

25<sup>th</sup> April, 2003

## MINUTES OF CONVOCATION

Friday, 25th April, 2003  
9:00 a.m.

### PRESENT:

The Treasurer (Vern Krishna, Q.C., FCGA), Aaron, Arnup, Bindman, Boyd, Braithwaite, Campion, Carey, Carpenter-Gunn, Cass, Chahbar (by telephone), Cherniak, Coffey, Copeland, Crowe, Curtis, Diamond, Ducharme, Epstein, Feinstein, Finkelstein, Finlayson, Go, Gottlieb, Harris, Laskin, Lawrence, MacKenzie, Manes, Marrocco, Millar, Minor, Mulligan, Murray, Pilkington, Porter, Potter, Puccini, Ross, Ruby, Simpson, Swaye, Topp (by telephone), White, Wilson and Wright.

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The reporter was sworn.

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### IN PUBLIC

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### TREASURER'S REMARKS

The Treasurer acknowledged the contribution of those benchers not running for election again and expressed gratitude to Tom Carey, Richmond Wilson, Niels Ortved, Marilyn Pilkington, Leonard Braithwaite and Gregory Mulligan on behalf of Convocation.

It was announced that the Law Society Medal/Lincoln Alexander Award Ceremony and dinner are rescheduled to the evening of May 21st.

The Treasurer remarked on the success of the Special Lectures Series held on April 10 and 11 and thanked the staff involved including Diana Miles, Director, Professional Development and Competence, Ian Lebane, Jane Neveleff, Helen Bernstein, Cathy Castaldo, Kathy Stolarчук and Andrea Camenzuli.

The Osgoode Society has approached the Law Society to purchase 500 copies of a book illustrating the history of Osgoode Hall to be compiled by John Honsberger at a cost of \$26,996 to be resold in our store and, a further grant of \$7,500 to purchase photographs.

It was moved by Mr. Carey, seconded by Mr. Cherniak that Convocation support the Osgoode Society's request.

Not Put

Convocation indicated its support and approval. The matter was referred to the Finance Committee for its review following which it will be brought back before Convocation.

### MOTION-DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Bindman, seconded by Ms. Curtis that the Draft Minutes of Convocation of March 27th, 2003 be confirmed.

Carried

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT & COMPETENCE

Re: Candidates for Call to the Bar

Re: Foreign Legal Consultant ApplicationsTO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADAIN CONVOCATION ASSEMBLED

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

## B.

ADMINISTRATIONB.1. CALL TO THE BAR AND CERTIFICATE OF FITNESSB.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 Friday, April 25th, 2003:

Mojisola Eubade Akpata	Bar Admission Course
Catherine Patricia Beaudoin	Bar Admission Course
Cory Blaine Deyarmond	Bar Admission Course
Lisa Dawn Dufraimont	Bar Admission Course
Anne Tunstall Fitzgerald	Bar Admission Course
Shirley Greenberg	Bar Admission Course
Julianna Aviva Greenspan	Bar Admission Course
Kalvinder Sunil Johal	Bar Admission Course
Ovais Ali Khan	Bar Admission Course
Gary Saul Margolis	Bar Admission Course
Christopher Edward McCarthy	Bar Admission Course
Selwyn Milan McSween	Bar Admission Course
Diana Renée Reynolds	Bar Admission Course
Trisha Lynne Robertson	Bar Admission Course
William Adam Schultz	Bar Admission Course
David Abraham Silverman	Bar Admission Course
Frederick Ralph Skilton	Bar Admission Course

B.2. APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT

B.2.1. The following apply to be certified as supervised foreign legal consultants in Ontario:

Sally Dianne Whitehead	State of New York Skadden, Arps, Slate, Meagher & Flom LLP
Eric Avi Spindel	State of New York Skadden, Arps, Slate, Meagher & Flom LLP

B.2.3. Their applications are complete and they have filed all necessary undertakings.

ALL OF WHICH is respectfully submitted

DATED this the 25th day of April, 2003

It was moved by Mr. Cherniak, seconded by Mr. Ducharme that the Report of the Director of Professional Development & Competence be adopted.

Carried

#### CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Professional Development & Competence were presented to the Treasurer and called to the Bar. Mr. Ducharme then presented them to Madam Justice Jean L. MacFarland to sign the Rolls and take the necessary oaths.

Mojisola Eubade Akpata	Bar Admission Course
Catherine Patricia Beaudoin	Bar Admission Course
Cory Blaine Deyarmond	Bar Admission Course
Lisa Dawn Dufraimont	Bar Admission Course
Anne Tunstall Fitzgerald	Bar Admission Course
Shirley Greenberg	Bar Admission Course
Julianna Aviva Greenspan	Bar Admission Course
Kalvinder Sunil Johal	Bar Admission Course
Ovais Ali Khan	Bar Admission Course
Gary Saul Margolis	Bar Admission Course
Christopher Edward McCarthy	Bar Admission Course
Selwyn Milan McSween	Bar Admission Course
Diana Ren9e Reynolds	Bar Admission Course
Trisha Lynne Robertson	Bar Admission Course
William Adam Schultz	Bar Admission Course
David Abraham Silverman	Bar Admission Course
Frederick Ralph Skilton	Bar Admission Course

#### REPORT OF THE FINANCE & AUDIT COMMITTEE REPORT

Mr. Ruby presented the Report of the Finance & Audit Committee for approval by Convocation.

Finance and Audit Committee  
April 10, 2003

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Report to Convocation

Purpose of Report:      Decision  
                                 Information

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

# TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee (“the Committee”) met on April 10, 2003. Committee members in attendance were: Ruby C. (c), Crowe M. (vc), Epstein S. (vc), Cass R., Chahbar A., Coffey A., Diamond G., Lawrence A., MacKenzie G., Swaye G., White D.. Other benchers in attendance were Krishna V. (Treasurer), Copeland P., Mulligan G., Wilson R.. Jesty P. and Ross D. from Deloitte& Touche LLP, Hebditch S. from LibraryCo Inc. and Strom M. and Kim Y. from LawPro attended. Staff attending were Heins M., Tysall W., Grady F., White R., Cawse A..

2. The Committee is reporting on the following matters:

## Decision

- X Law Society General Fund Audited Financial Statements
- X Lawyers Fund for Client Compensation Fund Audited Financial Statements
- X Errors and Omissions Insurance Fund Audited Combined Financial Statements
- X Law Society Auditor Appointment
- X Funding of Ontario Law Schools Accessibility Study
- X Denison Fund (confidential)

## Information

- X LibraryCo Inc. Audited Financial Statements
- X Systems of Internal Control and Accounting Systems (confidential)
- X Investment Compliance Reports
- X Change in Investment Manager

# FOR DECISION

## LAW SOCIETY OF UPPER CANADA GENERAL FUND AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2002

3. The annual financial statements of the General Fund, Lawyers Fund for Client Compensation, Errors and Omissions Insurance Fund, and LibraryCo Inc. have been reviewed by the Audit Sub-Committee and a report recommending their approval was reviewed by the Finance & Audit Committee. The reviews have included:
  - Proactive discussions with management and the external auditor in planning the year end audit.
  - Discussions with management and the external auditor on the quality of compliance with accounting principles and presentation / disclosure standards.
  - Discussions with management and the external auditor on significant variances between comparative reporting periods.
  - Confirmation from management and the external auditor that there were no significant problems or areas of concern.
  - A formal report from the auditors concerning their role and confirmation of their independence.

