review. The giving of written reasons engenders a better appeal process and is fair to all parties. It allows for the development of a body of jurisprudence upon which staff, members and future panels can obtain guidance for future actions.

129. At the same time, it is important that orders and reasons be given in a timely fashion, because fairness to the parties requires promptness.

130. The melding of these two considerations (written reasons and timeliness) is possible, but only if there is greater commitment to the timely production of reasons.

131. Appeal periods and timing benchmarks for the tribunals process will be discussed further in sections that follow.

132. The Task Force also discussed the problem of quality of decisions. It agreed that although there should not be mandatory templates that panel members are required to follow, there should continue to be education programs on decision writing that all benchers are required to attend.

133. The Task Force recommends that,

a. written reasons should be required in all cases. Oral reasons should no longer be given;

b. there should be a benchmark for the delivery of written reasons, specified as number of days following the end of hearing (e.g. 60 days). Panelists should be advised of this fact before they schedule themselves for hearings so that in considering their availability they include the time line for delivery of reasons. Panel members would determine which member will write the decision;

c. where is it urgent for the Hearing Panel to make a decision immediately (e.g. disbarment or suspension), it may do so at the conclusion of the hearing, but without giving any oral reasons. The appeal period will run from the

announcement of the disposition of the case (e.g. if the Panel announces the disposition of disbarment on January 1 and releases its reasons for decision on February 1, the appeal period would run from January 1);

d. adjudicators should be provided with suggested subject areas to be covered in their decisions, but not be required to follow mandatory templates; and

e. the *Rules of Practice and Procedure* should be reviewed to ensure that the terms "decision", "order" and "reasons" are clearly explained and in keeping with the language of the Act (section 49.32).

APPEALS

134. There are a number of issues that arise respecting appeals, including timing of appeals and abandonment of appeals.

135. Currently, parties must file a notice of appeal within 30 days of service of an order. The appeal period is not linked in any way to the delivery of reasons, hence the dilemma of parties having to file notices of appeal, on occasion, without the benefit of reasons.

136. This mirrors the approach used in the courts and, although it does result in the possibility that a Notice of Appeal will have to be filed before the reasons for decisions are issued, the Task Force believes the Law Society should follow the approach used in the courts. At the same time, however, it should be made clear that a party may amend its Notice of Appeal, if necessary, once the reasons are issued.

137. The Task Force is of the view that modes of service on the member and the Law Society should be harmonized. Service on the member should be able to be effected by fax, where appropriate, to shorten the length of time it takes for service. The Law Society and the member should be served at the same time and in the same manner.

138. Moreover, the time limitation for filing a cross-appeal should be specified in the *Rules of Practice and Procedure* as a specified number of days following service of the Notice to Appeal.

139. Another issue in managing appeals is raised by the fact that currently, the Tribunals Office has no clear authority to deem an appeal abandoned. The Task Force believes this should be part of the Tribunals Office's administrative case management of files from beginning to end. Such a process would,

a. authorize the Tribunals Office to extend any time limits on consent;

b. provide a formal procedure for parties to seek leave to extend any time limits where there is no consent;

c. authorize the Tribunals Office to send a notice to appellants in the form of a copy of the relevant Rule in the *Rules of Practice and Procedure* setting out that an appeal shall be deemed abandoned if any time limit for filing material is not met; and

d. authorize the Tribunals Office to deem an appeal abandoned where the time limits are not met.

140. The Task Force recommends that,

a. the time for filing an appeal should be 30 days from the date of the announcement of the disposition of the case;

b. the time for filing a cross-appeal should be expressed in the *Rules of Practice and Procedure* as a specified number of days following service of the Notice of Appeal;[15]

c. the member and the Law Society should be served at the same time and in the same manner;

d. the Tribunals Office should have the authority to deal with appeal time limits as follows:

i. Extend any time limits on consent.
ii. Administer the process where a party seeks leave to extend time limits where there is no consent.
iii. Upon receipt of a Notice of Appeal or Cross-Appeal, send the appellant the relevant Rule in the *Rules of Practice and Procedure* on the required time limits for filing materials on appeals. In this way appellants would be advised that failure to file any material within the required time limits would result in the appeal being deemed abandoned.
iv. Send out confirmation that the appeal is deemed abandoned once the time has passed with no consent or order for an extension.

ESTABLISHING TIME LINE BENCHMARKS

141. The Task Force has discussed the issue of delay in scheduling matters and issuing orders and reasons. It has discussed a number of ways of addressing these delays, many of which are reflected in recommendations in this report.

142. A number of courts and tribunals have attempted to address the issue of delay by setting benchmarks for each component of a process. Benchmarks are not mandatory, but they do create expectations of behaviour for all those involved with the adjudicative process. If they are taken seriously, over time they can help change the attitudes and "culture" to better reflect the goals of the adjudicative process.

143. It is important to note when introducing benchmarks that they may not necessarily apply to all cases or situations, depending upon the particular circumstances.

144. The key to introducing benchmarks is that Law Society counsel and panels be ready and able to meet the benchmarks, otherwise there is little likelihood that the members and their counsel will take the benchmarks seriously.

[15] The Task Force leaves it to the Rules drafter to specify the appropriate number of days.

145. The Task Force has identified two initial benchmarks it recommends be adopted and used as the foundation for developing additional ones, as set out below.

146. The Task Force recommends that,

a. the Law Society develop time line benchmarks to guide the case management process;

b. the first benchmarks to be developed should be,

i. the time from service of Notice of Application to the first hearing date (e.g. within 6 months);
ii. the time from completion of a hearing to issuance of written order and reasons (e.g. within 60 days).

ONGOING TRIBUNALS-RELATED POLICY DEVELOPMENT

147. It is important to the ongoing enhancement of the tribunals process that there be a forum for tribunals-related policy/rules to be developed for Convocation's consideration. While the majority of the Task Force recommends that a new standing committee on tribunals should be established, the option put forward that this role is within the Professional Regulation Committee's mandate is also discussed here.

148. Pursuant to s.62 (0.1)1 of the *Law Society Act*, Convocation may make by-laws, relating to the affairs of the Society. More specifically, pursuant to section 62(1) by-laws may be made,

> 11.providing for the establishment, composition, jurisdiction and operation of standing and other committees…and delegating to any committee such of the powers and duties of Convocation as may be considered expedient.

149. The majority of the Task Force recommends that Convocation establish a Tribunals standing committee. Its mandate would be to provide Convocation with policy options respecting tribunals-related policy and rules. Its membership should include the Chairs of the Hearing and Appeal panels, as well as other benchers.

150. Another option discussed was that the Professional Regulation Committee address tribunals-related rules and policies. Prior to the amendments to the *Law Society Act* in 1999, the Professional Regulation Committee was known as the Discipline Policy Committee. Its role included policies related to investigation and prosecution as well as policies related to adjudication. The option the Task Force discussed is premised on the view that the Committee should continue to exercise this function, rather than be limited to investigative, prosecutorial policies. The separation between tribunals and discipline is at a staff level, but not required at the policy level.

151. The majority of the Task Force expressed the concern, however, that the Professional Regulation Committee and the Proceedings Authorization Committee are identified with the investigative and prosecutorial branch of the organization. The adjudicative process must be perceived to be as separate from the investigative/prosecutorial arm as possible. The rule and policy making function, as it relates to adjudicative matters, must be as neutral as possible.

152. The majority of the Task Force was of the view that, given the need to maintain a distance between the investigative/prosecutorial branch and the adjudicative branch of the organization it would not be appropriate for the Professional Regulation Committee to make ongoing decisions on tribunals-related matters.

153. The Task Force recommends that Convocation establish a standing committee to be known as the Tribunals Committee, whose membership should include the Chairs of the Hearing and Appeal Panels.

ADJUDICATOR CODE OF CONDUCT

154. The adjudication role is one that requires panel members to learn specialized skills and adhere to standards of behaviour intended to ensure that the process is fair, transparent and consistent.

155. The fact that most of the Law Society adjudicators are lawyers does not mean that they are automatically experienced with and can apply these specialized skills. In private practice, lawyers represent a particular client and make decisions or advocate on behalf of the client from a given perspective. Adjudicators must be neutral, not only in the manner in which they receive the evidence before them, but also in the manner in which they conduct hearings and motions and render their decisions.

156. Adjudicator Codes of Conduct are widely used mechanisms for ensuring adjudicative consistency from panel to panel and from year to year and for providing guidance to adjudicators about the unique nature of their role and the importance of adhering to certain behaviours. Given the diverse range of experience Law Society panelists have, the value of a consistent code cannot be over estimated.

157. The Society of Ontario Adjudicators and Regulators (SOAR) has developed a model Code of Conduct to assist those tribunals seeking to develop such a code. Examples of bodies that have implemented a code for adjudicators include the College of Nurses of Ontario, the Professional Engineers of Ontario, the Ontario Municipal Board, the Immigration and Refugee Board and the Workplace and Safety Insurance Appeals Tribunal.

158. A code of conduct will address a number of discrete issues, the most typical of which are,

a. Purpose of the Code
b. Guiding Principles
c. Applicability
d. Conflict of Interest
e. Role of the Chair
f. Conduct of the Hearing/Responsibility of Panel members/Good Conduct
g. Duty of Confidentiality
h. Decision-making responsibilities/deliberations
i. Duty to provide written reasons
j. Adequacy of reasons
k. Collegial responsibilities
l. Post-term responsibilities/post-service conduct

m. Role of staff

159. Appendix 4 sets out, for information, the topics that might be included under each heading.

160. The Task Force recommends that the Law Society develop an Adjudicator Code of Conduct to guide panels in their responsibilities as adjudicators. If Convocation accepts the Task Force's recommendation for the establishment of a Tribunals Standing Committee, the Task Force recommends that that Committee develop the proposed code for Convocation's consideration and approval.

ADJUDICATOR EDUCATION/ QUALITY ASSURANCE

161. The role of an adjudicator requires special knowledge and education. This ongoing education is essential to ensure quality adjudication and decisions. Since benchers govern the profession in the public interest, the way in which they undertake the role of disciplining those members who fall below ethical standards is one of the most important tasks they do. The continued credibility of self-regulation requires that the adjudicative process be consistent, transparent and fair.

162. Given this high level of responsibility on benchers as adjudicators, a question arises as to the best way to ensure that there are quality assurance measures in place to meet that responsibility. While the Law Society makes ongoing adjudicator education available to benchers, benchers are not required to take it.

163. The Task Force believes that it is incumbent upon the Law Society to mandate ongoing adjudicative education for benchers as part of a tribunals system committed to quality.

164. If education is mandated, any lawyer interested in running for bencher or any potential lay appointee would be advised well in advance that part of their responsibilities as bencher included mandatory adjudicator training. This culture of education would become entrenched with little difficulty. Moreover, the Law Society could make it clear to the public that its adjudicative process included educated and ongoing professional development.

165. The Task Force recommends that all benchers undergo mandatory and ongoing adjudicator education, such education to include but not be limited to,

a. conducting hearings and pre-hearing conferences;
b. evidence;
c. decision writing; and
d. jurisprudential updates.

PUBLICATION OF UPCOMING HEARINGS SCHEDULE AND LAW SOCIETY DECISIONS

166. In analyzing publication issues it is important to consider the role that publication of tribunal matters plays in the Law Society's self-governance. The Law Society regulates the profession in the public interest. Today's public demands more openness and accountability from self-regulating professions.

167. One of the Law Society's most important public interest functions is ensuring that lawyers who commit acts of professional misconduct are held accountable for their actions. While it is essential to ensure that the tribunals process is fair, transparent and consistent, it is also important that information about matters before panels and their decisions are easily accessible by the public, whenever there is a public interest in having that information.

168. In response to lawyer misconduct, the Law Society must not only act, but must be seen to act. Otherwise, the public confidence in self-regulation is called into question. To the extent that the Law Society deviates from a policy of transparency and public information, there must be good cause for doing so.

Upcoming Hearings Schedule

169. In furtherance of the Law Society's public interest mandate, the Tribunals Office prepares monthly lists of the upcoming hearings and the Communications and Public Affairs Department distributes these lists by e-mail to about 120 media outlets.

170. A typical monthly list currently includes the following information:

a. member's name and file number.

b. town or city in which the member practises.

c. date the matter is scheduled to be heard.

d. name of the Law Society's counsel and the member's counsel, where applicable.

e. an extract of the particulars of alleged professional misconduct or conduct unbecoming from the Notice of Application, Notice of Hearing or Notice of Appeal, whichever is relevant.

171. Media interest in the Law Society's regulatory processes, particularly its hearings, has increased significantly in recent years. In 2000, the Law Society distributed the monthly list by mail to between 10 and 20 media outlets. By 2002, 70 media outlets were receiving the list. Today, the lists are distributed to 120 media outlets. The number of media outlets interested in this list is expected to grow.

172. As more reporters and editors learn that this information is available to the public, they question why the information is not more easily accessible and widely available, particularly in view of the Law Society's public interest mandate.

173. Many reporters and editors track certain cases and expect the Communications and Public Affairs Department to inform them if and when a hearing is scheduled in a particular matter. Currently, this requires staff to track matters and contact the media.

174. This information is of interest to others as well. Currently, it is not distributed to Law Society staff, benchers, or other key stakeholders. Upon request, the Communications and Public Affairs Department has added others to the distribution list.

175. It is no longer efficient to continue to advise the public of upcoming hearings by distributing lists to the media. Making the list available on the Law Society's web site is recommended for the following reasons:

a. It levels the playing field among journalists with all media outlets by providing everyone with access to the same information, rather than only to those who know that this is public information. Currently, the information is public and yet not made widely available and easily accessible to all who may be interested in it.

b. It increases the transparency of the Law Society's regulatory process.

c. It makes the information easily available to a wider audience such as staff in the Professional Regulation Department, Call Centre employees, benchers, Law Society stakeholders, members of the public and the profession.

d. Since all hearing dispositions are already posted on the web site, it is a logical next step to make upcoming hearings lists available on line.

e. It makes more efficient use of staff time and resources in that staff will not have to continuously update media e-mail addresses, make regular additions, distribute the materials electronically, fix problems when e-mails do not go through and track the matters as a service to the media.

f. It is one more service offered on the web site, enhancing its reputation as the "go to site" for news and information.

176. Many other professional regulators list their hearings schedules on their web sites, including the Law Society of British Columbia, the Law Society of Alberta, the College of Nurses of Ontario, the College of Physicians & Surgeons of Ontario and the Ontario College of Teachers.

177. A more flexible and transparent approach would be for upcoming hearings schedules to be published on the Law Society's web site as follows:

a. At the end of each month, the schedule of hearings for the upcoming month would be posted on the Law Society's web site in secure format;[16]

b. Each month the schedule on line would be replaced with the new schedule. Previous month's schedules would not be archived;

c. All hearings, appeals, and motions held in public, would be listed. The extract of the particulars from the Notice of Application, Notice of Hearing or Notice of

[16] Posting upcoming hearing schedules on line affects the privacy rights of members involved in the Law Society's tribunal process. Any publication policy must balance the privacy interests of the member with the responsibility of the Law Society to inform the public of the manner in which it governs the legal profession in the public interest. Posting the upcoming hearings schedule in PDF format allows the typical web site visitor to only read the text, and prevents the typical visitor from copying, downloading or changing the text.

Appeal would be set out unless a hearing panel has previously made an in the absence of the public order with respect to that matter or has made a non-publication order;[17]

d. File numbers, which are internal to the Law Society, would no longer be included in the schedule.