Both Committees recommend approval of the financial statements.

4. The draft, audited annual financial statements for the General Fund with accompanying management discussion and analysis are attached (page 2).

Convocation is requested to approve the audited annual financial statements for the General Fund for the year ended December 31, 2002.

LAWYERS FUND FOR CLIENT COMPENSATION  
AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2002

5. The draft, audited annual financial statements for the Lawyers Fund for Client Compensation with accompanying management discussion and analysis are attached (page 15).

Convocation is requested to approve the audited annual financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 2002.

ERRORS AND OMISSIONS INSURANCE FUND  
AUDITED COMBINED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2002

6. The draft, audited combined annual financial statements for the Errors and Omissions Insurance Fund with accompanying management discussion and analysis are attached (page 22).

Convocation is requested to approve the audited combined annual financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 2002.

LAW SOCIETY AUDITOR FOR THE YEAR ENDED DECEMBER 31, 2003

7. The Audit Committee has had ongoing meetings with the auditors, Deloitte & Touche LLP as part of the year end processes and the auditors have also reported to the Finance & Audit Committee on the annual financial statements and on business and financial reporting risk. Convocation appoints the Law Society auditors on the advice of the Finance & Audit Committee. This has been Deloitte & Touche's first year as Law Society auditor after a comprehensive tender process.

The Audit Committee and the Finance & Audit Committee recommend that Deloitte & Touche LLP be appointed auditors of the Law Society's General Fund, Lawyers Fund for Client Compensation and LibraryCo Inc. for the 2003 financial year.

FUNDING OF ONTARIO LAW SCHOOLS ACCESSIBILITY STUDY

8. Ontario law schools (with the exception of the University of Toronto who are completing a separate study) intend to complete a study on the effect of rising tuition fees on the accessibility of legal education. The study will be completed by Dr. Allan King, commencing immediately, with an estimated completion date of May 31, 2004. The Law Schools are estimating costs of the study to approximate \$200,000 and are requesting funds from the Law Society and the Law Foundation of Ontario to pay for the study. The law schools are each contributing 125 hours of technical advisor time to the study. This potential expenditure has not been included in the 2003 budget.
9. A letter from Dean Alison Harvison Young is attached (page 45) requesting the funding and providing further information and a budget. A Research Proposal for the accessibility study is also attached for further background.
10. The Law Society intends to meet with the participant law schools to finalize details of the study and to improve it, if that seems feasible, in consultation with the Law Deans group. The Committee approved the expenditure of \$100,000 in principle and recommended that any changes that Mr. Copeland (Chair, Equity

& Aboriginal Issues Committee) and the Treasurer suggests, be addressed by Convocation, hopefully in June.

The Committee recommends that Convocation approve the expenditure of \$100,000 for this purpose on the understanding that after consultation with the Law Deans Group, further refinements in the tuition fee accessibility study may be brought directly to Convocation for approval before the money is spent.

#### J.S. DENISON FUND (Confidential)

11. A covering memorandum addressing an application to the J.S. Denison Fund is attached (page 59). A grant made under the administrative privilege rule of \$1,000 has been made with respect to this application which needs to be ratified by Convocation

The Finance and Audit Committee recommends that Convocation ratify the disbursement of \$1,000 from the J.S. Denison Fund as set out in the attached memorandum.

#### FOR INFORMATION

#### LIBRARYCO INC.

#### AUDITED FINANCIAL STATEMENTS FOR THE YEAR ENDED DECEMBER 31, 2002

12. The audited annual financial statements for LibraryCo Inc. with accompanying management discussion and analysis are attached (page 35). The financial statements have been approved by the Board of LibraryCo Inc.

#### SYSTEMS OF INTERNAL CONTROL AND ACCOUNTING SYSTEMS (Confidential)

13. A copy of the Management Letter from Deloitte & Touche LLP, including the Law Society's response is attached for information (page 61)

#### INVESTMENT COMPLIANCE REPORTS

14. Investment Compliance Reports for the quarter ended December 31, 2002 for the General Fund and the Lawyers Fund for Client Compensation are attached at page 69. The Reports confirm there are no breaches in compliance.

#### INVESTMENT MANAGER

15. For the last year and a half the Compensation Fund's Long Term Portfolio (\$14.3 million dollars at December 31, 2002) has been managed by Perigee Investment Counsel Inc. This has been part of LawPro's arrangements with Perigee.
16. LawPro has completed a review and tender process resulting in a change in investment managers from Perigee to Foyston, Gordon and Payne Inc.

17. Foyston is able to meet the Law Society's Investment Counsellor and Portfolio Manager needs and has agreed to administer our long term portfolio in conjunction with the LawPro portfolio.

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

- (1) Copy of the draft audited annual financial statements for the General Fund for the year ended December 31, 2002.  
(pages 2 – 14)
- (2) Copy of the draft audited annual financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 2002.  
(pages 15 – 21)
- (3) Copy of the draft audited combined annual financial statements for the Errors and Omissions Insurance Fund for the year ended December 31, 2002.  
(pages 22 – 34)
- (4) Copy of the audited annual financial statements for LibraryCo Inc.  
(pages 35 – 44)
- (5) Copy of a letter from Dean Alison Harvison Young to the Treasurer and Mr. Ron Manes dated March 26, 2003 with a budget.  
(pages 45 – 47)
- (6) Copy of a Research Proposal for the accessibility study.  
(pages 48 – 58)
- (7) Copy of a covering memorandum addressing an application to the J.S. Denison Fund. (in camera)  
(pages 59 – 60)
- (8) Copy of the Management Letter from Deloitte & Touche LLP including the Law Society's response.  
(in camera)  
(pages 61 – 68)
- (9) Copy of the Investment Compliance Reports for the quarter ended December 31, 2002 for the General Fund and the Lawyers Fund for Client Compensation.  
(pages 69 – 82)

Re: Approval of Financial Statements for 2002

It was moved by Mr. Ruby, seconded by Mr. Wright that the audited annual financial statements for the General Fund for the year ended December 31, 2002 be approved.

Carried

It was moved by Mr. Ruby, seconded by Mr. Wright that the audited combined annual financial statements for the Errors & Omissions Insurance Fund for the year ended December 31, 2002 be approved.

Carried

Re: Appointment of Auditor for the Year Ended December 31, 2003

It was moved by Mr. Ruby, seconded by Mr. Wright that Deloitte & Touche LLP be appointed auditors of the Law Society's General Fund, Lawyers Fund for Client Compensation and LibraryCo Inc. for the 2003 financial year.

Carried

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IN CAMERA

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**IN CAMERA Content Has Been Removed**

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IN PUBLIC

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#### RESUMPTION OF THE FINANCE & AUDIT COMMITTEE REPORT

##### Re: Financial Statements for 2002

It was moved by Mr. Ruby, seconded by Mr. Topp that the audited financial statements for the Lawyers Fund for Client Compensation for the year ended December 31, 2002 be approved.

Carried

##### Re: Funding of Ontario Law Schools Accessibility Study

Dean Feldthusen spoke to Convocation on this matter.

It was moved by Mr. Ruby, seconded by Mr. Wright that the expenditure of \$100,000 for the study be approved on the understanding that after consultation with the Law Deans Group, further refinements in the tuition fee accessibility study may be brought directly to Convocation for approval before the money is spent.

An amendment was accepted by the mover and seconder that the terms of the study must come back to Convocation before the funds are disbursed.

The Ruby/Wright motion as amended was approved.

#### Items for Information Only

- LibraryCo Inc. Audited Financial Statements
- Systems of Internal Control and Accounting Systems (in camera)



- Investment Compliance Reports
- Change in Investment Manager

Convocation took its morning recess at 11:10 a.m. and resumed at 11:35 a.m.

The Treasurer encouraged benchers to attend the Access to Justice Conference scheduled for May 28th.

#### REPORT OF THE PROFESSIONAL REGULATION COMMITTEE

Mr. Ducharme presented the Report of the Professional Regulation Committee for approval by Convocation.

Professional Regulation Committee  
April 25, 2003

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Report to Convocation

Purposes of Report: Decision and Information

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

#### OVERVIEW OF POLICY ISSUE

##### PROPOSED BY-LAW ON THE OFFICE OF THE COMPLAINTS RESOLUTION COMMISSIONER

Request to Convocation

1. Convocation is asked to approve the proposed by-law on the office of the Complaints Resolution Commissioner, as set out in the motion on page 4.

Summary of the Issue

2. Pursuant to sections 49.14 through 49.19 of the *Law Society Act*, Convocation is required to appoint a Complaints Resolution Commissioner (“CRC”) in accordance with the regulations under the Act. The CRC was created as a result of policy decisions made by Convocation in the early 1990s, which formed the basis for certain amendments to the *Law Society Act*, effective February 1999, on the office of the CRC.
3. The Act provides that the CRC shall attempt to resolve and shall review complaints referred to the CRC “under the by-laws”. The by-law making authority under the s. 62 (0.1) of the Act gives the Society the power to make by-laws “governing the referral of complaints to the Complaints Resolution Commissioner and governing the performance of duties and the exercise of powers by the Commissioner” (paragraph 38).
4. Accordingly, to fulfill the statutory obligation, the Committee is proposing that Convocation adopt the by-law, which includes a description of the functions of the CRC in the review and resolution of complaints and covers administrative matters connected with the office of the CRC.
5. At its March 2003 meeting, the Committee approved the policy basis for a new by-law on the office of the CRC. The policies are summarized in the report at page 10 and following. Background information on the

creation of the office of the CRC and a detailed policy discussion are also provided, beginning at page 18. The main features of the by-law are described at page 35 and following.

## THE REPORT

### Terms of Reference/Committee Process

6. The Committee met on April 10, 2003. Committee members in attendance were Todd Ducharme (Chair), Judith Potter and Heather Ross (Vice-Chairs), Stephen Bindman, Tom Carey, Gillian Diamond, Patrick Furlong, Avvy Go, Gary Gottlieb, Holly Harris and Joanne St. Lewis. Staff in attendance were Dan Abrahams, Mirka Adamsky-Rackova, Naomi Bussin, Lesley Cameron, Terry Knott, Dulce Mitchell, Zeynep Onen, Bethany Simons, Elliot Spears, Jim Varro and Sheena Weir.

John Starzynski, Volunteer Executive Director of the Ontario Bar Assistance Program ("OBAP"), also attended for a portion of the meeting.

7. The Committee is reporting on the following matters:

#### Policy – For Decision

- Proposed by-law on the office of the Complaints Resolution Commissioner

#### Information

- Quarterly Report from the Professional Regulation Division

## PROPOSED BY-LAW ON THE OFFICE OF THE COMPLAINTS RESOLUTION COMMISSIONER

8. The following is the motion to make the new By-Law on the Complaints Resolution Commissioner (a by-law number will be assigned at Convocation):

### THE LAW SOCIETY OF UPPER CANADA

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

#### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 13 and 38 of subsection 62 (0.1) of the *Law Society Act*, a by-law be made as follows:

### COMPLAINTS RESOLUTION COMMISSIONER

#### PART I GENERAL

#### Definitions

1. In this By-Law,

"complainant" means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a member or student member;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

#### Provision of funds by Society

2. (1) The money required for the administration of this By-Law and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

#### Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this By-Law and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

#### Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the standing committee of Convocation responsible for professional regulation matters a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the committee shall lay the report before Convocation not later than at its regular meeting in June.

#### Delegation of powers and duties of Secretary: Professional Regulation Counsel

4. If the Secretary for any reason is unable to do so, an employee or officer of the Society who holds the office of Professional Regulation Counsel may exercise the powers and perform the duties of the Secretary under this By-Law.

#### Complaints against benchers and Society employees

5. In Parts II and III, a reference to the Secretary shall be deemed, with respect to a complaint that concerns the conduct of a bencher or employee of the Society, to be a reference to the Treasurer.

## PART II REVIEW OF COMPLAINTS

#### Reviewable complaints

6. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
  - (c) the complaint has not been previously reviewed by the Commissioner; and
  - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

#### Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns the following matters:

- 1. Quantum of fees or disbursements charged by a member to a complainant.
- 2. Requirements imposed on a member under By-Law 17 [Filing Requirements] or 19 [Handling of Money and Other Property].
- 3. Negligence of a member or student member.

Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 9 (1).

Right to request referral

7. (1) A complainant may request the Secretary to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

8. (1) The Secretary shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 7.

Notice

(2) The Secretary shall notify in writing the member or student member who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 7 that the complaint has been referred to the Commissioner for review.

Fresh evidence

9. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner’s opinion is significant, about the conduct of the member or student member who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society’s consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or

- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

- (3) The Secretary shall notify in writing the member or student member who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

- (4) If the Commissioner refers a complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, the Secretary shall consider the recommendation and notify in writing the Commissioner, complainant and member or student member who is the subject of the complaint of whether the Secretary will be following the recommendation.

Same

- (5) If the Commissioner refers a complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, and the Secretary determines not to follow the recommendation of the Commissioner, the Secretary shall provide the Commissioner, complainant and member or student member who is the subject of the complaint with a written explanation for the determination.

Procedure

- 10. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

- (2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

- (3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: member, student member

- (4) The member or student member who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, *etc.*

- (5) At the time that the Secretary refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

- (6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

### PART III RESOLUTION

Discretionary referral of complaints

- 11. (1) The Secretary may refer a complaint to the Commissioner for resolution if,

- (a) the complaint is within the jurisdiction of the Society to investigate;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been referred to the Proceedings Authorization Committee;
- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the member or student member who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

#### Parties

12. The parties to a resolution of a complaint by the Commissioner are the complainant, the member or student member who is the subject of the complaint and the Society.

#### Outcome of Resolution

13. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

#### No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Secretary.

#### Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

#### Confidentiality: Commissioner

14. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

#### Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's Rules of Professional Conduct.

#### Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

#### Procedure

15. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

### *A. SUMMARY OF THE POLICY BASIS FOR THE PROPOSED BY-LAW*

9. The following are the policy recommendations of the Committee on which the proposed by-law is based.

#### General

- a. The two roles of the CRC must be recognized. The CRC is to review complaints of persons who are dissatisfied with the outcome of the Law Society's consideration of a complaint. In addition, the CRC will attempt to resolve complaints at an earlier stage in the process, where no decision on the complaint has been made by the Society.

- b. The CRC may make recommendations to resolve complaints but the CRC has no adjudicative function.
- c. The office of the CRC is independent from the Law Society, and as an independent and impartial body, is designed to promote fairness and accountability of the Society.
- d. The Law Society's Director of Professional Regulation, in the capacity of Secretary for regulatory functions ("the Secretary") will act as gatekeeper for referrals to the CRC, for both review and resolution.