178. The Task Force recommends that the Law Society publish its upcoming hearings schedule on its web site in accordance with the proposal set out in paragraph 177.

Publication of Decisions

179. The Task Force has considered a number of issues related to the publication of panel decisions including,

a. a consistent approach to identifying parties and witnesses; and
b. the time frame for posting decisions on the Law Society's web site.

Identification of Parties and Witnesses

180. In considering the publication of decisions the Task Force has noted that the mandate of the Law Society is to govern the legal profession in the public interest. It is in the public interest that all decisions the Law Society's tribunals make are accessible to the profession and the public. Publication of decisions promotes the accessibility, transparency and accountability of the hearing process. The Law Society should publish all decisions that are the result of hearings of the Law Society's tribunals.

181. At the same time, however, the reasons should, where appropriate, protect the identity of certain witnesses or complainants where there is no public interest in identifying them. The Task Force recommends that in considering when it is appropriate to anonymize, there be presumptions against anonymization in the following instances:

a. The name of the member who is the subject of the proceeding will not be anonymized unless exceptional circumstances warrant this.

b. The name of certain categories of witnesses will not be anonymized, namely,

i. Law Society staff;
ii. expert witnesses;
iii. institutional witnesses; and
iv. lawyer witnesses.

182. Panels should, in each hearing, consider whether it is appropriate to anonymize the names of some of the witnesses. Guidelines should be developed to assist Panels in

[17] Currently the Rules of Practice and Procedure preclude publication of any information respecting competence or capacity matters. The Task Force's recommendation reflects the current strictures on publication. As will be seen in a subsequent section, however, the Task Force is recommending a review of the confidentiality policy relating to these matters. In the Task Force's view, notice of the hearings in all matters should be made available to the public on the Law Society website.

making such decisions. Without limiting guideline development, the Task Force suggests that one of the considerations should be the public interest in encouraging the reporting of allegations of professional misconduct, incapacity or incompetence and the participation of witnesses. Some witnesses or complainants may be reluctant to proceed if their names will be made public in written reasons.

183. The Task Force recommends that,

a. panels should, in each hearing, consider whether it is appropriate to anonymize the names of some of the witnesses;

b. guidelines should be developed to assist Panels in making such decisions;

c. in considering when it is appropriate to anonymize witness names there should be presumptions against anonymization in the following instances:

i. The name of the member who is the subject of the proceeding will not be anonymized unless exceptional circumstances warrant this. Guidelines should identify the nature of those exceptional circumstances.

ii. The name of certain categories of witnesses will not be anonymized, namely Law Society staff; expert witnesses; institutional witnesses; and lawyer witnesses.

d. where it is concluded that there should be anonymization, the identity of persons whose identification might reasonably reveal the identity of another person whose identity is protected shall also be protected – for example, parents, guardians, siblings, spouses, and other relatives or friends;

e. in deciding whether exceptional circumstances exist to protect a member's identity, the Hearing or Appeal Panel shall consider the public interest and any potential harm to the member, the complainant, a witness or any other party to the proceeding;

f. facts that tend to identify a person whose name is to be anonymized, shall not be included in the decision. For example, references to the person's occupation, particular dates, particular locations or other particular circumstances of the case that would reasonably lead to the identification of a victim, complainant, witness or other protected person;

g. persons whose identity is to be anonymized shall not be identified by the initials of their names. This might tend to identify them to some persons. Rather, guidelines will set out the various ways in which they may be identified, such as " the victim"; "the complainant"; "the witness"; "the member". If there is more than one person in any category numbers may be added, such as "victim 1," "victim 2," "witness 1," "witness 2" etc;

h. reasons may be edited to correct typographical, spelling and grammatical errors, and to achieve consistency of formatting.

Time Frame for Posting Decisions

184. It is appropriate for the Law Society to post its tribunals decisions on its web site. The policy question raised by the issue is whether there is a public interest in making that information available without time limit. The Task Force weighed whether the actual tribunal reasons should remain on the website indefinitely or whether it would be sufficient, after a period of time, to provide only information on the finding and penalty against the member.

185. Currently, what is on the Law Society web site is the case digests that are printed in the Ontario Lawyers' Gazette (the Gazette). These remain on line indefinitely because the Gazette issues remain in the Archives section of the web site. Law Society decisions are also available on CanLII and QuickLaw, and as with all jurisprudence, are available indefinitely. Given the increasing demand for regulator accountability, transparency and information, it is appropriate that the actual decisions be available on the website. To do otherwise is to open the Society to the argument and perception that it is delaying, hiding or otherwise impeding the public's "right to know". However, the Task Force is of the view that after a period of time, it is not necessary for the Law Society web site to include the actual decision, which is available elsewhere, provide the finding and penalty against the member remain posted.

186. The Task Force recommends that,

a. the Law Society post tribunal decisions on its web site for a period of three years; and

b. after three years the finding and penalty against the member remain on the website, with a link to the CANLII or QuickLaw sites where the decision may be found. The decision itself would no longer be available on the Law Society web site.

IN CAMERA NATURE OF COMPETENCE AND CAPACITY HEARINGS

187. Pursuant to Rule 3.04.1 of the *Rules of Practice and Procedure,* professional competence hearings are to be held in the absence of the public. Only the complainant is entitled to know that an application has been issued. No other member of the public is entitled to know about the application. The rationale for this approach is that the competence stream is intended to be remedial, not punitive, and members are to be given a chance, if possible, to correct the deficiencies in their practice.

188. Where the tribunal makes an order suspending or limiting the member's rights and privileges, however, the *Rules of Practice and Procedure* provide that "the decision and order are a matter of public record". That information is to be published before the expiry of the time for filing an appeal

189. The Professional Development and Competence Committee's mandate includes consideration of competence-related issues. In the past the Committee has considered changes to the manner in which practice reviews and competence provisions are addressed and Convocation has removed some of the confidentiality provisions that surround practice reviews and competence hearings.

190. Pursuant to Rule 3.04(1) of the *Rules of Practice and Procedure*, a proceeding in respect of a determination of incapacity is to be held in the absence of the public. The application is not to be made public, except to the complainant. Where the tribunal makes an order suspending or limiting a member's rights and privileges, however, the *Rules* provide that "the order is a matter of public record, but the reasons shall not be made public".

191. The different treatment within the tribunals process for conduct (in public) and competence and capacity (in the absence of the public) proceedings has possible implications for transparency, fairness and consistency. It has been held in the Supreme Court of Canada's decision in *Finney* that regulators cannot shield themselves from criticism by indicating that different streams of the regulatory structure have different goals or approaches. The Task Force is of the view that it may be important to re-examine the manner in which the competence and capacity streams of the Law Society's regulation operate.

192. The Task Force recommends that Convocation direct the Professional Development and Competence Committee and the Professional Regulation Committee to re-examine the provisions in the *Rules of Practice and Procedure* respecting competence and capacity proceedings.

REQUEST TO CONVOCATION

193. That Convocation approves the recommended enhancements to the Law Society's tribunals process and procedures, set out in Part III of this report and in Appendix 1.

194. That Convocation undertakes an examination of different models for the composition of the Law Society tribunals, as described in Part II of this report.

APPENDIX 1

TASK FORCE RECOMMENDATIONS

COMPOSITION OF TRIBUNALS

1. The Task Force recommends that Convocation undertake an examination of the different models for the composition of the Law Society tribunals, as described in Part II of this report.

COMMENCEMENT OF PROCEEDINGS

2. The Task Force recommends that,

   a. the Tribunals Office should issue all originating processes and assign file numbers;

   b. Rule 4 should be amended to clarify and enhance the role of the Tribunals Office. The role of the Tribunals Office in administratively managing proceedings from beginning to end, should be made clear in Rule 4;

c. in particular, it should be made clear that the Tribunals Office opens and maintains the file of the proceedings and performs an administrative case management role until the final decision is released.

PRE-HEARING CASE MANAGEMENT

3. The Task Force recommends that,

a. the *Rules of Practice and Procedure* clarify that there are two tribunals: the Hearing Panel and the Appeal Panel;

b. there continue to be the Hearings Management function (HM) and the Appeals Management function (AM), both renamed to remove the word "Tribunal" from the title;

c. it be stated in the *Rules of Practice and Procedure* that there is no appeal from a decision of the HM; and

d. it be stated in the *Rules of Practice and Procedure* that the AM's order is final, except where it finally disposes of the matter, in which case there is an appeal to the Appeal Panel. The Appeal Panel's decision is final.

SCHEDULING AND ADJOURNMENTS

4. The Task Force recommends that,

a. Rules 9 and 15 of the *Rules of Practice and Procedure* be amended to provide that as a general rule the Tribunals Office will schedule hearings and appeals;

b. only where there is disagreement that cannot be resolved should scheduling be referred to the HM or AM (or in some instances a Hearing Panel seized with the matter). The HM and AM will retain a case management role that would be articulated in the *Rules of Practice and Procedure.* An appearance before the HM or AM would be done on request, as necessary;

c. to the extent that the HM and AM make scheduling determinations these should be endorsed on the record and subsequent Hearing Panels and Appeal Panels shall be made aware of and consider such decisions before they entertain any further requests;

d. guidelines for the scheduling of hearings and appeals and considering adjournment requests along the lines set out in paragraph 86-89 should be developed for the use of staff, HM, AM and Hearing and Appeal Panels;

e. as a general rule, adjournment requests should be brought no later than 10 days before a scheduled date.

PRE-HEARING CONFERENCES

5. The Task Force recommends that,

a. the *Rules of Practice and Procedure* be amended to reflect the importance of holding pre-hearing conferences as early as possible in the proceeding;

b. where appropriate, parties should be made aware of the availability of pre-hearing conferences and encouraged to participate in such a conference;

c. the processes set out in paragraph 95 should be included in the pre-hearing provisions of the *Rules*;

d. a pre-hearing conference should be mandatory where the hearing of a matter is expected to take longer than two days. It should be held prior to the hearing date, as early in the process as reasonable;

e. for matters that do not fall within (d), the *Rules of Practice and Procedure* should provide that a pre-hearing conference may be ordered in the discretion of the HM or the Hearing or Appeal Panel or at the request of the parties;

f. the Law Society should be required to file materials for use on the pre-hearing conference one week before the conference. The member should not be required to file material; and

g. any agreements reached on the pre-hearing conference should be endorsed on the record and available to subsequent adjudicators.

SUMMONSES

6. The Task Force therefore recommends that,

a. the issuing of summonses should fall within the responsibility of the Tribunals Office, not the Director of Professional Regulation;

b. the Tribunals Office may issue summonses upon request;

c. where the Tribunals Office refuses to issue a summons a party may, on motion, request that the Hearing Panel or Appeal Panel issue the summons.

ELECTRONIC HEARINGS

7. The Task Force recommends that the Rules be amended to eliminate, where appropriate, the requirement that a motion to seek an order for an electronic hearing must be argued in person and instead permitting submissions to be made in writing.

CONSOLIDATION

8. The Task Force recommends that,

a. the Rules be amended to allow for a motion to consolidate multiple proceedings against a single member even in the absence of consent;

b. such motion should be brought as early in the proceeding as possible and not, except in exceptional circumstances, on the date set for hearing; and

c. there may be cost consequences for unreasonable delay caused by the timing of the motion.

IN CAMERA MATTERS AND NON-PUBLICATION ORDERS

9. The Task Force recommends that,

a. the *Rules of Practice and Procedure* no longer refer to in camera orders. Instead they should speak of orders that a hearing, or part thereof, be conducted "in the absence of the public". This is in contrast to orders that affect publication.

b. conduct matters should continue to be held in public;

c. this principle should be derogated from only in exceptional circumstances that should be enumerated in the *Rules of Practice and Procedure*. In assessing whether any portion of a hearing or any aspect of the evidence should be received in the absence of the public, panels must pay particular attention to the importance of an open and transparent process.

d. the current exceptions set out in Rule 3.01(b) of the *Rules of Practice and Procedure* should be reviewed to ensure that they are not overly broad.

e. panels must be educated on the limited circumstances under which a conduct hearing may be held in the absence of the public;

f. requests for a hearing to be held *in the absence of the public* should only be made by way of a formal motion, in public, subject to an order by the Hearing Panel that the motion or any part of it be held in the absence of the public. The Hearing Panel should deliver reasons for its decision on the specific motion, in writing;

g. counsel for the Law Society should ensure that upon any motion that a proceeding be heard in the absence of the public or that a non-publication order be made, the Hearing Panel is informed of the relevant provisions of the Rules;

h. if a Panel believes that exceptional circumstances have been demonstrated, its order should cover only so much of the hearing as is necessary to address those exceptional circumstances;

i. panels should also be entitled to order that while the hearing will be in public, distribution or publication of information is prohibited. Written reasons must be given, explaining the basis for the decision;

j. a Hearing Panel may make an order that a hearing or some aspect of it is to be held in the absence of the public and it may make a non-publication order respecting some or all of the evidence, but it may never order that its order not be public; and

k. wherever possible, reasons should be public information, so that a body of jurisprudence develops and is available to all.

ORDERS AND REASONS FOR DECISION

10. The Task Force recommends that,

a. written reasons should be required in all cases. Oral reasons should no longer be given;

b. there should be a benchmark for the delivery of written reasons, specified as number of days following the end of hearing (e.g. 60 days). Panelists should be advised of this fact before they schedule themselves for hearings so that in considering their availability they include the time line for delivery of reasons. Panel members would determine which member will write the decision;

c. where is it urgent for the Hearing Panel to make a decision immediately (e.g. disbarment or suspension), it may do so at the conclusion of the hearing, but without giving any oral reasons. The appeal period will run from the announcement of the disposition of the case (e.g. if the Panel announces the disposition of disbarment on January 1 and releases its reasons for decision on February 1, the appeal period would run from January 1);

d. adjudicators should be provided with suggested subject areas to be covered in their decisions, but not be required to follow mandatory templates; and

e. the *Rules of Practice and Procedure* should be reviewed to ensure that the terms "decision", "order" and "reasons" are clearly explained and in keeping with the language of the Act (section 49.32).

APPEALS

11. The Task Force recommends that,

a. the time for filing an appeal should be 30 days from the date of the announcement of the disposition of the case;

b. the time for filing a cross-appeal should be expressed in the *Rules of Practice and Procedure* as a specified number of days following service of the Notice of Appeal;

c. the member and the Law Society should be served at the same time and in the same manner;

d. the Tribunals Office should have the authority to deal with appeal time limits as follows:

i. Extend any time limits on consent.

ii. Administer the process where a party seeks leave to extend time limits where there is no consent.

iii. Upon receipt of a Notice of Appeal or Cross-Appeal, send the appellant the relevant *Rule in the Rules of Practice and Procedure* on the required time limits for filing materials on appeals. In this way appellants would be advised that failure to file any material within the required time limits would result in the appeal being deemed abandoned.

iv. Send out confirmation that the appeal is deemed abandoned once the time has passed with no consent or order for an extension.

ESTABLISHING TIMELINE BENCHMARKS

12. The Task Force recommends that,

a. the Law Society develop time line benchmarks to guide the case management process;

b. the first benchmarks to be developed should be,

i. the time from service of Notice of Application to the first hearing date (e.g. within 6 months);

ii. the time from completion of a hearing to issuance of written order and reasons (e.g. within 60 days).