#### Review Function

- e. The review function involves closed files, namely, files in which the Society has determined that no disciplinary action is required in response to a complaint. The CRC will perform a review function similar to that currently performed by lay benchers. The Secretary will refer matters to the CRC for review when requested to do so by a complainant, as is the complainant's right.
- f. The review function will take the form of a meeting (not a hearing) between the CRC and the complainant at which the lawyer is not present. As occurs in the current complaints review process, the lawyer will receive notice that the complainant has requested a review by the CRC.
- g. The use of informal resolution during the review process will be encouraged.
- h. Relevant Society staff will not attend the review meeting with the complainant, but will be available to the CRC on a timely, convenient basis should questions or issues relating to the particular complaint file arise.
- i. At the end of the review, the CRC may decide that the decision to close the file was correct. A decision of the CRC not to proceed further is final and conclusive. The CRC will notify the complainant in writing of the decision, the Society will inform the lawyer in writing and the file will then be closed.
- j. If the CRC determines that the file should not be closed, the CRC may make a recommendation to the Secretary that further action be taken. The CRC will notify the parties, in writing, of the CRC's recommendations. If the Secretary disagrees with the recommendations of the CRC, the Secretary will provide a written response to the CRC, the complainant and the member.
- k. The complainant should be allowed 60 days from the time notice is received that the file is to be closed to request a review by the CRC.

#### Resolution Function

- l. Formal resolution of complaints is a new function that is not currently performed by the Complaints Review Commissioners. Resolution will deal with open files in which a final decision on the conduct in question has not been made by the Society. The Secretary will determine whether a matter is referred to the CRC for resolution, prior to the filing being closed or referral to the Proceedings Authorization Committee ("PAC"). The Secretary may refer a file to resolution on consent of the complainant, the lawyer and the Society.
- m. The CRC will have broad discretion to determine the process for the resolution function.
- n. No resolution may occur without the agreement of the complainant, the lawyer and the Society. Accordingly, resolution cannot be imposed on the lawyer. In addition, the Society, as regulator, will not agree to a resolution without being satisfied that the agreement is appropriate.

- o. Confidentiality will be an essential feature of the resolution process. All communications made during the resolution process must be “without prejudice” and, subject to certain provisions in the *Rules of Professional Conduct* as described below, may be used only for the purpose of achieving a resolution. Such communications must not form part of the record or be used in any investigation or discipline proceedings at the Society or any other proceeding without the consent of the parties.
- p. The Law Society’s rule of professional conduct on justified or permitted disclosure (rule 2.03(3)) would apply to the CRC who is a lawyer, as well as the misconduct reporting rule and relevant commentary (rule 6.01 (3)) with respect to disclosures, admissions or other communications that may evidence criminal activity.
- q. Any agreement will be referred to the Secretary for approval. If the parties do not resolve the issues, the matter will be referred back to the Secretary.
- r. Where necessary, the Society will be responsible to implement and enforce any resolution reached during the process.

#### General Process Issues

- s. The review and resolution procedures will be determined by the CRC. In this respect the CRC will have the power to make rules to govern its process within the confines of the Act, the by-law and this policy.
- t. The Society will be required to respond in a timely fashion to requests from the CRC for information related to the matters before the CRC.

#### Reporting and Funding

- u. An annual report from the CRC on activities and related issues within the CRC’s office will be made through the Professional Regulation Committee to Convocation.
- v. General language on funding provided through the Society’s budget process should be included in the by-law.

### B. BACKGROUND

- 10. Pursuant to sections 49.14 through 49.19 of the *Law Society Act*, Convocation is required to appoint a Complaints Resolution Commissioner (“CRC”) in accordance with the regulations under the Act. The CRC was created as a result of policy decisions made by Convocation in the early 1990s, which formed the basis for certain amendments to the *Law Society Act*, effective February 1999, on the office of the CRC. The Act provides that the CRC shall attempt to resolve and shall review complaints referred to the CRC “under the by-laws”.
- 11. To date, a by-law on the CRC has not been made by the Society. The by-law making authority under the s. 62 (0.1) of the Act gives the Society the power to make by-laws “governing the referral of complaints to the Complaints Resolution Commissioner and governing the performance of duties and the exercise of powers by the Commissioner” (paragraph 38).



12. This report provides background on the CRC and the Committee's policy proposals for the new by-law based on the work of the Committee's working group.<sup>1</sup>

*D. SETTING THE CONTEXT:*

*THE COMPLAINTS INVESTIGATION PROCESS*

13. The functions of the current Complaints Review Commissioner and the proposed functions of the Complaints Resolution Commissioner flow from the complaints investigation process. The following description of that process illustrates how the current and proposed Commissioners' roles relate to it.

*Intake*

14. All complaints against a member are made in writing through the Client Service Centre, and are handled by regulatory intake staff. A "Helpform" is available to assist complainants outline their complaint if they wish.
15. Once all the information needed has been obtained from the complainant, a file is opened and the complaint is evaluated to determine if it discloses any issues falling within the Society's mandate. If not, the complainant is notified in writing that the complaint falls outside the mandate. For example, a complaint about excessive fees would result in a suggestion to the complainant that he or she contact the Assessment Office.
16. When it appears that a serious conduct, capacity or competence issue is raised about a member, the complaint is transferred forthwith to the Investigations Department. Otherwise, the file is referred to Complaints Resolution.

*Complaints Resolution*

17. Complaints Resolution will attempt to resolve all complaints that do not raise issues of misconduct or competence that might warrant formal conduct or competence proceedings. Complaints Resolution investigations must be authorized by the Secretary under s. 49.3 of the *Law Society Act* by the Secretary. If the file can be resolved quickly by the Intake Unit (i.e. in under 90 days), no authorization required.
18. The usual approach of Complaints Resolution staff is to apply resolution techniques. Negotiation techniques have been employed for a number of years, but received more focussed attention after 1998. In that year, the Society initiated an ADR Pilot Project, the purpose of which was to more formally and broadly evaluate the potential effectiveness of negotiation and mediation processes.
19. Attempts are made to resolve many complaints over the telephone, without relying on an exchange of correspondence. The majority of the complaints handled are service related, and include failing to report on real estate or mortgage transactions, failing to keep the client advised of the progress of a matter, failing to fulfil undertakings, refusing to release the client's file until fees have been paid, and failing to pay fees, for example, to expert witnesses or doctors for medical reports.
20. If the matter is successfully resolved, the file is closed. If a complaint cannot be resolved, a detailed reporting letter is prepared and sent to the complainant and member. The complainant will be advised of his or her right to have the matter reviewed (currently) by a Lay Benchers sitting as a Complaints Review Commissioner.

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<sup>1</sup> The working group consists of Carole Curtis (chair), Stephen Bindman, Todd Ducharme and Barbara Laskin.

21. A matter will be escalated from Complaints Resolution to Investigations when issues arise that fall within the mandate of Investigations (i.e. that the member's conduct appears to warrant disciplinary action). Complaints Resolution, however, will retain files where a matter may warrant disciplinary action and under the Society's *Rules of Practice and Procedure* may be heard by a single benchers (e.g. failure to respond, failure to pay financial obligations, etc). In such cases, Complaints Resolution staff will refer matters to the Proceedings Authorization Committee ("PAC") for consideration. Complaints Resolution may retain files in which it is believed that the member's conduct may warrant an Invitation to Attend or a Letter of Advice. Complaints Resolution may also recommend "diversion" options to the PAC (i.e. matters in which an alternative remedy to discipline usually supported by a member's undertaking is proposed).