ONGOING TRIBUNALS-RELATED POLICY DEVELOPMENT

13. The Task Force recommends that Convocation establish a standing committee to be known as the Tribunals Committee, whose membership should include the Chairs of the Hearing and Appeal Panels.

ADJUDICATOR CODE OF CONDUCT

14. The Task Force recommends that the Law Society develop an Adjudicator Code of Conduct to guide panels in their responsibilities as adjudicators. If Convocation accepts the Task Force's recommendation for the establishment of a Tribunals Standing Committee, the Task Force recommends that that Committee develop the proposed code for Convocation's consideration and approval.

ADJUDICATOR EDUCATION/QUALITY ASSURANCE

15. The Task Force recommends that all benchers undergo mandatory and ongoing adjudicator education, such education to include but not be limited to,

a. conducting hearings and pre-hearing conferences;

b. evidence;

c. decision writing; and

d. jurisprudential updates.

PUBLICATION OF UPCOMING HEARINGS SCHEDULE AND LAW SOCIETY DECISIONS

16. The Task Force recommends that the Law Society publish its upcoming hearings schedule on its web site in accordance with the proposal set out in paragraph 177.

17. The Task Force recommends that,

a. panels should, in each hearing, consider whether it is appropriate to anonymize the names of some of the witnesses;

b. guidelines should be developed to assist Panels in making such decisions;

c. in considering when it is appropriate to anonymize witness names there should be presumptions against anonymization in the following instances:

i. The name of the member who is the subject of the proceeding will not be anonymized unless exceptional circumstances warrant this. Guidelines should identify the nature of those exceptional circumstances.

ii. The name of certain categories of witnesses will not be anonymized, namely Law Society staff; expert witnesses; institutional witnesses; and lawyer witnesses.

d. where it is concluded that there should be anonymization, the identity of persons whose identification might reasonably reveal the identity of another person whose identity is protected shall also be protected – for example, parents, guardians, siblings, spouses, and other relatives or friends;

e. in deciding whether exceptional circumstances exist to protect a member's identity, the Hearing or Appeal Panel shall consider the public interest and any potential harm to the member, the complainant, a witness or any other party to the proceeding;

f. facts that tend to identify a person whose name is to be anonymized, shall not be included in the decision. For example, references to the person's occupation, particular dates, particular locations or other particular circumstances of the case that would reasonably lead to the identification of a victim, complainant, witness or other protected person;

g. persons whose identity is to be anonymized shall not be identified by the initials of their names. This might tend to identify them to some persons. Rather, guidelines will set out the various ways in which they may be identified such as " the victim"; "the complainant"; "the witness"; "the member". If there is more than one person in any category numbers may be added, such as "victim 1," "victim 2," "witness 1," "witness 2" etc;

h. reasons may be edited to correct typographical, spelling and grammatical errors, and to achieve consistency of formatting.

18. The Task Force recommends that,

    a. the Law Society post tribunal decisions on its web site for a period of three years; and

    b. after three years the finding and penalty against the member remain on the website, with a link to the CANLII or QuickLaw sites where the decision may be found. The decision itself would no longer be available on the Law Society web site.

IN CAMERA NATURE OF COMPETENCE AND CAPACITY HEARINGS

19. The Task Force recommends that Convocation direct the Professional Development and Competence Committee and the Professional Regulation Committee to re-examine the provisions in the *Rules of Practice and Procedure* respecting competence and capacity proceedings.

APPENDIX 2

TERMS OF REFERENCE
(approved November 2004)

The Law Society strives to fulfil its mandate in the most fair, efficient and transparent manner possible.

In September 2004, Convocation established the Tribunals Task Force to examine the Law Society's tribunals process and procedures, from Proceedings Authorization Committee authorization to the release of orders and decisions, including an examination of the hearings, appeals, decision-making and the decision release process.

Where appropriate, the Task Force will develop recommendations to ensure that the process and decisions are timely, fair, transparent, consistent and accessible. The Task Force may also identify other areas of the regulatory process that would benefit from further work.

In undertaking this examination the Task Force will consider, among other issues,

- The current tribunals process and procedures, including
  - The composition of tribunals;
  - The decision-making and decision release process;
  - The timeliness, effectiveness and transparency of the process;
  - The *Rules of Practice and Procedure;*
- Any gaps and issues these reveal;
- Best practices in place in other regulatory bodies.

The Task Force anticipates reporting to Convocation in March 2005.

APPENDIX 3

RULES OF PRACTICE AND PROCEDURE

MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

As amended, April 25, 2003

THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

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THE LAW SOCIETY OF UPPER CANADA

RULES OF PRACTICE AND PROCEDURE

(MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*)

RULE 1 GENERAL RULES

1.01 Application

Rules 1 through 15 apply to hearings before tribunals under sections 27, 28.1, 30, 31, 32, 34, 38, 43, 45, 49.1, 49.32(1), 49.32(2), 49.42, and 49.43 of the *Law Society Act*
(hereinafter "the Act").

Definitions

1.02 (1) In these Rules, unless the context requires otherwise, words that are not defined in subrule (2) have the meanings defined in the Act or the *Statutory Powers Procedure Act*.

(2) In these Rules,

"appeal" means an appeal under subsections 49.32(1) and (2) of the Act;

"Appeals Management Tribunal" or "AMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"complainant" means a person who has made a complaint to the Society regarding a member or student member which is relevant to the application;

"Hearings Management Tribunal" or "HMT" means the bencher to whom jurisdiction is assigned in procedural matters;

"holiday" means a holiday as defined in the *Rules of Civil Procedure;*

"interim order" means an interlocutory order suspending the rights and privileges of a member or student member or restricting the manner in which a member may practice law;

"motion" means a request for a ruling or decision by a tribunal on a particular issue at any stage in the proceeding which is subject to these Rules, other than a request for an adjournment;

"originating process" means a notice of application, a notice of hearing, or a notice of motion for an interim order where a notice of application has not yet been served;

"party" means the Society, the person who is subject to the proceeding, and any other person added as a party by the tribunal in accordance with the Act;

"person subject to a proceeding" means a member, student member, former member or non-Ontario lawyer as the context may require;

"proceeding" means a proceeding under the Act that commences with the service of an originating process;

"tribunal" means whichever of the HMT, Hearing Panel, AMT, or Appeal Panel that is or will be hearing the applicable part of a proceeding;

Interpretation of Rules

1.03 (1) These Rules shall be liberally construed to secure the just and expeditious determination of proceedings.

(2) Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

Substantial Compliance

1.04 (1) Substantial compliance with a form or notice required by or under these Rules is sufficient.

(2) No proceeding is invalid by reason only of a defect or other irregularity in form.

Compliance with a Rule

1.05 (1) Any provision of these Rules may be waived with the consent of the parties and leave of the tribunal.

(2) The tribunal may, where it is in the interests of justice, dispense with compliance with any Rule at any time and upon such terms as are just.

Computing Time

1.06 Subject to Rule 1.07, in computing time periods specified in these Rules or in an order of a tribunal,

(a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;

(b) where a period of less than seven days is prescribed, holidays shall not be counted;

(c) where the time for doing an act under these Rules expires on a holiday, the act may be done on the next day that is not a holiday; and

(d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day that is not a holiday.

Extension or Abridgment of Time Periods

1.07 (1) A tribunal by order may extend or abridge any time prescribed by these Rules on such terms as are just.

(2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

Withdrawal of Counsel

1.08 Where counsel for a party seeks to be removed from the record of a proceeding, counsel shall bring a motion for leave to withdraw before the tribunal.

Removal of Counsel

1.09 Where a party seeks to remove a counsel from the record of a proceeding, the party shall bring a motion before the tribunal.

Communication with a Tribunal

1.10 Communication with a tribunal outside of the hearing shall be in the presence of all parties or their counsel, or in writing through the Clerk of the tribunal with a copy served on all parties.

Summons

1.11 (1) A summons to witness may be signed by the Secretary.

(2) On the request of a party, the Secretary shall provide a summons to a witness in blank form and the party may complete the summons and insert the name of the witness.

(3) Service of a summons on a witness is the responsibility of the party who obtained the summons.

(4) The party who obtained the summons shall pay attendance money to a witness in accordance with Tariff A under the *Rules of Civil Procedure.*

(5) Notwithstanding subrule (4), if a person is in attendance at the hearing, it is unnecessary to serve the person with a summons or to pay attendance money to call the person as a witness.

Form of Proceeding

1.12 (1) Subject to subrule (2), hearings shall be held orally with the parties, and their counsel if applicable, appearing in person.

(2) The tribunal on motion by any party may order that some or all of a hearing be held as an electronic hearing.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the suitability of the subject matter;
(b) the nature of the evidence and whether credibility is in issue;
(c) whether the matters in dispute are questions of law;

(d) the convenience of the parties;
(e) the cost, efficiency and timeliness of the proceeding;
(f) the avoidance of delay or unnecessary length;
(g) the fairness of the process;
(h) public accessibility to the hearing;
(i) the fulfilment of the Society's statutory mandate; and
(j) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) On consent, a party may move for an order that some or all of a hearing be held as a written hearing.

Location of Hearings

1.13 (1) Subject to this rule, all hearings shall be held at the offices of the Society in Toronto.

(2) The tribunal, on motion by any party, may order that a hearing be held at a place other than the offices of the Society in Toronto.

(3) On a motion under subrule (2), the tribunal may consider, on balance,

(a) the convenience of the parties;
(b) the cost, efficiency and timeliness of the proceeding;
(c) the avoidance of delay or unnecessary length;
(d) the fairness of the process;
(e) public accessibility to the hearing;
(f) the fulfilment of the Society's statutory mandate; and
(g) any other matter which the tribunal considers relevant in order to secure the just and expeditious determination of the proceeding.

(4) The tribunal may set the location of a hearing in a place other than the offices of the Society in Toronto only after consultation with the Hearings Coordinator and the Secretary.

(5) The Hearings Coordinator shall be informed forthwith where there is a request for an adjournment of a hearing scheduled to be held in a location other than the offices of the Society in Toronto.

Adjournments

1.14 (1) Where the grounds for a request for an adjournment are known in advance of the date scheduled for the hearing, the adjournment request shall be made,

(a) to the HMT, where a hearing before a Hearing Panel is pending and a Hearing Panel is not seized of the proceeding; or

(b) to the AMT, where an appeal to the Appeal Panel is pending and an Appeal Panel is not seized of the proceeding,

where a sitting of the HMT or AMT is scheduled, or can be scheduled, before the date scheduled for the hearing.

(2) In circumstances to which subrule (1) does not apply, a request for adjournment shall be made to the tribunal on the date scheduled for the hearing.

RULE 2 JOINDER AND NON-PARTY PARTICIPATION

Joinder of Parties

2.01 Where permitted under the Act, the Hearing Panel may add any person as a party to a proceeding.

Non-Party Participation

2.02 (1) A tribunal may allow a person who is not a party to participate in a proceeding if the participation of the person would, in the opinion of the tribunal, be of assistance to the tribunal, or is required in the interests of justice.

(2) The tribunal shall determine the extent of such participation, when granted, and without limiting the generality of this, the tribunal may allow the person to make oral or written submissions, to lead evidence, and to cross-examine witnesses.

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

Proceedings other than Capacity and Professional Competence Proceedings

3.01 Subject to rules 3.04 and 3.04.1, hearings shall be open to the public except where the tribunal is of the opinion that,

(a) matters involving public security may be disclosed;

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) it is necessary to maintain the confidentiality of a privileged document or communication.

Reasons and Order of the Tribunal

3.02 (1) Subject to subrule (2), the order and reasons of a tribunal, including any written disposition, are a matter of public record.

(2) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal may order that all or part of its reasons, except for those referred to in subrule (3), are not to be made public.

(3) Where a proceeding, or part of a proceeding, before a tribunal has been held in the absence of the public, the tribunal shall issue with its decision a written statement of the reasons for holding the proceeding, or applicable part of the proceeding, in the absence of the public but shall do so without disclosing any matters which, in the opinion of the tribunal, ought not to be disclosed.

Procedure Where Party Seeks *In Camera* Order

3.03 (1) A party seeking an order that any part of a proceeding be held in the absence of the public shall bring a motion in public before the tribunal in accordance with rule 7 with necessary modifications.

(2) Where a party is of the view that it will not be possible to argue the motion without disclosing specific matters which are the subject of the motion, that party may seek an order that the motion be heard in the absence of the public.

(3) Where a party requests that the motion be held in the absence of the public, the party shall state in public the general grounds upon which the motion is brought without disclosing the specific matters which the party wishes to be received in the absence of the public.

(4) Where a party requests that the motion be heard in the absence of the public, the tribunal may grant leave to a non-party to participate in the motion.

(5) In considering whether to permit a non-party to participate in the motion, the tribunal shall consider the nature of the non-party's interest, whether there is any reason for concern that the non-party may fail to maintain the confidentiality of matters which are disclosed in the absence of the public, and whether the interests of the public will otherwise be adequately represented.

(6) The tribunal shall advise a non-party who is permitted to participate in the absence of the public that, unless otherwise ordered, the non-party may not publish or otherwise communicate or disclose to anyone outside the hearing room anything that has been disclosed in the absence of the public.

(7) The tribunal shall advise the non-party that if the confidentiality of the proceeding is breached, in appropriate cases, the tribunal or any party to the proceeding may state a case to the Divisional Court for an order punishing that person for contempt.

(8) In circumstances where the motion is held in the absence of the public and is dismissed, the tribunal may, in public, following the motion, order that the motion be treated as if the motion had been held in public.

Varying, Setting Aside or Suspending an *In Camera* Order

3.03.1 (1) Following the completion of a conduct or discipline hearing, a motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made in that conduct or discipline hearing pursuant to rule 3.01 or section 9 of the *Statutory Powers Procedure Act* that all or part of a conduct or

discipline hearing be held *in camera*, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 7 except that the notice of motion shall be served on all parties and any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

Capacity Proceedings

3.04 (1) A proceeding shall, subject to subrules (2), (5) and (6) be held in the absence of the public if it is a proceeding in respect of a determination of incapacity.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of incapacity shall not be made public by the Society except as required in connection with a proceeding, except as provided for in the Act and except as provided for in subrule (3.1).

(3.1) After the member or student member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of incapacity has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Subject to subrule (6), where the hearing of an application for a determination of incapacity has been closed to the public, and where the tribunal has made an order suspending or limiting the member or student member's rights and privileges, the order is a matter of public record but the tribunal's reasons shall not be made public.

(6) Where the hearing of an application for a determination of incapacity has been closed to the public, the Society shall, where practicable, inform a complainant of the tribunal's decision as to whether the application was established and the tribunal shall determine which aspects of the order shall be made available to a complainant.

Professional Competence Proceedings

3.04.1 (1) A proceeding shall, subject to subrules (2), (5) and (6) be held in the absence of the public if it is a proceeding in respect of a determination of whether a member is failing or has failed to meet standards of professional competence.

(2) At the request of the person subject to the proceeding, the tribunal may order that the proceeding be open to the public.

(3) Unless the proceeding before the tribunal is open to the public as provided by subrule (2), an application for a determination of professional competence shall not be made public by the Society except as required in connection with a proceeding except as provided for in the Act, and except as provided for in subrule (3.1).

(3.1) After the member is served with the application, the Society shall, where practicable, inform a complainant of the fact of the application.

(4) Where the hearing of an application for a determination of professional competence has been open to the public in accordance with subrule (2), the decision, order and reasons of the tribunal are a matter of public record.