#### Investigations

22. The Investigations Department conducts all discipline related investigations.
23. The Secretary must authorize an investigation of the member's conduct under s. 49.3 of the *Law Society Act*. The Investigations staff must determine if there is evidence of professional misconduct, incompetence or incapacity. The investigation will involve an exchange of correspondence, initiated by requesting the member's response to the letter of complaint. The investigation will usually involve personal meetings with the lawyer and the complainant, a review of the lawyer's file(s) or other field work (e.g. searches). As assessment will be done on whether the case is appropriate for ADR techniques. If so, the authorization of the Proceedings Authorization Committee ("PAC") must be obtained before using this approach.
24. If there is no evidence of misconduct, incompetence or incapacity, a decision is made to close the file. The lawyer and the complainant are notified in writing, and the complainant is offered the option of having the decision to close the file reviewed by a Lay Benchers sitting as a Complaints Review Commissioner.
25. When an investigation discloses issues that warrant further action, material is prepared for referral to PAC. PAC may authorize, among other things,
- a. an informal resolution of the matter
  - b. a misconduct, incapacity or incompetence hearing application<sup>2</sup>
  - c. an Invitation to Attend before a panel of Benchers
  - d. a Letter of Advice to the Member
  - e. further investigation
  - f. an application for an Interlocutory Order suspending the rights and privileges of a member, restricting the manner in which he or she may practice law
  - g. an admission (good character) hearing
  - h. closing the file.

#### D. THE CURRENT COMPLAINTS REVIEW PROCESS

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<sup>2</sup> The standard PAC applies to an authorization for an application to the Hearing Panel is reasonable grounds for believing that the member or student member has contravened section 33 of the Act. (By-Law 21, s. 9(2)).

26. As noted above, the complaints review process is initiated by the complainant requesting that the Complaints Review Commissioner review the Society's decision, after investigation, that no action with respect to the complaint is warranted (e.g. a request for review of the matter by the PAC for disciplinary action). By-Law 20 on Review of Complaints governs the process (see Appendix 1).
27. If a complainant requests a review, the Society must undertake the review. In other words, the Society has no discretion to refuse the review. Once the complainant makes the request, the lawyer who is the subject of the complaint is notified of the review.
28. Relevant material for the review is prepared by the investigator on the file. This includes copies of letters exchanged between the complainant, the lawyer and the Society in the course of the investigation, and any notes to file. The material sent to the complainant includes any of the above material that the complainant would have received in the course of the investigation.
29. A meeting is arranged between the Commissioner and the complainant, who may attend alone or with others. A security officer is in attendance at every review, together with a member of the Society's support staff who provides administrative assistance to the Commissioner. The meetings are informal. On occasion, the complainants present their issues. Often, complainants find it easier to articulate and summarize their complaints at a personal meeting than in writing. In other cases, the Commissioner asks questions to illicit the information. Most review meetings are less than one hour.
30. *Pro bono* counsel also attend at the review to provide assistance to the Commissioner with any legal questions or issues that may arise from the facts in the matter. The Society maintains a roster of *pro bono* counsel for this purpose.
31. The By-Law permits the Commissioner, either before or after deciding whether the Society's disposition of a complaint was appropriate, to refer a complaint to the Society and direct the Society to investigate the complaint further. In such cases, correspondence is exchanged between the Society and Commissioner and in some cases, the member is asked for further information.
32. The Commissioner may suggest a way to resolve the complaint. This may involve, for example, a proposal that Law Society staff send the lawyer a letter outlining concerns expressed by the Commissioner about the conduct in question (which would conclude the matter), or that the lawyer be requested to take some action in respect of the complaint that may address part or all of the complainant's concerns. While the lawyer cannot be compelled to follow the suggestions, the lawyer may agree to this type of informal resolution.
33. At the end of the review, the Commissioner may decide that the decision to close the file is correct. The Commissioner will notify the complainant in writing of the decision, the Society will inform the lawyer in writing, and the file will then be closed.
34. In rare circumstances, the Commissioner, having concerns about the lawyer's conduct, will determine that the file should not be closed and that the advice of PAC should be sought (this would occur pursuant to By-Law 21 (Proceedings Authorization Committee)).

#### *E. BACKGROUND TO THE NEW OFFICE OF*

#### *THE COMPLAINTS RESOLUTION COMMISSIONER*

35. The history of the statutorily mandated office of the CRC can be traced to a study begun in the late 1980s that led to adoption of new policies for the investigation of complaints.

June 22, 1990 - Report of the Special Committee on Complaints Procedures (the Callwood Committee)

36. On June 22, 1990, Convocation adopted the report of the Special Committee on Complaints Procedures, which included a proposal for a Complaints Resolution Commissioner. Particulars of the proposal which would take effect once the *Law Society Act* was amended included the following:
- a. The CRC would independently review cases where lawyers refuse to comply with staff suggestions to remedy isolated cases of unsatisfactory professional practice (under Rule 2 of the former *Rules of Professional Conduct*<sup>3</sup>).
  - b. The decision of the CRC would be binding on a member.
  - c. The CRC would have the discretion to consult with the complainant, the lawyer or others as appropriate.
  - d. The CRC would not be an employee of the Society.
  - e. Failure to comply with the CRC's decision would result in a referral to the discipline process based on the member's failure to co-operate with the Society.

May 31, 1991 - Special Committee on Reforms Implementation

37. This Committee was struck to deal with implementation of reforms to the discipline, complaints and standards processes, approved by Convocation. Part of the report dealt with the Callwood Committee's proposals for the CRC, but offered a more streamlined process, which included the following:
- a. The independent review by the CRC would occur when either the complainant or the lawyer disagreed with the staff suggestion for the resolution of a matter.
  - b. The CRC's decisions would be binding in the sense that compliance by the lawyer would conclude the matter.
  - c. Non-compliance would result in the matter being referred to the Discipline Complaints Authorization Committee (the predecessor to the Proceedings Authorization Committee (PAC)), which would consider the matter based on the misconduct and not on the issue of non-compliance.
  - d. The process would operate for a two year trial period.
  - e. The CRC would be appointed by the Society on the recommendation of a selection committee (a lay bench, the Treasurer, the Attorney General and the Ombudsman) based on a majority vote.
  - f. The initial term of the CRC would be two years.
  - g. The CRC would be an individual who may not be a lawyer but could not be a bench.
  - h. The existing functions of complaints review would be included in the responsibilities of the CRC.

December 1996 Request for Amendments to the *Law Society Act*, the February 1999 Amendments and O.Reg. 31/99

38. In December 1996, the Society communicated to the Attorney General its request for amendments to the *Law Society Act*, including proposals for the CRC which were, in general, based on the previous policy reports.

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<sup>3</sup>This type of conduct included failure to communicate adequately with the client in ongoing matters, failure to perform timely work, performing slipshod work, misleading the client in order to cover up the fact of neglect or mistakes and failure to make a prompt and complete report when the work is finished.

39. The *Law Society Act* was amended by the *Law Society Amendment Act, 1998*, in force February 1999. The amendments provided for the office of the CRC. The CRC, while appointed by Convocation, is to perform his or her functions independently of the Society. The Act mandates the Society to create the office of the CRC in the following sections.

### COMPLAINTS RESOLUTION COMMISSIONER

#### Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations.

#### Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner.

#### Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment.

#### Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation.

#### Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office.

#### Functions of Commissioner

- 49.15 (1) The Commissioner shall,
- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
  - (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws.

Investigation by Commissioner(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to the Secretary shall be deemed to be a reference to the Commissioner.

#### Access to information

(3) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a member or student member who is the subject of the complaint; and

- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint.

#### Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws.

#### Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate.

#### Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation.

#### Confidentiality

- 49.18 (1) The Commissioner and each member of his or her staff shall not disclose,
- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
  - (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12.

#### Exceptions

- (2) Subsection (1) does not prohibit,
  - (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure required in connection with a proceeding under this Act;
  - (c) disclosure of information that is a matter of public record;
  - (d) disclosure by a person to his or her counsel; or
  - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

#### Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1).

#### Decisions final

- 49.19 A decision of the Commissioner is final and is not subject to appeal.
40. According to s. 49.15, referral of matters to the CRC for resolution or review is to be accomplished pursuant to the by-laws.
41. A regulation was made dealing with the selection committee for the CRC. O. Reg. 31/99 reads:

O. REG. 31/99

REGULATION MADE UNDER THE

*LAW SOCIETY ACT*

COMPLAINTS RESOLUTION COMMISSIONER

1. (1) When a vacancy exists in the office of Complaints Resolution Commissioner, a committee shall be established to be known in English as the Complaints Resolution Commissioner Selection Committee and in French as Comité de sélection du commissaire au règlement des plaintes.
- (2) The Committee shall be composed of,
  - (a) the Attorney General or a person the Attorney General appoints as his or her representative on the Committee;
  - (b) the Treasurer or a person the Treasurer appoints as his or her representative on the Committee; and
  - (c) a lay benchner appointed by Convocation, who shall be the chair of the Committee.
- (3) A person appointed under subsection (2) ceases to hold office when the Complaints Resolution Commissioner is appointed.
- (4) The function of the Committee is to make recommendations to Convocation for the appointment of a person as Complaints Resolution Commissioner.
- (5) The Committee shall perform its function in the following manner:
  1. Subject to paragraph 4, the Committee shall advertise the vacancy in the office of Complaints Resolution Commissioner and shall review all applications received by the Committee.
  2. The Committee shall conduct the advertising and review process in accordance with criteria established by the Committee, including criteria relating to the assessment of applicants' professional excellence, community awareness and personal characteristics.
  3. The Committee shall give Convocation a ranked list of at least two applicants the Committee recommends for appointment as Complaints Resolution Commissioner, with brief supporting reasons.
  4. If Convocation is of the opinion that there is not enough time to advertise the vacancy, the Committee may review and make recommendations based on applications submitted at the time of a previous vacancy.

2. (1) Convocation shall not appoint a person as Complaints Resolution Commissioner unless the appointment is recommended by the Complaints Resolution Commissioner Selection Committee.
  1. If the Committee gives Convocation a list of persons it recommends for appointment, Convocation may require the Committee to give Convocation a list of additional persons who are recommended by the Committee for appointment.
  2. Convocation shall consider the Committee's recommendations in the absence of the public.
3. This Regulation does not apply if Convocation reappoints the Complaints Resolution Commissioner under subsection 49.14 (3) of the Act.
4. This Regulation comes into force on February 1, 1999.

*F. DETAILED DISCUSSION OF THE COMMITTEE'S PROPOSALS FOR THE CRC*

42. The Committee's policy review for the purpose of a new by-law on the CRC began some months ago. In March 2002, after discussions between the then Committee's chair, the Treasurer and lay benchers, a working group was struck to consolidate and focus on issues that arose during the Committee's previous discussions, and to define the policy on which the by-law should rest. The Committee's consideration of the issue is based on the work of the working group.
43. The Committee focussed on the following issues:
  - Functions and powers of the CRC (review and resolution)
  - The nature of the process
  - Law Society resources available to the CRC
  - Obligations of the Law Society with respect to the operations of the CRC

*General Functions and Powers of the New Complaints Resolution Commissioner*

44. In assessing the functions of the new CRC, the Committee, referring to the language of the Act, affirmed the distinction between the review and resolution functions, described in more detail below. In the Committee's view, in neither process should the CRC have an adjudicative function. In the review process, the CRC will try to determine whether the Society's consideration of a complaint was reasonable. In the resolution process, the CRC attempts to bring the member and the complainant to a resolution which they and the Society can agree will be an appropriate disposition of the complaint.
45. As a matter of internal process, the Committee felt that the Secretary should play the central role – the “gatekeeper” effectively - in referring matters to the CRC, either for review or resolution. This will ensure consistency of approach to the involvement of the CRC.
46. In summary, the Committee proposes that:
  - a. The two roles of the CRC must be recognized. The CRC is to review complaints of persons who are dissatisfied with the outcome of the Law Society's consideration of a complaint. In addition, the CRC will attempt to resolve complaints at an earlier stage in the process, where no decision on the complaint has been made by the Society.
  - b. The CRC may make recommendations to resolve complaints but the CRC has no adjudicative function.



- c. The office of the CRC is independent from the Law Society, and as an independent and impartial body, is designed to promote fairness and accountability of the Society.
- d. The Law Society's Director of Professional Regulation, in the capacity of Secretary for regulatory functions ("the Secretary") will act as gatekeeper for referrals to the CRC, for both review and resolution.

## The Review Function

### Format and Purpose of the Review

- 47. Review of complaints by the Commissioner will involve a function similar to that now exercised by the lay benchers sitting as Complaints Review Commissioners. The CRC will perform the review independently of the Society.
- 48. If a complainant is dissatisfied with the Society's disposition of a complaint, namely, the decision to close the file on the basis that it does not warrant disciplinary action against the lawyer, the complainant has the right to request that that matter be reviewed by the CRC. The Society should fully explain the mandate and powers of the CRC so that complainants understand what they can expect from the process. The Secretary should have no discretion to refuse the request for CRC in these circumstances.
- 49. The review will take the form of a meeting between the complainant and the CRC. The CRC should determine the procedures for the resolution function. As occurs in the current complaints review process, the lawyer should receive notice that the complainant has requested a review by the CRC.
- 50. The Committee discussed whether Law Society staff should attend the review meeting between the CRC and the complainant to address any questions that the CRC believes staff are best able to answer. The primary concern is that the presence of staff may cloud the appearance - or worse, defeat the purpose - of an impartial review by the CRC of the complaint investigation. The complainant may also perceive a power imbalance in facing staff and the CRC, appointed under the auspices of the Society.
- 51. The Committee concluded that staff should not attend the meeting with the complainant. However, the Committee felt that there is significant merit to having appropriate staff available to the CRC to maintain consistency in the treatment of files for review. These staff should consist of a single administrative contact for the CRC who has knowledge of and overall responsibility for the process and the individual knowledgeable about the particular file under review (generally, the investigator). The Society's involvement in the matter through these staff would be at the discretion of the CRC.
- 52. Further, such staff should be available to the CRC on a timely, convenient basis to make the access meaningful.
- 53. The only timeline the Committee suggests be included in the by-law is that relating to the time within which a complainant must request a review by the CRC. The Committee felt that 60 days from the time of receipt of notice that the file will be closed, without an ability for an extension, was sufficient.