(5) Where the hearing of an application for a determination of professional competence has been closed to the public and where the tribunal has made an order suspending or limiting the member's rights and privileges, the decision and the order are a matter of public record.

(6) Where the hearing of an application for a determination of professional competence has been closed to the public and where the decision and order of the tribunal are not otherwise a matter of public record, the Society shall, where practicable, disclose to a complainant the decision of the tribunal and the parts of the order permitted to be disclosed by the tribunal.

Application to Appeals

3.05 (1) Where an appeal arises from a decision or order of a tribunal in respect of a conduct, admission, or readmission proceeding, the provisions of rules 3.01, 3.02 and 3.03 apply, with necessary modifications.

(2) Where an appeal arises from a decision or order of a tribunal in respect of a capacity proceeding or a professional competence proceeding the provisions of rules 3.04 and 3.04.1 apply, with necessary modifications.

Non-publication Orders

3.06 (1) A tribunal may order that information disclosed in the course of a proceeding open to the public is not to be published or otherwise made public by any person, provided that the tribunal is satisfied that the information discloses,

(a) matters involving public security;

(b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or

(c) matters for which it is necessary to maintain the confidentiality of a privileged document or communication.

(2) A motion for a non-publication order shall be made in accordance with rule 3.03 with necessary modifications.

Varying, Setting Aside or Suspending a Non-publication Order

3.07 (1) A motion may be made to a Hearing Panel at any time to vary, set aside or suspend the operation of an order made pursuant to rule 3.06, but where the order is made by the Appeal Panel, the motion shall be made to the Appeal Panel.

(2) A motion under sub-rule (1) shall be made in accordance with rule 3.03.1(2).

RULE 4 COMMENCEMENT OF PROCEEDINGS

Conduct, Capacity, Professional Competence and Non-Compliance Proceedings

4.01 (1) A notice of application shall be issued by the Society in Form 4A in respect of conduct, capacity, professional competence and non-compliance proceedings.

(2) A copy of the notice of application shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Admission, Restoration, Requalification, Reinstatement, and Readmission Proceedings

4.02 (1) A notice of hearing shall be issued by the Society in Form 4B,

(a) in respect of admission and restoration applications where a hearing is required by the Society;

(b) in respect of readmission applications, in every case;

(c) in respect of requalification and reinstatement applications where the person the subject of the proceeding requests, in writing, a hearing.

(2) A copy of the notice of hearing shall be filed with the Clerk of the Hearing Panel and served on the person subject to the proceeding.

Abandonment of a Proceeding

4.03 (1) Prior to the hearing of a conduct, capacity, professional competence or non-compliance proceeding on its merits, the Society may abandon a notice of application by delivering a notice of abandonment in Form 4C.

(2) Prior to the hearing of an admission or restoration proceeding on its merits, the Society may abandon the requirement of a hearing by delivering a notice of abandonment in Form 4C.

(3) Prior to the hearing of an admission, restoration, requalification, reinstatement or readmission proceeding on its merits, the person subject to the proceeding may

abandon his or her application by delivering a notice of abandonment in Form 4C.

RULE 5 SERVICE OF DOCUMENTS

Service of Documents on Parties

5.01 (1) An originating process shall be served on the person subject to the proceeding,

(a) personally;

(b) by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society; or

(c) where a person subject to a proceeding is represented by counsel prior to issuance of an originating process, on counsel where counsel endorses on the originating process or a copy of it an acceptance of service and the date of the acceptance.

(2) An originating process shall be served at least ten days before it is first returnable before a tribunal.

(3) Service of any document other than an originating process may be effected,

(a) by personal delivery to the party or the party's counsel;

(b) by regular or registered mail to the last known address of the party or the party's counsel;

(c) by facsimile transmission to the last known facsimile transmission number of the party or the party's counsel but, where the recipient is the person subject to the proceeding or his or her counsel, the consent of the recipient is required;

(d) by courier, including Priority Post, to the last known address of the party or the party' counsel; or

(e) by any other means authorized or permitted by the tribunal.

(4) Service is deemed to be effective when delivered,

(a) by personal delivery or facsimile transmission before 4 p.m., on the day of delivery or facsimile transmission, and after that time, on the next day;
(b) by regular or registered mail, on the fifth day after mailing;

(c) by courier, on the second day after the document was provided to the courier; or

(d) by any means authorized or permitted by the tribunal, on the date ordered by the tribunal.

RULE 6 DISCLOSURE

Obligations of the Society

6.01 (1) The Society shall make such disclosure as is required by law and without limiting the generality of this requirement, the Society shall provide a person subject to a proceeding with, at least ten days before the hearing,

(a) a copy of any document upon which it intends to rely and the opportunity to examine any other document;

(b) a summary of the oral evidence of all witnesses; and

(c) the list of witnesses which the Society intends to call.

(2) Subject to rule 6.05, evidence against a person subject to a proceeding is not admissible unless disclosure of that evidence has been made at least ten days before the hearing.

Obligations of the Person Subject to a Proceeding

6.02 (1) In admission, requalification, restoration, and reinstatement proceedings, evidence upon which the person subject to the proceeding intends to rely is not admissible unless the person has provided to the Society, within 60 days of receipt of the notice of hearing,

(a) a copy of any documents upon which the person intends to rely;

(b) a summary of the oral evidence of all witnesses upon which the person intends to rely; and

(c) the list of witnesses which he or she intends to call.

(2) In readmission proceedings, evidence upon which a person subject to the proceeding intends to rely is not admissible in that proceeding unless he or she has provided to the Society, with the prescribed application form, the material listed in subrule (1)(a) through (c) within 60 days of receipt of the notice of hearing.

Summaries of Evidence

6.03 Where parties are required to disclose a summary of the oral evidence of a witness, the summary shall be in writing and contain,

(a) the substance of the evidence of the witness;

(b) a list of documents or things, if any, to which the witness will refer; and

(c) the witness' name and address or, if the witness' address is not provided, the name of a person through whom the witness can be contacted.

Expert Reports

6.04 Evidence of an expert led by any party or non-party participant is not admissible unless the party or non-party participant gives all parties in the proceeding, at least ten days before the hearing, the expert's curriculum vitae, and a copy of the expert's written report or, if there is no written report, a summary of the evidence.

Discretion of Tribunal

6.05 A tribunal may, in its discretion, allow the introduction of evidence that is not admissible under rules 6.01, 6.02 and 6.04 and may make such directions as it considers necessary to ensure that no party is prejudiced.

RULE 7 MOTIONS

Scheduling the Motion

7.01 (1) The party bringing a motion to be heard on a date, other than the date scheduled for the hearing of the proceeding on its merits, shall obtain available dates and times for the hearing of the motion from the Hearings Coordinator.

(2) The party bringing a motion, on a date other than the date scheduled for the hearing of the proceeding on its merits, shall inform the Hearings Coordinator of the estimated length of time it will take to argue the motion when obtaining the available dates and times.

Making a Motion

7.02 (1) A motion shall be made by a notice of motion in accordance with Form 7A unless the nature of the motion or the circumstances make a notice of motion unnecessary.

(2) The notice of motion shall be served on all parties and, in the case of motions for disclosure, any person who will be affected by the order sought, at least ten days before the motion is to be heard and shall be filed with proof of service at least seven days before the hearing date with the Clerk of the tribunal.

(3) The moving party shall serve on any person or party served with the notice of motion and file with the Clerk of the tribunal, at least seven days before the hearing date,

(a) a motion record containing the notice of motion and all affidavits and other material to be relied upon; and

(b) a factum, if desired by the moving party, and a book of those authorities referred to in the factum.

Responding to a Motion

7.03 The responding party may serve on the moving party and any person or party served with the notice of motion and file with the Clerk to the tribunal, at least three days before the hearing date,

(a) a responding record containing any materials not contained in the motion record to be relied upon; and

(b) a factum, if desired by the responding party, and a book of those authorities referred to in the factum.

Materials on the motion

7.04 (1) A motion record and responding motion record shall have consecutively numbered pages and a table of contents describing each document, including each exhibit, by its nature and date and, in the case of an exhibit, by exhibit number or letter.

(2) Where this rule requires materials to be filed with the Clerk to the tribunal, a party shall file with the Clerk,

(a) four copies of the materials where the motion is before a three member Hearing Panel;

(b) two copies of the materials where the motion is before a one member Hearing Panel, the HMT, or the AMT; or

(c) six copies of the materials where the motion is before the Appeal Panel.

Evidence on the Motion

7.05 Subject to rules 11.01 (3) and 11.02, evidence on a motion shall be given by affidavit unless the tribunal orders otherwise.

Abandoning a Motion

7.06 (1) A party who makes a motion may abandon it by delivering a notice in Form 4C to that effect to any person or party served with the notice of motion and the Clerk of the tribunal.

(2) A party who serves a notice of motion and does not file it or appear at the hearing of the motion shall be deemed to have abandoned the motion unless the tribunal orders otherwise.

(3) Where a motion is abandoned or is deemed to have been abandoned, a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the tribunal orders otherwise.

Motions on Consent

7.07 Where a motion is on consent, the motion may be heard in writing without the attendance of the parties or persons affected, unless the tribunal orders otherwise, and the written consent of the motion participants and a draft order shall be filed with the notice of motion.

Disposition of Motions

7.08 When a motion is heard by a tribunal prior to the hearing of the proceeding on its merits, the tribunal may grant the relief sought, dismiss or adjourn the motion, in whole or in part and with or without terms, or may adjourn the motion to be disposed of by the tribunal hearing the proceeding on its merits.

Written Order

7.09 (1) Immediately after a motion has been determined, the successful party shall and any other party or person served with the notice of motion may, deliver a draft of the formal order.

(2) An order shall be in accordance with Form 7B.

(3) An order delivered in accordance with subrule (1), or rule 7.07, shall be reviewed, amended if necessary and signed by the chair of the tribunal which heard the motion.

(4) This subrule does not apply to orders made on the record during the hearing of a proceeding on its merits or to motions in writing in accordance with rule 7.07.

Costs and Adjournments

7.10 All motions shall be brought in a timely fashion having regard to all of the circumstances, and the moving party's failure to do so, may be taken into account in awarding costs on the motion and any related adjournment which may be necessary.

RULE 8 INTERIM ORDERS

General

8.01 Rule 7 applies with necessary modifications to this rule.

Making the Motion

8.02 (1) Subject to subrule (2), the Society may bring a motion before the Hearing Panel for an interim order.

(2) Where a motion for an interim order is brought prior to the authorization of a notice of application or the Hearing Panel has not commenced a hearing to

determine the merits of a proceeding, the Society shall bring the motion with the authorization of the Proceedings Authorization Committee.

Materials to be Served

8.03 (1) The Society shall serve on the member or student member, at least three days before the date on which the motion is to be heard,

(a) a motion record which shall contain the notice prescribed in rule 7, all affidavits and any other material to be relied upon; and

(b) a factum, if desired by the Society, and a book containing any authorities referred to in the factum.

(2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service the day before the hearing of the motion.

Responding to the Motion

8.04 (1) The member or student member may serve on the Society, no later than 2:00 p.m. the day before the hearing of the motion,

(a) a responding motion record containing any materials not contained in the Society's motion record; and

(b) a factum, if desired by the member or student member, and a book of those authorities referred to in the factum.

(2) Four copies of the materials referred to in subrule (1) shall be filed with the Clerk of the Hearing Panel with proof of service by 4:00 p.m. the day before the hearing of the motion.

Order to Specify Duration

8.05 An interim order continues in force until a further order of a tribunal sets aside or varies the interim order, or the final order on the merits of the proceeding.

RULE 9 PRE-HEARING PROCEDURES

Tribunal to which proceedings are first returnable

9.01 (1) Subject to subrules (3) and (4), a proceeding shall be first returnable before the HMT to set a date for a hearing on its merits.

(2) When the originating process is served, notice shall be given of the time and place at which the proceeding shall be returnable before the HMT.

(3) A proceeding which originates by notice of application shall be first returnable before a Hearing Panel for the purpose of proceeding with a hearing on its merits where the hearing of another proceeding has already been scheduled or the

nature of the allegations in the notice of application requires that the hearing be expedited.

(4) A proceeding which originates by notice of motion for an interim order where a notice of application has not yet been served shall be first returnable before the Hearing Panel for the hearing the motion on its merits.

Setting Hearing Dates

9.02 (1) Subject to subrule (2), a hearing into a proceeding shall be set only on regularly scheduled hearing dates obtained from the Hearings Coordinator.

(2) Where the parties estimate that the hearing will require more than one day,

(a) the parties shall request special dates for the hearing at the HMT; and

(b) the HMT, at its discretion, may direct that the parties to attend a pre-hearing conference as prescribed by Rule 10.

(3) Prior to requesting the HMT to set special dates for the hearing, the parties shall first obtain available dates from the Hearings Coordinator.

RULE 10 PRE-HEARING CONFERENCES

Party to Request

10.01 (1) Prior to the hearing of a proceeding on its merits, commenced by either a notice of application or a notice of hearing, any party may request that a pre-hearing conference take place before a bencher.

(2) There shall not be more than one pre-hearing conference in a proceeding except by order of the pre-hearing conference bencher or the HMT or on the consent of the parties.

(3) The pre-hearing conference bencher shall not sit on the tribunal at the hearing of a proceeding on its merits unless the parties consent in accordance with rule 12.01.

Attendance at Pre-Hearing

10.02 (1) Where a party refuses to attend a pre-hearing conference, an order that a pre-hearing conference be held may be obtained on motion to the HMT.

(2) Unless otherwise ordered, written notice of the time and place of a pre-hearing conference shall be given by the Hearings Coordinator to the parties and the pre-hearing conference bencher.

(3) Unless otherwise ordered or the parties consent, the parties and their counsel are required to attend in person.

Preparation for Pre-hearing Conference

10.03 Unless otherwise ordered, the parties shall exchange pre-hearing conference memoranda and any related documents and provide copies to the pre-hearing conference bencher, at least two days prior to the pre-hearing conference.

Electronic Pre-hearing Conference

10.04 A pre-hearing conference may be held by conference telephone with the consent of the parties and leave of the pre-hearing conference bencher or the HMT.

Procedure at Pre-hearing Conference

10.05 At the pre-hearing conference, the presiding bencher shall discuss with the parties, among other things,

(a) whether any of the issues can be settled;
(b) whether the issues can be simplified;
(c) whether the parties are able to enter into an agreed statement of facts concerning all or part of the subject matter of the proceeding; and
(d) the advisability, in appropriate cases, of attempting other forms of resolution.

Closed and Without Prejudice

10.06 A pre-hearing conference shall not be open to the public and all discussions at the pre-hearing conference shall be without prejudice.

Documents

10.07 Documents provided to the pre-hearing conference bencher shall,

(a) at the conclusion of the pre-hearing conference, be returned by the pre-hearing conference bencher to the party who provided them ; and

(b) not be considered to be filed in the proceedings.

Agreements and Undertakings

10.08 (1) Agreements and undertakings made at a pre-hearing conference may be recorded in a memorandum prepared by or at the direction of the pre-hearing conference bencher.

(2) Copies of the memorandum referred to in subrule (1) shall be provided to the parties.

(3) Agreements and undertakings in the memorandum referred to in subrule (1) are binding upon the parties to the proceeding unless otherwise ordered by the Hearing Panel.

RULE 11 EVIDENCE

Rules of Evidence

11.01 (1) The rules of evidence applicable in civil proceedings apply in proceedings under the Act.

(2) Notwithstanding subrule (1), with leave of the tribunal, an affidavit or statutory declaration of any person is admissible in evidence as proof, in the absence of evidence to the contrary, of the statements made therein.

(3) An affidavit for use in a proceeding may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit but where, in the opinion of the tribunal, better evidence should be adduced through direct evidence of a witness, the tribunal may require the party to file or call such direct evidence and strike out the evidence filed.

Cross-Examination before Official Examiner

11.02 (1) A tribunal may order, on its own motion or on the motion of a party, that the cross-examination of the deponent of an affidavit or statutory declaration be conducted before an official examiner.

(2) Where the cross-examination of the deponent of an affidavit or statutory declaration is conducted before an official examiner, it shall be conducted in a manner analogous to the procedure under the *Rules of Civil Procedure* and, where necessary, the parties may seek direction from the tribunal.

Documentary Evidence

11.03 In addition to providing a copy to the other party, any party tendering a document as evidence shall provide to the Clerk of the tribunal,

(a) four copies of each document where the hearing is before a three member Hearing Panel; or,

(b) two copies of each document where the hearing is before a one member Hearing Panel, the HMT, or the AMT.

Certain information not admissible

11.04 Notwithstanding subrule 11.01 (1), information obtained by the Discrimination and Harassment Counsel as a result of the performance of his or her duties under clause 4 (1) (a) of By-Law 36 shall not be used and is inadmissible in a proceeding before the tribunal.

RULE 12 CONDUCT OF HEARINGS

Consent

12.01 Where the member or student member and the Society consent to a hearing before a one member Hearing Panel, a consent in Form 12A, must be filed with the Hearing Panel prior to the commencement of the hearing.

Pre-hearing Conference

12.02 Where a pre-hearing conference has been held in relation to a proceeding, and the member or student member and the Society consent to the proceeding being heard before the pre-hearing bencher sitting as a one member Hearing Panel,

(a) the hearing shall not commence until after the conclusion of the pre-hearing conference;

(b) the hearing shall be conducted in accordance with the same rules applicable to any other proceeding before a Hearing Panel; and,

(c) consent, in Form 12B, shall be executed after the pre-hearing conference by both the member or student member and the Society and filed with the Hearing Panel prior to the commencement of the hearing.Exclusion of Witnesses in Proceedings

12.03 (1) A tribunal may order that one or more witnesses be excluded from the hearing until called to give evidence.

(2) An order under subrule (1) may not be made in respect of a party to the proceeding or a witness whose presence is essential to advise counsel for the party calling the witness, but the tribunal may require any such party or witness to give evidence before other witnesses are called to give evidence on behalf of that party.

(3) Where an order is made excluding one or more witnesses from the hearing, there shall be no communication to an excluded witness of any evidence given during the witness' absence from the hearing, except with the leave of the tribunal, until after the witness has been called and has given evidence.

Visual or Audio Recording of Proceedings

12.04 Subsections 136 (1), (2) and (3) of the *Courts of Justice Act* apply to proceedings with necessary modifications.

Transcripts

12.05 (1) All oral and electronic hearings shall be recorded to permit the production of a transcript.

(2) The first party to order a transcript shall pay the cost of transcribing and shall file a copy of the transcript as part of the record.

Interpreters

12.06 (1) Where a witness requires an interpreter, the Society shall provide the interpreter, subject to an order to the contrary by the tribunal.

(2) An interpreter shall be competent and independent and, before the witness is called, shall swear or affirm that he or she will interpret accurately the administration of the oath or affirmation to the witness, the questions put to the witness and his or her answers.

Special Needs

12.07 Parties shall notify the Hearings Coordinator as early as possible of any special needs of the parties or their witnesses.

RULE 13 ORDERS

Admonitions and Reprimands

13.01 (1) Unless the right of appeal is waived by the Society and the member or student member, a reprimand or admonition shall not be administered before the time for serving a notice of appeal has expired.

(2) A reprimand or admonition may be administered by any member of the tribunal.

(3) Where an order of reprimand or admonition is appealed and where the Appeal Panel decides that a reprimand or admonition is the appropriate disposition, the reprimand or admonition may be administered by any member of the Appeal Panel.

(4) A reprimand or admonition may be administered in writing.

(5) Except where a reprimand or admonition is administered in writing, it is to be administered at a sitting of the Hearing Panel or the Appeal Panel, as the case may be, that is open to the public.

(6) An admonition shall be a matter of public of record but shall not be published in the Ontario Lawyers Gazette or in any formal media release by the Society except where the admonition is referred to in subsequent or other proceedings.

Orders issued by One Member Hearing Panel in Conduct Proceedings

13.02 A one member Hearing Panel may not make an order under subsections 35(1) 1 or 35(1) 2 of the Act.

Written Reasons

13.03 (1) Subject to subrule (2) and subrule 15.07, a tribunal is required to give reasons in

writing if the request for written reasons is made within thirty days after the day on which the panel makes its final decision or order.

(2) A Hearing Panel shall issue written reasons for decisions in relation to capacity applications in every case.

Incapacity Orders made in the absence of the Member or Student Member

13.04 (1) Where the Hearing Panel has proceeded in the absence of the member or student member and has determined that there are reasonable grounds for believing that the member or student member is, or has been, incapacitated, the Hearing Panel may make an interim order.

(2) An interim order becomes final on the thirty-first day after the day on which notice of the interim order is served on the member or student member unless, before that day, he or she moves before the Hearing Panel to have the interim order of suspension set aside and the issue of incapacity determined.

(3) The member or student member named in the order may appeal a final order of suspension made under this rule.

RULE 14 COSTS

Security for Costs

14.01 (1) In admission, readmission, reinstatement, restoration or requalification proceedings, or an appeal arising from any of these proceedings, the tribunal, on motion by the Society, may make such order for security for costs as is just where it appears that,

(a) the person subject to the proceeding has an order for payment of costs made against him or her in the same or another proceeding under the Act which remains unpaid in whole or in part; and

(b) there is good reason to believe that the proceeding is unwarranted and the person subject to the proceeding has insufficient assets in Ontario to pay the costs of the Society where ordered.

(2) A person subject to a proceeding against whom an order for security for costs has been made may not, until the security has been given, take any step in the proceeding except with leave of the tribunal.

(3) Where a person subject to a proceeding defaults in giving the security required by an order, the tribunal, on motion by the Society, may dismiss the proceeding and any stay obtained no longer applies.

Motions for Costs

14.02 A request for costs shall be made by motion to the tribunal which heard the proceeding on its merits or where otherwise appropriate.

Costs against the Society

14.03 In admission, conduct, capacity, professional competence or non-compliance proceedings, where it appears that the proceedings were unwarranted, the tribunal may order that such costs as it considers just be paid to the person subject to the proceeding by the Society and any other party to the proceeding.

Costs to the Society

14.04 (1) In appropriate cases, where a tribunal has made a determination in a proceeding that is adverse to a party other than the Society, the tribunal may make an order requiring that party to pay all or part of,

(a) the Society's legal costs and expenses;
(b) the Society's costs and expenses incurred in investigating the matter; and
(c) the Society's costs and expenses incurred in conducting the proceeding.

(2) In awarding costs and expenses, the tribunal shall apply any tariff which may be approved by Convocation from time to time.

Wasted or Unreasonable Costs

14.05 (1) Where a party or non-party participant has caused costs to be incurred without reasonable cause or to be wasted by undue delay, negligence or other default, the tribunal may make an order awarding such costs as are just.

(2) An order under subrule (1) may be made by the tribunal on its own motion or on the motion of any party in the proceeding.

RULE 15 APPEALS

General

15.01 Subject to the Act, there is no appeal from an interlocutory order of a Hearing Panel other than an interim order.

Stay Pending Appeal

15.02 A party seeking a stay of a final order of a Hearing Panel shall bring a motion to the Appeal Panel in accordance with Rule 7 with necessary modifications.

Commencement of Appeals

15.03 (1) An appeal shall be brought by a notice of appeal in accordance with Form 15A.

(2) The notice of appeal shall be served on all other parties and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of the order;

(b) after 30 days on consent of the parties, or with leave of the Appeal Panel.

Materials on the Appeal

15.04 (1) A party delivering a notice of appeal shall contemporaneously serve and file a certificate of the contents of the record book, in accordance with Form 15B, listing the contents of the record book necessary for that party's purposes.

(2) Within five days of delivery of a certificate of the contents of the record book, the other party shall serve and file a certificate of the contents of the record book in accordance with Form 15B.

(3) Subject to subrule (5), the contents of the record book shall contain the documents listed in the certificate(s), as the case may be, unless ordered otherwise by the AMT.

(4) Within thirty days of delivery of the first certificate of the contents of the record book, the party delivering a notice of appeal shall serve a record book on the opposing party or counsel for that party and shall file 6 copies of the record book with the Clerk to the Appeal Panel.

(5) Where a party fails to deliver a certificate of the contents of the record book, that party shall be deemed to accept the other party's certificate of the contents of the record book, unless the party obtains the consent of the other party or an order from the AMT.

(6) The record book shall contain, in consecutively numbered pages, the following,

(a) a table of contents describing each document by its nature and date and, in the case of an exhibit, by exhibit number or letter;

(b) a copy of each notice of appeal;

(c) a copy of each document required;

(d) all relevant transcripts or a list of all relevant transcripts together with a certificate of the court reporter confirming that such transcripts have been ordered and any deposit required for preparation of transcripts has been paid; and

(e) a copy of each certificate of the contents of the record book.

(7) The party delivering a notice of appeal shall serve a factum on all other parties within 15 days of the delivery of the record book.

(8) Within 15 days of receipt of a factum, a party shall serve a responding factum on all other parties.

(9) Each factum shall contain a concise statement, without argument, of the facts, issues to be argued, a concise statement of law, and authorities relating to each issue and the order sought.

(10) Each party shall serve with their factum, a book of authorities unless the authorities to be relied upon are contained in the standard book of authorities.

(11) Each party shall file 6 copies of that party's factum and book of authorities with the Clerk to the Appeal Panel.

(12) Where the party who files a notice of appeal fails to file a certificate of content of the record book, record book, factum or book of authorities in the time prescribed by this rule or by the AMT, the notice of appeal shall be deemed to be abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Appeal Management Tribunal (AMT)

15.05 (1) The AMT shall schedule hearings before the Appeal Panel.

(2) The AMT shall hear motions with respect to,

(a) the abridgement or extension of any time prescribed by these Rules or by a previous order of the AMT;

(b) the location of the hearing of an appeal or a motion;

(c) the form of the hearing, including a request to hold a hearing as an electronic or written hearing;

(d) the consequences of non-compliance with a previous order of the AMT;

(e) the materials to be filed with the Appeal Panel;

(f) procedural issues regarding motions before the Appeal Panel including the contents of any affidavit or the record book of further evidence, the scope or conduct of a cross-examination, and the costs of transcripts and appointments before an official examiner; and

(g) requests to strike out a notices of appeal for failure to comply with these rules or any order of the AMT or the Appeal Panel.

(3) The AMT may, on request of a party or on its own motion, transfer the hearing of a motion to the Appeal Panel hearing the proceeding on its merits.

Motion to Tender Fresh Evidence

15.06 (1) If a party seeks to tender evidence to the Appeal Panel which was not before the Hearing Panel, the party shall bring a motion before the Appeal Panel in accordance with Rule 7 with necessary modifications.

(2) Both parties shall be prepared to proceed with the Appeal Panel's consideration of the appeal on its merits following a motion to tender fresh evidence, in any event of the result of the motion.

(3) Where the party who files a notice of motion to tender fresh evidence fails to file supporting materials in the time prescribed by this rule or by the AMT or fails to attend for cross-examination if required or fails to obtain transcripts of any cross-examinations in accordance with these rules, the notice of motion to tender fresh evidence shall be deemed abandoned, unless the party obtains the consent of the other party or an order from the AMT.

Reasons

15.07 The Appeal Panel shall give written reasons for its decision in every case.

RULE 16 SUMMARY ORDERS

Application

16.01 (1) Rule 16 applies to matters concerning sections 46, 47, 48, 49, 49.1 and 49.32(3) of the Act.

(2) Rules 1, 5, 6, 7, 10, 11, 12 and 14 apply with necessary modification to Rule 16.

Definitions

16.02 In this Rule,

"summary disposition bencher" means an elected bencher appointed by Convocation, pursuant to sections 46, 47, 48, 49 or 49.1 of the Act, to make summary orders.

"Asummary order" means an order prescribed by sections 46, 47, 48, 49 or 49.1 of the Act.

"summary order appeal" means an appeal prescribed by subsection 49.32(3) of the Act.

Summary Orders

16.03 A summary order issued by the summary disposition bencher shall be in accordance with Form 16A.

Service of Notice of Summary Orders

16.04 (1) Notice to a member or former member of a summary order having been made shall be served personally or by mailing a copy thereof in a registered letter addressed to the person's last known residence or office address as shown by the records of the Society.

(2) Where notice is given by registered mail it shall be deemed to have been given on the fifth day after the mailing.

Appeal of a Summary Order

16.05 (1) An appeal of a summary order on any question of fact or law shall be brought by a notice of appeal in accordance with Form 16B.

(2) The notice of appeal shall be served on the Society and filed with the Clerk to the Appeal Panel:

(a) within 30 days of service of notice of the order on the member;

(b) after 30 days on consent of the Society, or with leave of the Appeal Panel.

Disclosure of Documents by Society

16.06 Where a notice of appeal is served on the Society, it shall make disclosure to the member or former member, within 10 days of receipt of the notice of appeal, of all relevant documents in its possession, power or control.

Appeal Record

16.07 (1) The member or former member shall serve on the Society within 30 days of service of the notice of appeal,

(a) an appeal record which shall contain the summary order, the notice of appeal, all affidavits, and any other material to be relied upon; and

(b) a factum, if desired by the member or former member, and a book containing any authorities referred to in the factum.

(2) The member or former member shall file six copies of the materials referred to in subrule (1) with the Clerk of the Appeal Panel with proof of service within 5 days of service of the materials on the Society.

Responding to an Appeal

16.08 (1) The Society shall serve on the member or former member, within 10 days of the receipt of an appeal record,

(a) a responding appeal record containing any materials not contained in the appeal record upon which it intends to rely; and

(b) a factum, if desired by the Society, and a book of those authorities referred to in the factum.

(2) The Society shall file six copies of the materials in subrule (1) with the Clerk of the Appeal Panel with proof of service no more than 5 days after the service of the material upon the member or former member.

Evidence on the Appeal of a Summary Order

16.09 Subject to Rules 11.01 (3) and 11.02, evidence on the appeal of a summary order shall be given by affidavit unless the Appeal Panel orders otherwise.

Scheduling the Appeal

16.10 After the member or former member has complied with Rule 16.07, the member or former member shall contact the Hearings Coordinator within 30 days to obtain available dates and times for the hearing of the appeal.

Abandoning a Summary Order Appeal

16.11 (1) The member or former member may abandon a summary order appeal by serving a notice of abandonment in Form 4C on the Society and the Clerk of the Appeal Panel.

(2) The member, or former member, who,

(a) fails to comply with the provisions of Rule 16.07;

(b) fails to comply with the provisions of Rule 16.10; or

(c) fails to appear at the hearing of the appeal,

shall be deemed to have abandoned the summary order appeal unless the Appeal Panel orders otherwise.