### The Results of the Review

- 54. If the CRC agrees with the Society's disposition, the file will remain closed. This decision is final and will conclude the matter. If the CRC believes that additional information is needed or further investigation is warranted, he or she may refer the matter to the Secretary for those purposes.
- 55. *Informal* resolution, noted earlier in the description of the current complaints review process, may result from the review function. It is possible that a matter may be sent back to the Society from a review with a suggested resolution. This differs from the CRC independently pursuing a resolution with the parties, discussed below. Accordingly, the resolution that may occur in the review function must be distinguished from the resolution function of the CRC contemplated in the Act. The Committee noted the Callwood

Committee saw the CRC playing a greater role in mediating and resolving complaints, as contemplated by the Act. However, the Committee believes that the informal resolution described above in the review function should be encouraged.

56. The Committee determined that if the CRC decides that the file should not be closed, the CRC may make a recommendation to the Secretary that further action be taken. The CRC will notify the parties, in writing, of the CRC's recommendations. If the Secretary disagrees with the recommendations of the CRC, the Secretary will provide an explanation in writing of that decision to the CRC, the complainant and the member.
57. In summary, the Committee proposes that:
  - a. The review function will involve closed files, namely, files in which the Society has determined that no disciplinary action is required in response to a complaint. The CRC will perform a review function similar to that currently performed by lay benchers. The Secretary will refer matters to the CRC for review when requested to do so by a complainant, as is the complainant's right.
  - b. The review function will take the form of a meeting (not a hearing) between the CRC and the complainant at which the lawyer is not present. As occurs in the current complaints review process, the lawyer will receive notice that the complainant has requested a review by the CRC.
  - c. The use of informal resolution during the review process will be encouraged.
  - d. Relevant Society staff will not attend the review meeting with the complainant, but will be available to the CRC on a timely, convenient basis should questions or issues relating to the particular complaint file arise.
  - e. At the end of the review, the CRC may decide that the decision to close the file was correct. A decision of the CRC not to proceed further is final and conclusive. The CRC will notify the complainant in writing of the decision, the Society will inform the lawyer in writing and the file will then be closed.
  - f. If the CRC determines that the file should not be closed, the CRC may make a recommendation to the Secretary that further action be taken. The CRC will notify the parties, in writing, of the CRC's recommendations. If the Secretary disagrees with the recommendations of the CRC, the Secretary will provide a written response to the CRC, the complainant and the member.
  - g. The complainant should be allowed 60 days from the time notice is received that the file is to be closed to request a review by the CRC.

#### The Resolution Function

58. Formal resolution of complaints is a new function that is not currently performed by lay benchers sitting as Complaints Review Commissioners. In the resolution function, the CRC independently of the Society would engage the parties in seeking an appropriate resolution to the issue before the CRC. A matter will only be referred to the CRC for resolution through the Secretary. The resolution function will only occur in files in which a final decision on the complaint by the Society has not yet been made, i.e. open complaint files.
59. The Secretary will determine whether to refer a matter to the CRC for resolution prior to closing the file or referring the matter to PAC, as the case may be.
60. The complainant or lawyer, or both, may wish to attempt resolution of the complaint during the investigation stage. As noted earlier in this report, Convocation adopted a report in September 1998 that proposed formalized ADR features in the investigative stream. The intent at that time was to use ADR to divert matters from discipline, where appropriate. The Committee noted that while various forms of ADR are attempted in current complaints resolution and investigation processes, no formalized ADR component exists in the investigation of complaints. ADR is not a feature of every investigation and when it is used, it is usually by way of negotiation techniques in an effort to resolve issues in the complaint. The lack of a formalized process, however, would not preclude a mediated solution, if the both the lawyer and complainant were amenable to it.

61. The Committee recognized that if a formalized ADR process existed operationally in the investigation of complaints, a resolution function within the office of the CRC may appear redundant. The September 1998 report, however, envisaged a system where ADR in the operational departments would co-exist with the *independent* resolution function performed by the CRC.
62. The Committee was of the view that if the parties engage in efforts to resolve the complaint during the investigation with the assistance of the Society's operational staff, the CRC should not be available thereafter for resolution. If the parties do not choose to pursue this internal resolution, they may wish to be referred to the CRC for resolution. This will insure that the CRC does not replicate the Society's operational attempts at resolution. The process should be designed to prevent a complainant from getting a second chance, so to speak, at resolution when internal efforts were not successful. If this design feature is not addressed, the CRC's resolution function may have little meaning.
63. For the resolution function to work properly, the lawyer should participate in the resolution. This does not mean, however, that the lawyer must attend a face to face meeting with the complainant and the CRC. Such a meeting between the complainant, the lawyer and the CRC will be the exception. Many complainants would be intimidated by the presence of the lawyer. The process would likely involve the CRC talking to each side separately to reach a resolution, but almost certainly would involve a meeting with the complainant.
64. The CRC should have broad discretion to determine the process for the resolution function, and should have the ability to make rules governing the process, within the parameters of the Act and the by-laws. It is anticipated that flexibility will be necessary in this respect if the resolution function is to be successful.
65. The Committee acknowledged that some lawyers may be reluctant to participate. However, if resolution is seen as a reasonable way to conclude the matter, the lawyer may be more amenable to the process. If the lawyer ultimately can reject the proposed resolution, there does not appear to be a disadvantage to the lawyer participating. Accordingly, the agreement of both parties is required before a matter is considered to be resolved by the CRC, and the Secretary as the Society's representative must be satisfied that the agreement is an appropriate resolution to the matter. Further, the Society should be prepared to enforce the resolution agreement, as required, as the resolution is effectively a disposition of the matter with conditions to which the parties have agreed.
66. If the parties do not resolve the issues, the CRC should refer the matter back to the Secretary. The Secretary in such circumstances must be the individual who decides what should occur next.
67. With respect to the confidentiality of the process, the Committee felt that the goals of resolution will be achieved if a high level of confidentiality is attached to the process. The view was that parties will be reluctant to confide in the CRC if their disclosures may be used against them (i.e. a lawyer's disclosure which may indicate a breach of professional conduct). The question was whether the misconduct reporting rule in the Society's *Rules of Professional Conduct* should apply to disclosures that the CRC may learn about during the resolution process.
68. The Committee decided on the following respecting confidentiality:
  - a. the rule on justified or permitted disclosure of confidential information (rule 2.03(3)<sup>4</sup>) should apply to a CRC who is a lawyer, and

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<sup>4</sup> Where a lawyer believes upon reasonable grounds that there is an imminent risk to an identifiable person or group of death or serious bodily harm, including serious psychological harm that substantially interferes with health or well-being, the lawyer may disclose, pursuant to judicial order where practicable, confidential information where it is necessary to do so in order to prevent the death or harm, but shall not disclose more information than is required.