(3) Where an appeal is abandoned or is deemed to have been abandoned, the Society is entitled the costs of the appeal unless the Appeal Panel orders otherwise.

Appeals on Consent

16.12 Where an appeal is on consent, the appeal may be heard in writing without the attendance of the Society or the member or former member unless the Appeal Panel orders otherwise. The written consent of the parties and a draft order shall be filed with the Clerk of the Appeal Panel.

Adopted by Convocation: January 28, 1999
Amended: February 19, 1999, March 26, 1999, April 30, 1999, May 28, 1999, September 24, 1999, January 27, 2000, June 23, 2000, February 21, 2001, June 22, 2001 and April 25, 2003.

These Rules can be found at www.lsuc.on.ca

APPENDIX 4

ADJUDICATOR CODE OF CONDUCT
(headings and possible topics)

Purpose of the Code

- to establish rules of conduct governing the professional and ethical responsibilities of tribunal members
- to set out the responsibility of tribunal members to maintain the integrity, competence and effectiveness of the tribunal

If Code is made available to the public:

- to inform the public of the decision-maker's obligation to act fairly
- to contribute to public confidence in the tribunal

Guiding Principles

Decision-maker's responsibility to:

- regulate in the public interest
- promote the principles of accountability, respect, integrity and openness by leadership and example

Applicability of the Code

- to all Hearing and Appeal Panel members from commencement to completion of term, including participation in on-going responsibilities after the completion of the term

Conflict of Interest

- definitions
  - pecuniary vs. non-pecuniary conflict of interest
  - test for conflict of interest
  - bias
  - apprehension of bias

- rules of conduct
  - prohibition on:

-acting where conflict of interest exists
-acting where bias does or may be seen to exist
-taking partisan position in public with respect to issue before the tribunal
-accepting money or gifts from someone affected by tribunal decision
-appearing before tribunal as expert witness
-acting as a consultant in the preparation of a case before the tribunal
-using information obtained through official duties for personal gain
-using tribunal property for anything other than tribunal activity
-using letterhead and business cards for anything other than tribunal responsibilities

- procedural protocol/ steps to take when the question of bias or conflict of interest is raised
  - duty to inquire where there may be a possible conflict
  - duty to disclose immediately upon realization of conflict
- conflict of interest affecting the Chair

Role of the Chair

- ensure hearing is fair and that both sides get opportunity to present their case

Conduct of the Hearing/ Responsibilities of Discipline Panel Members/ Good Conduct

- approach the hearing with open-mind and avoid action that could lead any person to think otherwise
- avoid body language/ tone of voice that is indicative of pre-judgment of the issue
- avoid contributing to unnecessary delay in the proceedings
- minimize undue interruption of submissions/ testimony and limit questions to only those that are necessary to seek clarification
- demonstrate sensitivity to gender, cultural, ability and religion issues that could affect the conduct of the proceedings
- ensure unrepresented parties are not unduly disadvantaged
- refrain from communicating with parties unless in the presence of all parties and, preferably, on the record
- comment on competence of counsel only if, at the end of the hearing, the tribunal is pleased with the assistance of both
- refrain from discussions of tribunal business outside the hearing
- respect formality of proceedings; comport one's self formally; avoid using first names
- refrain from informal discussions; casual chit-chat
- avoid collecting information outside of the hearing
- redirect media inquiries to Chair, counsel of the Law Society Communications Department, without comment on the case
- refrain from socializing and dining with a party unless all parties are present and there is no discussion of the subject matter of the hearing
- follow guidelines for granting adjournments
- avoid relying on hearing panel members' own expertise
- comply with duty to meet timelines that are based on reasonable expectations

Duty of Confidentiality

- prohibition on discussion of case in the presence of anyone other than panelists hearing the issue before the tribunal

Decision-making Responsibilities/ Deliberations

- made on merits, based on evidence put before hearing panel
- made without regard to the opinions and criticism of others
- made in consideration of tribunal's jurisprudence
- prepared in format set out by the tribunal
- completed in a timely manner

- written to reflect clear, logical reasoning
- discussed only in the absence of others who are not adjudicating the issue before the tribunal

Duty to Provide Written Reasons

[self-evident]

Adequacy of Reasons

- outlines the elements of well-crafted reasons

Collegial Responsibilities

- to other members
- when sitting as a Hearing Panel
- to the Tribunal Chair
- to the Tribunal

Post-term Responsibilities/ Post-service Conduct

- appearances before the tribunal to be limited except as a witness or consultant for a specified period of time from ceasing to be a Member or after the release of outstanding decisions
- bound by Code where matter before the tribunal is on-going
- prohibition on taking improper advantage of past office
- obligation to ensure maintenance of integrity of the Tribunal

Role of the Tribunal Staff

- distinguish between role of Law Society Discipline Counsel and role of Tribunal Office staff
- set out roles of each staff member of the Tribunals Office

REPORTS FOR INFORMATION ONLY

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

- University of Ottawa French Common Law Program – Request for Funding Study
- "Equality Guidelines" in Purchasing Agreements
- Update Report on the Tsunami Project
- Equity Public Education Events – 2005

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

April 28, 2005

Report to Convocation

Committee members:
Joanne St. Lewis (Chair)
Derry Millar (Vice-Chair)
Marion Boyd
Mary Louise Dickson
Sy Eber
Thomas G. Heintzman
Ronald D. Manes
Tracey O'Donnell
Mark Sandler
William J. Simpson

Purpose of Report: Information

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

THE REPORT

Terms of Reference/Committee Process

1. The Committee met on April 14, 2005. Committee members participating were Joanne St. Lewis (Chair), Mary Louise Dickson, Dr. Sy Eber, Mark Sandler and William J. Simpson. Invited member, Senka Dukovich (Representative of the Equity Advisory Group (EAG)), also participated. Staff members in attendance were Josée Bouchard, Katherine Haist and Marisha Roman.

2. The Committee is reporting on the following matters:

Information

- Request for funding for a study undertaken by the University of Ottawa, French Common Law Program
- "Equality Guidelines" in Purchasing Agreements
- Update report on the Tsunami Project
- Equity Public Education Events - 2005

INFORMATION

REQUEST FOR FUNDING FOR A STUDY UNDERTAKEN BY THE UNIVERSITY OF OTTAWA, FRENCH COMMON LAW PROGRAM

Background

3. The Equity Initiatives Department received a request for funding for a study undertaken by the University of Ottawa, French Common Law Program. The objective of the study is to determine the contributions of graduates from the French Common Law Program of the University of Ottawa to the provision of legal services in French in the last 25 years. Since 1980, 1000 individuals have taken courses in the French Common Law Program of the University of Ottawa.

4. The study is undertaken in two phases. The first phase is funded by the Department of Justice Canada and consists of doing a survey of all graduates of the program to determine their career paths and whether they are using their French common law skills. The first phase took place between January 2005 and March 2005.

5. Between April 2005 and March 2006 (Phase II), the project coordinators will conduct focus groups and analyze the results of the survey.

6. The University of Ottawa is in the process of requesting funding from the Department of Justice for the second phase of the study and requires financing from other partners. It is asking for an unspecified financial contribution from the Law Society. Funding to the amount of $4,000 would be appropriate.

7. The letter of request for funding and the survey are included at Appendix 1.

Decision to fund the study

8. The Committee approved funding for this project, to be allocated from the budget of the Equity Initiatives Department. The following factors influenced its decision.

9. The Law Society recognizes the uniqueness of the Francophone community and is committed to the promotion of rights of Francophone communities. The mandate of the Law Society is to regulate the legal profession in the public interest. Therefore, it is within the mandate of the Law Society to promote access to legal services in the French language. The Faculty of Law of the University of Ottawa and the Faculty of Law of the Université Moncton are the only two Canadian law faculties that offer full common law programs in the French language. Therefore, a number of lawyers who practice in French in Ontario have completed their common law degree in the French Common Law Program of the University of Ottawa. Further, the Law Society of Upper Canada offers the Bar Admission Course in the French language.

10. It is anticipated that the study will provide useful information for the Law Society as the regulator of the legal profession. The Law Society has very limited information about graduates from the French common law program, their career paths and the types of legal services they offer in French. Such information may assist in developing programs and initiatives to increase access to legal services in the French language.

11. The Equity Initiatives Department will allocate $4,000 to this study from its 2005 budget. This will serve to enhance the Law Society's partnership with the Francophone legal community. The Committee notes, however, that the Law Society is not a funding agency and it funds external studies only in exceptional circumstances. The decision to fund this project is based on the Law Society's recognition of the uniqueness of the

Francophone community in Ontario, the importance of ensuring that legal services are offered in the French language and the fact that the Law Society has very little information about career paths of Francophone lawyers and the provision of legal services in French.

12. At its April 14, 2005, the Committee adopted the following recommendation:

    a. That the Equity and Aboriginal Issues Committee supports the Study of Graduates from the French Common Law Program of the University of Ottawa;
    b. That the Equity and Aboriginal Issues Committee approves funding to the amount of $4,000 towards the study mentioned in paragraph a). Such funding will be allocated from the budget of the Equity Initiatives Department and will be provided under the condition that the results of the study be provided to the Law Society and that the Law Society be allowed to use the results of the study.

"EQUALITY GUIDELINES" IN PURCHASING AGREEMENTS

Background

13. Recommendation 16 of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*[1] states that "the Law Society should examine whether or not it should develop a contract compliance program that would have the effect of requiring the firms and organizations with which it does business to have in place practices that meet diversity and equity requirements". In January 2004, the Bicentennial Report Working Group[2] stated that the Law Society has an underutilized opportunity to stimulate diversity initiatives within the profession through the implementation of an effective contract compliance program.

14. As a result, senior managers of the Law Society considered a number of contract compliance programs already in place in other organizations and developed "Equality Guidelines" to be applied to its purchasing agreements (Equality Guidelines presented at Appendix 2). When developing the Equality Guidelines, senior management also considered the Law Society's purchasing policy and practices and took into account operational requirements. Management developed Equality Guidelines that permit efficiency in the procurement of goods and services while obliging suppliers and law firms covered by the Guidelines to follow practices and policies that meet diversity and equality requirements.

15. The following is an outline of other contract compliance programs considered by the Law Society and a description of the Law Society's purchasing policy and practices.

Contract Compliance Programs

16. The following contract compliance programs were considered in the development of the "Equality Guidelines".

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[1] *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997)

[2] *Bicentennial Implementaton Status Report and Strategy* (Toronto: Law Society of Upper Canada, January 2004).

Government of Canada

17. In 1995 the Canadian government launched the Federal Contractors Program for Employment Equity ("FCP-EE). The FCP-EE applies to provincially regulated employers with a national workforce of 100 or more employees and to public sector employers who are not subject to the *Employment Equity Act*. Contracts relating to performance of legal services entered into under the authority of the Minister of Justice are excluded. Legal services are exempted "because it is impossible to determine whether a contract will exceed the $200,000 mark. Also, the bidding process is not necessarily involved since the Minister of Justice usually with which law firm he or she wants to contract".[3] Under this program, contractors who may be awarded government contracts for the supply of goods and services to the value of $200,000 or more must sign a Certificate of Commitment, verifying their commitment to set up equity programs in their workplace in the event that such a contract is awarded to them. Once a government contract of this value is awarded, the commitment becomes an on-going obligation and does not expire with the fulfillment of the contract.

18. In signing the Certificate of Commitment, the potential contract recipient agrees, upon being awarded the contract, to adhere to the following eleven criteria: communicating employment equity to employees, assigning a senior official to be responsible for employment equity, collecting and maintaining workforce information and workforce analysis, establishing employment systems review, establishing goals, developing an employment equity plan, adopting positive policies and reasonable accommodation, establishing a positive work environment, developing monitoring procedures and providing authorization to enter premises.

19. Compliance with the federal contract compliance program is determined through compliance reviews conducted with program participants, chosen through random sampling. Reviews are carried out by Workplace Equity Officers from the federal government.

Government of Ontario

20. The provincial government does not appear to have a contract compliance policy in place. For the most part, individual ministries are responsible for procuring their required goods and services. However, the Office of Common Purpose formulates the policies that guide such acquisitions. Certain service acquisitions are subject to the government's "Fair Wage Policy" which is designed to address pay equity among employees.

City of Toronto

21. Organizations that contract with the City of Toronto for the supply of goods and services are required to sign certificates pledging to adopt and post in the workplace the city's Fair Wage and Non-Discrimination policies. The Declaration of Non-Discrimination Policy Certificate also contains a clause through which the organization declares its intent to uphold policies that prohibit discrimination by and within the organization.

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[3] Errol P. Mendes, *Racial Discrimination: Law and Practice* (Scarborough: Carswell, 1995-1999) at 7-7.

22. Allegations of non-compliance with the Fair Wage and Non-Discrimination policies are initially brought to the attention of the city through complaints made via a Telephone Hotline. In the case of contraventions of the Fair Wage policy, the city responds by conducting a work place audit of the organization. A finding of non-compliance results in the organization being required to pay back wages owed in addition to a penalty levied by City. A "violation" is placed in the organization's record and a finding of two violations in a three year period may result in the organization being disqualified from receiving further municipal contracts for anywhere from 2 years to indefinitely. The names of non-compliant firms are posted for public viewing on the City's website.

23. Allegations of non-compliance with the Non-Discrimination Policy are referred to the Ontario Human Rights Commission for further investigation.

Ryerson University

24. Ryerson University's *Discrimination and Harassment Prevention Policy* contains a clause that states "This Policy applies […] to contractors. It shall be deemed to be a condition of every contract entered into by, or on behalf of, the University that those contracted with will comply with this Policy and with the Ontario Human Rights Code. Breach of this condition may result in cancellation of the contract".

The Law Society of Saskatchewan

25. It appears that only one Canadian Law Society, the Law Society of Saskatchewan, has adopted a contract compliance program. The policy applies to services provided by outside lawyers or law firms to the Law Society. It does not apply to other types of suppliers.

26. The policy states that law firms or lawyers in Saskatchewan are required, as a condition of receiving Law Society legal work:
    a. To make a commitment in writing to respect the workplace equity principles;
    b. To communicate their commitment to all staff within the law firm;
    c. To report on the representation of designated group members among lawyers within the firm, upon request;
    d. To have and implement a workplace equity policy and action plan.

The Law Society's Purchasing Practice

27. The Committee approved the Equality Guidelines adopted by the senior management staff of the Law Society of Upper Canada (Equality Guidelines presented at Appendix 2). The following describes the purchasing practices of the Law Society and the Equity Guidelines.

Purchasing Practices

28. The purchasing practices of the Law Society reflect the diverse functions performed by the various departments within the organization. Procedures provide for compliance with internal policy objectives while permitting sufficient flexibility for efficient procurement of goods and services. Many employees have authorization to participate in the purchasing process. The variety of goods and services required to support the

work of the Law Society is tremendous, ranging from, but not limited in scope to, banking services, accounting services, office products, outside legal counsel, catering, and educational instructors fees. Thus, in the interest of efficiency, some suppliers are chosen directly by individual departments within the Law Society. Others are chosen by the Purchasing Department, which use the criteria of cost, quality of the product/service and delivery options (time) as the bases upon which decisions are made.

Application of the Equality Guidelines

29. As mentioned above, Law Society financial practices allow many employees at various levels of the organization to participate in the purchasing process. The variety of goods and services required to support the work of the Law Society is tremendous and more than 2000 agreements are entered into by the Law Society with suppliers each year. Some suppliers are chosen directly by individual departments while others are chosen by the Purchasing Department. Senior staff decided that it would be administratively inefficient to apply the Equality Guidelines to all agreements with suppliers and/or law firms. Therefore, the Guidelines apply to law firms located in Ontario with more than 50 lawyers and to suppliers with a workforce of more than 50 employees, other than law firms, for contracts above $100,000.

30. The decision to apply the Equality Guidelines to law firms over 50 lawyers without also specifying a minimum amount is explained by the fact that it is difficult to determine whether retainers with lawyers will exceed $100,000.

Equality Guidelines Requirements

31. The Equality Guidelines make it a condition of agreements that suppliers or law firms comply with all relevant Law Society policies and procedures, including the Law Society's Policy on Preventing and Addressing Harassment and Discrimination Policy. A breach of this condition may result in cancellation of the agreement. This clause ensures that suppliers and law firms bound by the Equality Guidelines follow practices that promote equality and diversity.

UPDATE REPORT ON THE TSUNAMI PROJECT

Background

32. The Law Society of Upper Canada was asked to respond to assist victims of the South and Southeast Asia tsunami disaster of December 26, 2004 in consultation with partners and stakeholders such as the South Asian Legal Clinic of Ontario (SALCO), the South Asian Lawyers' Association (SALA) and Pro Bono Law Ontario (PBLO).

33. On January 27, 2005 Convocation approved the following recommendation:
    a. That the Law Society, in cooperation with stakeholders, facilitate the provision of pro bono legal services to members of communities in Ontario who have been affected by the South and Southeast Asian tsunami disaster;

b. That, if possible, the list of lawyers volunteering their services include lawyers who can provide assistance in languages spoken in the affected communities in Ontario;
c. That the Law Society monitor emerging legal issues in this and related areas;
d. That the Law Society publish relevant resources, updated information and links on its website and in other communication media related to access to justice issues in an international human rights context;
e. That the Law Society, in cooperation with stakeholders, develop a continuing legal education program for lawyers to enhance their knowledge of legal issues relevant to members of affected communities; and
f. That the Law Society organize, if appropriate, legal information sessions preferably within the affected communities.

34. This is an interim report on the activities of the Law Society in the Tsunami Relief Project.

Community Outreach

35. The Equity Initiatives Department, with the assistance of the Communications and Public Affairs Department, has been working closely with the South Asian Legal Clinic of Ontario (SALCO) to do outreach with communities affected by the tsunami. Representatives of the Law Society and SALCO have attended a number of community meetings and contacted various lawyers and organizations to identify the needs of the communities affected by the tsunami.

36. Contacts have been made with stakeholders, such as the Ontario Counsel of Agencies Serving Immigrants (OCASI). OCASI is involved in a Tsunami Relief Project. The OCASI project includes developing a resource kit for sponsors of tsunami victims. The OCASI sponsorship kit will include references to the Law Society's document of Frequently Asked Questions. The two documents will be linked on both the OCASI and Law Society websites.

37. In order to coordinate the efforts of the Law Society and the Canadian Bar Association (CBA), members of the Equity Initiatives Department have spoken with all immigration lawyers in Ontario involved with the CBA pro bono initiative for tsunami relief. The lawyers listed on the CBA website may be retained to review completed immigration applications.

38. Members of the Equity Initiatives Department have also attended a number of information sessions organized by SALCO at the East Scarborough Storefront. Located in Morningside Mall at the corner of Morningside and Lawrence, the Storefront is a community group that provides social, employment, legal, and health assistance to the community in East Scarborough. The communities most involved with their programs are the Tamil community, other South Asian communities, and the Somali community. The media (OMNI, CBC) were present at some of these information sessions.

39. Other contacts have included:

a. Community Legal Education Ontario (CLEO) – to discussed strategies to disseminate Frequently Asked Questions and outreach to the communities
b. Inter-Clinic Immigration Working Group (ICIWG)
c. Tamil Eelam Society of Canada
d. Horn of Africa Parents Association
e. Various Ontario legal clinics
f. People in the Thai, Tamil, Indian, Indonesian, and Somali communities in Toronto, Ottawa, Scarborough, Mississauga, and Kitchener-Waterloo

40. Counsel, Equity Initiatives Department, also met with John McKay, MP for Scarborough-Guildwood, and contacted Laurel Broten, MPP for Etobicoke-Lakeshore and Parliamentary Assistant to the Premier, about the Law Society's tsunami initiative.

Telephone Hotline

41. The Law Society has established a telephone line (including a toll-free line) and an e-mail address for members and the public wishing to participate in this initiative.

42. As of March 31, 2005, the Law Society had received approximately thirty calls and other inquiries from the communities. Counsel has been providing information about Citizenship and Immigration Canada's tsunami program, and referring members of the public to immigration lawyers who have agreed to assist the Law Society in the tsunami initiative.

43. Thus far, the calls have been from lawyers who want to assist in the Law Society initiative and people affected by the tsunami in the Somali, Sri Lankan, and Indian communities.

Lawyers Offering Information

44. A list of ten lawyers willing to do *pro bono* work for people affected by the tsunami has been compiled. The names of the lawyers are provided to the public on a case-by-case basis. The pro bono lawyers will assess potential cases and assist people with immigration applications.

Legal Issues

45. To date, the only legal issues that have come up in relation to the tsunami crisis relate to immigration and refugee law.

Frequently Asked Questions (FAQs)

46. In partnership with SALCO, the Law Society has developed a booklet of frequently asked questions (FAQs) about the tsunami as it relates to immigration.

47. The FAQs are published in English, French, Tamil and Somali and have been distributed to the communities.

48. The FAQs deal with Citizenship and Immigration Canada's response to the tsunami; the Canadian immigration process; sponsoring a family member; and getting legal help with an immigration problem.

49. The FAQs are posted on the Law Society website, including translations. There is also a link to the FAQs on the OCASI website in their sponsorship kit.

Communications

50. The Law Society has sent out community notices/news releases to local media and community organizations regarding the Law Society's tsunami initiative and information sessions.

51. The community notices/news releases are published in English, Tamil, and Somali. Some notices/news releases will also be published in French.

52. Communications are also available on the Law Society website.

Information Sessions

53. In conjunction with SALCO, the Law Society is organizing four legal information sessions for Ontario communities affected by the tsunami disaster.

54. The first session was held on March 23, 2005 at Scarborough Civic Centre from 3:00 to 6:00 p.m. Approximately twenty individuals attended from the Tamil and Somali communities, including representatives from some community organizations. The media in attendance were the *Ming Pao Newspaper* (Toronto) and the *East York Observer.* Sudabeh Mashkuri, Anita Balakrishna (staff lawyer at SALCO), and Jenny Vane (representative from the Ontario Government's Citizenship and Immigration (Settlement)) presented the information. The Law Society disseminated the FAQs in English, French and Tamil, and information from Ontario and Canadian government websites relating to the tsunami.

55. The second session will be held on April 23, 2005 at Wellesley Community Centre (Wellesley and Sherbourne) from 2:00 to 5:00 p.m. This session is being held in partnership with SALCO as well as Pam McConnell, City Councillor Ward 28. Speakers will include Sudabeh Mashkuri, Anita Balakrishna, and Ontario and Canadian government representatives. The Law Society will disseminate the FAQs in four languages and information from government websites.

56. In the spring the Law Society will also be holding information sessions in Mississauga and Ottawa, but the details are not yet finalized.

Continuing Legal Education

57. In partnership with SALCO, the Law Society is hosting a Continuing Legal Education program on May 5, 2005 entitled *Immigration and Refugee Law: The Aftermath of the Tsunami.*

58. The panel discussion will be from 4:00 to 6:00 p.m. Lawyers Barbara Jackman (Barrister & Solicitor) Guidy Mamann (Mamann and Associates), Hadayt Nazami (Barrister &

Solicitor), and Amina Sherazee (Downtown Legal Services) have confirmed that they will participate as panel members.

59. The panel discussion will be followed by a reception at 6:00 p.m. The keynote speaker will be Senator Mobina Jaffer.

EQUITY PUBLIC EDUCATION EVENTS 2005

60. The list of Upcoming Equity Public Education Events until June 2005 is presented at Appendix 3.

Appendix 1

Ottawa, le 16 mars 2005

Josée Bouchard
Barreau du Haut-Canada
Service des initiatives en faveur de l'équité
130, rue Queen Ouest
Toronto ON M5H 2N6

Objet : demande de soutien financier pour une étude auprès des personnes diplômées du programme de common law en français de l'Université d'Ottawa

Madame,

Notre équipe de recherche, composée de quatre membres du corps professoral du Programme de common law en français de la Faculté de droit de l'Université d'Ottawa, a entrepris, en janvier 2005, une étude sur la contribution des personnes diplômées de ce programme à l'essor des services juridiques en français au Canada depuis 25 ans.

Depuis 1980, plus de 1 000 personnes ont suivi des cours de common law en français à l'Université d'Ottawa. Nous réalisons une enquête auprès de cette population, en deux temps. La première phase (s'effectue de janvier à mars 2005 et est financée par le Fonds d'appui à l'accès à la justice dans les deux langues officielles du ministère de la Justice du Canada.) consiste à administrer un questionnaire auprès de toutes les personnes diplômées pour savoir ce qu'elles sont devenues au plan professionnel et dans quelle mesure elles ont utilisé leur formation pour servir la communauté. Vous trouverez ci-joint une copie de ce questionnaire.

La seconde phase (avril 2005-mars 2006) consistera à analyser les résultats de l'enquête par questionnaire et à enrichir ces données par des groupes de discussion. En s'appuyant sur cette information et sur d'autres sources d'information déjà existantes, nous tirerons, notamment, un profil des personnes diplômées, un aperçu de leur contribution à l'essor des services juridiques en français, des leçons pour adapter encore davantage l'enseignement de la common law en français aux besoins réels de même qu'une identification des outils de travail requis pour soutenir la pratique de la common law en français . Cette initiative vise parallèlement à réunir ces personnes diplômées en réseau.

Nous comptons sur une nouvelle demande de financement au Fonds d'appui pour réaliser cette seconde phase. Il faut par contre assurer un financement de contrepartie pour justifier cette demande. C'est pourquoi nous nous adressons à vous.

Vous trouverez ci-joint notre projet, avec son budget. Nous vous demandons une contribution financière à votre mesure, soit de portée générale ou relative à l'un ou l'autre des postes budgétaires. Nous vous serons reconnaissants de nous répondre dans les meilleurs délais, compte tenu que nous acheminerons la demande à Justice Canada d'ici la fin avril.

Si vous souhaitez obtenir plus d'information sur notre projet, notre demande ou tout autre aspect, n'hésitez pas à communiquer avec moi

En vous remerciant à l'avance, nous vous prions d'accepter l'expression de nos meilleurs sentiments.

Cordialement,

Yves Le Bouthillier
Vice-doyen et coordinateur du projet

Appendix 2

Equality Guidelines for Purchasing Agreements

The following Equality Guidelines have been integrated within the Law Society of Upper Canada's Purchasing Policy.

Equality Guidelines

The Law Society recognizes and respects the uniqueness of the Aboriginal and Francophone communities and is committed to the promotion of rights for Aboriginal and Francophone communities. In addition, the Law Society is committed to the promotion of rights of members of equality-seeking communities.

Convocation has undertaken that individuals and organizations representative of Francophone, Aboriginal and equality seeking communities have access to appropriate services, and are able to participate in the delivery of services directly provided, purchased and contracted by the Law Society.

The Law Society has adopted the following guidelines to ensure that suppliers and law firms that provide services to the Law Society promote equality and diversity in accordance with Law Society policies. This is to be balanced with operational requirements, best value, prudence, and sound contracting management.

The objectives of the equality guidelines are to:

- Ensure that Law Society purchasing procedures do not present barriers to businesses operated by Aboriginal, Francophone or equality-seeking communities. Purchasing processes should include a broad range of suppliers; and
- Ensure that suppliers and law firms doing business with the Law Society promote equality principles consistent with those of the Law Society.

Application of Equality Guidelines

The Law Society requires the following suppliers or law firms to comply with the Equality Guidelines:

- Law firms located in Ontario with more than 50 lawyers (includes associates and partners).
- Suppliers with a workforce of more than 50 employees, other than law firms described in paragraph 1, for contracts above $100,000 (pre-tax value).

Other suppliers and law firms are strongly encouraged to comply with the Equality Guidelines.

Equality Guidelines Requirements

It shall be deemed to be a condition of agreements entered into by the Law Society of Upper Canada with suppliers or law firms described in section “Application of Equality Guidelines” above, that those suppliers or law firms will comply with all relevant Law Society policies and procedures, including the Law Society of Upper Canada Workplace Harassment and Discrimination Policy and Procedures and with the *Ontario Human Rights Code* and, where applicable, the *Pay Equity Act*. Breach of this condition may result in cancellation of the agreement.

Suppliers and law firms described in section “Application of Equality Guidelines” above are required, as a condition of entering into an agreement for the provision of services to the Law Society, to sign and provide to the Law Society the attached Equality Guidelines form.

Suppliers and law firms described in section “Application of Equality Guidelines” should also, whenever possible, submit copies of relevant non-discrimination policies or policies relating to the promotion of equality and diversity adopted by the supplier or law firm. The Law Society may consider the policies when determining the most qualified supplier or law firm.

Other

All suppliers and law firms described in the “Application of Equality Guidelines” section above must be informed of, and comply with, the Law Society's Equality Guidelines. It is understood that other suppliers and law firms used by the Law Society promote equality principles consistent with those of the Law Society.

EQUALITY GUIDELINES FORM

PURPOSE:

To ensure that law firms located in Ontario with more than 50 lawyers, and suppliers, other than law firms, with a workforce of more than 50 employees for agreements above $100,000 (pre-tax value) are committed to promoting equality without discrimination and diversity in their workplace.

DECLARATION:

The Law Society of Upper Canada requires that suppliers and law firms described above complete and sign the following declaration.

The supplier or law firm shall comply with all relevant Law Society of Upper Canada policies and procedures, including the Law Society of Upper Canada Workplace Harassment and Discrimination Policy and Procedures (Law Society Harassment Policy). Included is the Law Society Harassment Policy. The Law Society is committed to fostering a milieu free of discrimination. Failure to abide by the Law Society Harassment Policy may result in the cancellation of the agreement between the Law Society of Upper Canada and [Name of supplier or law firm].

Suppliers and law firms described above should also, whenever possible, submit copies of relevant non-discrimination policies or policies relating to the promotion of equality and diversity adopted by the supplier. The Law Society may consider the policies when determining the most qualified supplier.

Supplier or law firm name:	Common or Business Name (if different):
Address or Principal Place of Business: Telephone: Fax:	Mailing Address (if different): Telephone: Fax:
Name and title of authorized official	

Signature of Authorized Official:_____

Date: _____

Appendix 3

UPCOMING PUBLIC EDUCATION EVENTS - 2005

South Asian Heritage Month
Event date: May 5, 2005

Immigration and Refugee Law: The Aftermath of the Tsunami
Workshop: Museum Room - 4:00 p.m. to 6:00 p.m.

Confirmed speakers: Barbara Jackman, Barrister & Solicitor
Guidy Mamann, Mamann and Associates
Hadayt Nazami, Barrister & Solicitor
Amina Sherazee, Downtown Legal Services

Reception
Convocation Hall - 6:00 p.m. to 8:00 p.m.

Confirmed keynote speaker: Senator Mobina Jaffer

National Access Awareness Week
Event date: May 31, 2005

Rights of Persons with Disabilities – Addressing Situations of Abuse
Workshop: Museum Room – 4:00 p.m. to 6:00 p.m.
Reception: Convocation Hall - 6:00 p.m. to 8:00 p.m.

National Aboriginal Day
Event date: June 8, 2005
Workshop and reception: Convocation Hall: 4:00 p.m. to 8:00 p.m.

Pride Week Reception
Event date: June 23, 2005
Reception: Convocation Hall: 5:00 p.m. to 8:00 p.m.

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

Copy of a letter addressed to Josée Bouchard together with a survey dated March 16, 2005.

(Appendix 1, pages 16 – 22)

LAWYERS FUND FOR CLIENT COMPENSATION COMMITTEE REPORT

- Fund Performance
- Grants Paid

Lawyers Fund for Client Compensation Committee
April 28, 2005

Report to Convocation

Committee Members:

Purpose of Report: Information

Prepared by the Lawyers Fund for Client Compensation

THE REPORT

1. The Lawyers Fund for Client Compensation Committee ("the Committee") met on March 4, 2005.

   Committee members in attendance were Robert Topp (Chair), Bradley Wright (Vice-Chair), Andrew Coffey, Abraham Feinstein and Laura Legge.

   Staff and others in attendance were Zeynep Onen (Director, Professional Regulation), Maria Loukidelis (Manager, Lawyers Fund for Client Compensation), Dan Abrahams (Professional Regulation Counsel and former Acting Manager), Fred Grady (Manager of Finance) and Craig Allen (LawPRO VP and Actuary).

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

   (A) ADMINISTRATION & POLICY

   i) Fund's performance

   The Committee discussed the Fund's performance in 2004 and anticipated position in 2005. The Committee sought and received assurances that the Fund's balance is sufficient to cover claims equivalent to the worst experiences in recent history.

   The Committee considered materials prepared by Craig Allen, LawPRO's Vice-President and Actuary, and requested certain revisions. Revised materials are attached as Appendix "A".

   (B) INFORMATION

   i) Grants Paid

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

The Committee also wishes to express its appreciation to the members of the Review Subcommittee (Mr. Feinstein and Dr. Filion, as well as Mr. Topp who serves in case of a tie) for their ongoing diligence, commitment and hard work in reviewing grant recommendations.

Member (Status if Disciplined)	Number of Claimants	Total Grants Paid
Clarke, Rudolph E. (Disbarred March 2003)	1	$ 5,000.00
Cooney, Roger Patrick Peter (Disbarred October 1994)	1	$ 15,000.00
Ehrlich, Stanley Charles (Suspended Jan 2005-3mths)	1	1,500.00
Fingold, Lee Edward (Disbarred January 1996)	1	$ 12,691.28
Gahan, Jeffrey Mark (Disbarred June 2004)	2	$ 5,000.00
Howard, Graham Irwin (Disbarred May 2003)	2	$ 4,943.98
Lewis, Donald Comstock (Disbarred October 2004)	4	$ 76,000.00
Pollitt, George Thomas (Permitted to Resign Sept 04)	1	$ 5,000.00
Steinberg, Sheldon Howard (Disbarred Nov. 2003)	10	$ 211,960.95
Stoner, Keith Gordon (Permitted to Resign June 2004)	1	$ 9,041.16
Tran, Eric Gregory (Disbarred April 2003)	3	$ 9,627.75
Zito, Giuseppe (Disbarred November 1998)	1	$ 50,000.00
Solicitor #75 (Suspended December 2001)	1	$ 70.00
Solicitor #99 (Suspended October 2002)	7	$ 515,265.73
Solicitor #120 (Pending Discipline January 2004)	4	$ 35,133.95
Solicitor #121 (Suspended August 2002)	1	$ 18,250.00
Solicitor #125 (Sole Practitioner October 2004)	1	$ 25,000.00
Solicitor #128 (Suspended October 2003)	14	$ 503,292.53
Solicitor #129 (Suspended December 2003)	1	$ 400.00
Solicitor #131 (Suspended February 2005)	1	$ 5,663.64
Solicitor #133 (Suspended October 2004)	2	$ 20,770.70
Solicitor #134 (Suspended October 2004)	8	$ 229,942.97
Solicitor #135 (Pending Trusteeship February 2005)	1	$ 12,767.03
Solicitor #136 (Suspended October 2004)	3	$ 224,837.18
Solicitor #140 (Suspended October 2003	1	$ 1,000.00
TOTAL	73	$1,998,159.55

APPENDIX “A”

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: MARCH 10, 2005

RE: UNPAID CLAIMS LIABILITY, DECEMBER 31, 2004, LAWYERS' FUND FOR CLIENT COMPENSATION

The unpaid claims liability, as at December 31, 2004 for the Lawyers' Fund for Client Compensation, is estimated to be $9,040,000. This amount is

- discounted for the time value of money (in the amount of $410,000),
- includes a provision for internal claims handling expenses (in the amount of $2,610,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of $970,000).

The December 2004 unpaid claims liability is below that at December 31, 2003, which was set at $9,854,000. The primary explanation for this decrease is favourable development on older claims. Claims payments during the year roughly equal the cost of newly reported claims.

On a nominal basis (i.e. without discounting and without a margin for unfavourable developments), the liability at December 31, 2004 is $8,481,000, which compares to a nominal liability of $9,281,000 at December 31, 2003.

The following table summarizes the individual items that account for the carrying forward of the December 31, 2003 nominal claims liability through to December 31, 2004:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2003	$6,161,000	$3,120,000	$9,281,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2003	(364,000)	(117,000)	(481,000)
Claims Liability at December 31, 2003 with Benefit of Hindsight	5,797,000	3,003,000	8,800,000
Add: Claims Incurred in Jan. – Dec. 2004	1,966,000	1,228,000	3,194,000
Less: Payments Made in Jan. – Dec. 2004	2,025,000	1,488,000	3,513,000
Claims Liability at Dec. 31, 2004	5,738,000	2,743,000	8,481,000

Fund Balance

The Fund Balance as at December 31, 2004 is $19.5 million, up from $17.5 million at December 2003. Two items account for the bulk of this increase. The first is claims for the year, net of favourable development on prior-year claims. This value at $1,602,000 is $1.4 million below budget. The other is investment income, which is roughly $460,000 greater than budgeted, due to realized capital gains.

PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE REPORT
- Director's Quarterly Benchmark Report

Professional Development, Competence & Admissions Committee
April 28, 2005

Report to Convocation

Committee Members
George D. Hunter (Chair)
Gavin A. MacKenzie (Vice-Chair)
William J. Simpson (Vice-Chair)
Robert B. Aaron
Peter N. Bourque
Kim A. Carpenter-Gunn
E. Susan Elliott
Alan D. Gold
Gary Lloyd Gottlieb
Laura L. Legge
Robert Martin
Bonnie R. Warkentin

Purpose of Report: Information

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

THE REPORT

Terms Of Reference/Committee Process

1. The Committee is reporting on the following matter:

Information

- Professional Development and Competence Director's Quarterly Benchmark Report

INFORMATION

DIRECTOR'S QUARTERLY BENCHMARK REPORT

2. APPENDIX 1 contains the Director of Professional Development and Competence's quarterly benchmark report for Convocation's information.

APPENDIX 1

QUARTERLY BENCHMARK REPORT
PROFESSIONAL DEVELOPMENT & COMPETENCE DEPARTMENT
(Product Usage Statistics as at March 31, 2005)

FOR INFORMATION ONLY

Prepared by:

Diana Miles
Director, Professional Development & Competence
(416) 947-3328
dmiles@lsuc.on.ca

April 2005

BENCHMARKS AND KEY INDICATORS REPORT

Practice Management Guidelines

Web traffic report for Practice Management Guidelines (number of visits)

Guideline	November & December 2002	2003	2004	1st Quarter 2005
Executive Summary Page	741	5,085	2,934	450
Client Service & Communication	71	1,488	5,088	790
File Management	108	930	3,317	1,132
Financial Management	93	553	1,190	533
Technology	71	597	1,723	388
Professional Management	43	584	1,620	690
Time Management	83	924	2,287	497
Personal Management	33	423	1,691	540
Closing Down Your Practice	32	558	1,365	398
Total	1,275	11,142	21,215	5,418

Best Practices Self-assessment Tool

The Best Practices Self-assessment Tool was launched on June 25, 2004.

	2004	1st Quarter 2005
Registered Users	654	52

Certified Specialist Program

	2001	2002	2003	2004	1ST Quarter 2005
Number of Specialists	617	611	609	682	682
Number of applications in process	-	-	-	-	18
Specialists in Toronto Area	349	344	341	384	383
Specialists outside Toronto	268	267	268	298	299
Number of Specialty Areas	10	10	10	13	13

Continuing Legal Education

	2001	2002	2003	2004	1st Quarter 2005
Total number of CLE programs *(all formats)*	67	63	71	72	23
Attendance at all CLE programs *(all formats)*	8,539	11,788	18,269	20,187	4,755
Average attendance per program	127	187	262	280	207
Number of programs for law clerks *(included in total)*	-	10	5	8	1
Number of programs on the Interactive Learning Network *(included in total)*	-	-	35	45	13
Attendance at ILN locations	-	-	4,014	3,595	677
Average attendance at ILN locations per program	-	-	115	80	52
Number of Teleseminars *(included in total)*	-	-	5	9	2
Attendance at Teleseminars	-	-	2,468	3,762	498
Average attendance at					

Teleseminars	-	-	494	418	249
Number of live webcast programs on BAR-eX	N/A	N/A	12	29	16
Attendance at live webcast programs	N/A	N/A	213	1,198	45
Average attendance at live webcast programs	N/A	N/A	18	41	717
Bursaries provided	140	151	243	215	98
Units/publications sold (paper, CD and PDF)	8,249	11,424	11,028	12,963	2,754

e-Transactions Site

	2003	2004	1st Quarter 2005
Number of visits on CLE page of e-Transactions	38,954	70,890	16,169

Web purchase report for CLE portion of e-Transactions site

Product	2003	2004	1st Quarter 2005
Book purchases	524	1,259	372
Program registrations	1,103	1,651	517
ILN program registrations	503	536	90
Teleseminar registrations	321	517	37
Video streams	27	90	46
PDF purchases	36	45	9
CD-ROM purchases	9	167	52

Practice Management Helpline

	2001	2002	2003	2004	1st Quarter 2005
Total member calls for advice	5,435	5,715	5,303	5,780	1,521

Breakdown of Callers

	2001	2002	2003	2004	1st Quarter 2005
Sole practitioners	2,363	2,465	2,399	2,363	686
Other members	2,150	2,354	2,372	2,332	623
Non-members[1]	922	896	532	1,013	212

[1] Non member category consists of the following: Articling students, Secretary or Bookkeeper at firm, Manager or Administrator at firm, Law Society staff, Law Clerk or Paralegal at firm and other (sales person, lawyer outside Ontario, etc.)

Practice Advisory Mentor Program

	2001	2002	2003	2004	1st Quarter 2005
Number of new mentors	N/A	N/A	6	17	8
Number of matches	N/A	30	91	86	24

Spot Audit

Number of Audits Conducted

	2001	2002	2003	2004	1st Quarter 2005
Books and records audits	718	506	529	476	94
Complex audits	319	401	528	663	149
Total audits	1,037	907	1,057	1,139	243

Audits referred to Investigations/ undertakings obtained	42	70	56	57	16

Practice Review

	2001 (first year of new process)	2002	2003	2004	1st Quarter 2005
Number of authorizations into program	16	20	19	45	6
Number of authorizations through internal referrals	3	8	11	11	2
Total	19	28	30	56	8

Total Practice Reviews Conducted[2]	18	50	45	50	19

[2] A portion represents follow-up practice reviews for members that volunteered into the program prior to mandatory reviews being enacted in 1999. As a result, more reviews are being shown as conducted than authorized. A significant number of reviews in 2002 & 2003 fall within this category.

Bar Admission Course Reference Materials

	2001	2002	November & December 2003	2004	1st Quarter 2005
Number Members who have purchased the materials online for $0	N/A	N/A	2,546	6,525	705

Bar Admission Course

	2001	2002	2003	2004	1st Quarter 2005
New Enrolment	1,247	1,312	1,317	1,356	1,318
Average attendance skills phase (May-June)	80%	72%	74%	69%	-
Average attendance substantive phase (July – Aug)	48%	42%	48%	39%	-
Tuition Fee	$4,400	$4,400	$4,400	$4,400	$4,400
National Mobility Agreement transfer candidates	-	-	41	76	18
Non-National Mobility Agreement transfer candidates	-	-	26	13	2
Total Transfer candidates	61	93	67	89	20

Articling and Placement Services

	2001	2002	2003	2004	1st Quarter 2005
International Articles	29	16	11	15	1
National Articles		14	16	12	6
Part time Articles		5	8	7	1
Joint Articles		0	2	5	4
Biographic paragraphs posted	53	62	99	93	12
Job postings	163	129	104	75	23
New Articling Mentors	N/A	N/A	N/A	5	0
New Articling Mentees	N/A	N/A	N/A	57	7
Students actively seeking placement	N/A	N/A	130	124	50 *(2004/2005 BAC)*

Education Support Services

	2001	2002	2003	2004	1st Quarter 2005
Distance education – number of locations	15	29	71	62	13
Distance education – number of students[3]	28	46	103	66	13
Number of students who have received accommodation[4]	11	29	27	38	13
Number of accommodations provided	N/A	N/A	126	128	13
Number of students who have received special needs accommodation[5]	47	33	33	56	40
Number of special needs accommodations provided	N/A	N/A	147	320	40
Number of students who have received tutoring	60	72	45	47	6
OSAP – number applicants	333	258	342	365	260
Repayable Allowance Program approvals	47	57	37	87	7
Repayable Allowance Program amount awarded	170,700	$213,395	$117,167	$290,295	$26,853

BAC e-Learning Site

Web traffic report for BAC e-Learning Site

	2003	2004	1st Quarter 2005
Number of visits	55,660	67,496	5,996

Great Library

	2001	2002	2003	2004	1st Quarter 2006[6]
Materials					

[3] Represents individual students and does not account for returning students
[4] Accommodation requests cover issues such as bereavement, pregnancy and time conflicts
[5] Special Needs Accommodation requests cover issues such as disabilities, medical conditions, dyslexia, and hearing and vision impairments
[6] New Web tracking system so the yearly comparative factor is not applicable in 2005

catalogued and classified	1,806	2,005	2,179	1,305[7]	185
Number of visits on the Great Library Web site	N/A	651,826	608,781	621,675	21,452
Catalogue searches on Web site	N/A	132,923	199,191	166,432	46,388
Number of information requests	71,000	47,000	48,800	47,100	10,700
Pages copied in custom copy service	68,437	56,159	43,815	40,391	14,021
Pages copied on self-copiers	481,473	397,957	337,313	297,223	72,694
Attendance at orientation tours and general instruction	413	350	360	448	-
Corporate Records and Archives new entries into records database	N/A	2,157	5,199	5,185	1,308

CONVOCATION ROSE AT 12:55 P.M.

Confirmed in Convocation this 26th day of May, 2005.

Treasurer

[7] Low due to processing the migrating records into the new electronic catalogue