- b. the rule requiring lawyers to report the misconduct of another lawyer (rule 6.01(3)<sup>5</sup>) should be applied in a fashion similar to that for other counsellors and mediators, in recognition of the independent role of the CRC. The standard is reflected in the following commentary applicable to Ontario Bar Assistance Program lawyer counsellors:

Often, instances of improper conduct arise from emotional, mental, or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports the Ontario Bar Assistance Program (OBAP), LINK, and other support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for OBAP and other support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity, or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

69. In summary, the Committee proposes that:

- a. Formal resolution of complaints, a new function that is not currently performed by the Complaints Review Commissioners, will deal with open files in which a final decision on the conduct in question has not been made by the Society. The Secretary will determine whether a matter is referred to the CRC for resolution, prior to the file being closed or referral to the Proceedings Authorization Committee ("PAC"). The Secretary may refer a file to resolution on consent of the complainant, the lawyer and the Society.
- b. The CRC will have broad discretion to determine the process for the resolution function.
- c. No resolution may occur without the agreement of the complainant, the lawyer and the Society. Accordingly, resolution cannot be imposed on the lawyer. In addition, the Society, as regulator, will not agree to a resolution without being satisfied that the agreement is appropriate.
- d. Confidentiality will be an essential feature of the resolution process. All communications made during the resolution process must be "without prejudice" and, subject to certain provisions in the *Rules of Professional Conduct*, as described below, may be used only for the purpose of achieving a resolution. Such communications must not form part of the record or be used in any investigation or discipline proceedings at the Society or any other proceeding without the consent of the parties.
- e. The Law Society's rule of professional conduct on justified or permitted disclosure (rule 2.03(3)) would apply to the CRC who is a lawyer, as well as the misconduct reporting rule and relevant

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<sup>5</sup> Duty to Report Misconduct

(3) A lawyer shall report to the Society, unless to do so would be unlawful or would involve a breach of solicitor-client privilege,

- (a) the misappropriation or misapplication of trust monies,
- (b) the abandonment of a law practice,
- (c) participation in serious criminal activity related to a lawyer's practice,
- (d) the mental instability of a lawyer of such a serious nature that the lawyer's clients are likely to be severely prejudiced, and
- (e) any other situation where a lawyer's clients are likely to be severely prejudiced.

commentary (rule 6.01 (3)) with respect to disclosures, admissions or other communications that may evidence criminal activity.

- f. Any agreement will be referred to the Secretary for approval. If the parties do not resolve the issues, the matter will be referred back to the Secretary.
- g. Where necessary, the Society will be responsible to implement and enforce any resolution reached during the process.

#### Law Society Interaction with the Commissioner

##### Timelines, Reporting and Funding

- 70. The Committee discussed whether timelines for responses from the Society to the CRC for information or file-related material be included in the by-law.
- 71. The Committee concluded that while this type of detail in the by-law was unnecessary, the by-law should include a general obligation by the Society to respond in a timely fashion to requests for information from the CRC relating to matters before the CRC.
- 72. The Committee acknowledged that there is a positive obligation on the part of the Society to work with the CRC. To this end, it is open to the CRC and the “point person” who regularly deals with the CRC, as described above, to develop a working relationship in which particulars of the process issues may be addressed.
- 73. An annual report from the CRC on activities and related issues within the CRC’s office should be made through the Professional Regulation Committee to Convocation, similar to the annual report that the Discrimination and Harassment Counsel makes to Convocation through the Equity and Aboriginal Issues Committee.<sup>6</sup>
- 74. The CRC’s report is intended to inform Convocation on how the office is functioning, and should include, for example, information on the number and type of recommendations the CRC may make to the Secretary and the ultimate disposition of these matters. In this way, the integrity of the process can be protected and issues arising within it addressed.
- 75. General language on funding provided through the Society’s budget process should be included in the by-law.

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<sup>6</sup> The relevant part of By-Law 36 on the Discrimination and Harassment Counsel reads:

##### Annual and semi-annual report to Committee

5. (1) The Counsel shall make a report to the committee,

(a) not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year; and

(b) not later than September 1 in each year, upon the affairs of the Counsel during the period January 1 to June 30 of that year.

##### Report to Convocation

(2) The committee shall submit each report received from the Counsel to Convocation on the first day following the deadline for the receipt of the report by the Committee on which Convocation has a regular meeting.

76. Accordingly, the Committee proposes that

- a. The Society should be obligated to respond in a timely fashion to requests from the CRC for information related to the matters before the CRC.
- b. An annual report from the CRC on activities and related issues within the CRC's office should be made through the Professional Regulation Committee to Convocation.
- c. General language on funding provided through the Society's budget process should be included in the by-law.

#### *G. MAIN FEATURES OF THE PROPOSED BY-LAW*

77. The following highlights the major provisions of the by-law, designed in three parts, which reflect the policies discussed above.

#### **PART I**

78. Part I of the by-law covers general provisions related to the office of the CRC, including the following:
- a. Funding for the office of the CRC is provided through Convocation's annual budget process (s. 2(1)) and spending is restricted to the budgeted amount (s. 2(2)).
  - b. The CRC must provide an annual report on the affairs of his or her office by March 31 in each year for the preceding year to the Professional Regulation Committee, which must provide it to Convocation by June Convocation in the same year (s. 3).
  - c. With respect to the Secretary's responsibilities under the by-law, the Society's Professional Regulation Counsel is authorized to act if the Secretary is unable to do so (s. 4)

#### **PART II**

79. This part details the functions of the CRC in the review of complaints, and covers the following:
- a. According to s. 6(1), the CRC may review complaints respecting the conduct of a member (or a student member) if the Society has considered the merits of the complaint, the complaint has not been disposed of by the Proceedings Authorization Committee ("PAC") or at the hearing level, the complaint has not been "previously reviewed" (interpreted in s. 6(3)) by the CRC, and the complainant has received notice that no further action will be taken on the complaint.
  - b. As a matter of identifying the jurisdiction of the CRC, the by-law provides that the CRC may not review complaints that, in the opinion of the CRC, relate to the quantum of fees or disbursements, the requirements of By-Laws 17 or 19, or negligence. (s. 6(2))
  - c. The complainant may request the CRC to review a matter but the request must be in writing (s. 7(1) and (2)). A complainant must make the request to the Secretary for review by the CRC within 60 days of notice that no further action will be taken by the Society on the complaint (s. 7(3)).
  - d. The Secretary shall refer all complaints to the CRC upon such request (s. 8(1)). Notice of the referral of a complaint to the CRC for review shall be given to the member who is the subject of the complaint (s. 8(2)).
  - e. If the CRC receives fresh evidence at the hearing which he or she considers significant, the CRC must refer the information and complaint back to the Society for further consideration (s. 9(1)).
  - f. The CRC, after review, shall,
    - i. if satisfied that the Society's consideration of the complaint and decision not to proceed with the complaint is reasonable, so inform the complainant and the Society (s. 9(2)(a));
    - ii. if not satisfied, refer the complaint back to the Secretary with a recommendation for further action (s. 9(2)(b)), and notify the complainant in writing.
  - g. Notice of the disposition shall be given to the member by the Secretary (s. 9(3)).

- h. If the matter is sent back pursuant to s. 9(2)(b), the Secretary must notify the CRC, the complainant and the member of whether the Secretary will follow the CRC's recommendation (s. 9(4)).
- i. The Secretary must provide a written explanation to the CRC, the member and complainant if the Secretary decides not to follow the recommendation of the CRC under s. 9(2)(b) (s. 9(5)).
- j. Subject to Part II, the CRC sets the procedures for review of complaints (s. 10(1)). The nature of the meeting is described, including who may participate in the meeting (s. 10(2) to (4)). The Society is entitled to provide a description of its consideration and reasons for disposition of the complaint (s. 10(5)). The CRC may require, and if so, the Society shall provide, information relating to the Society's consideration and disposition of a complaint (s. 10(6)).

### PART III

80. Part III deals with the functions of the CRC in the resolution of complaints, and includes the following:
- a. The Secretary may refer complaints to the CRC for resolution that are within the Society's investigatory jurisdiction, that have not been referred to or disposed of by PAC or disposed of at the hearing level, and in which no resolution has been attempted by the Society. The parties to the resolution must consent to the referral (s. 11(1)).
  - b. The parties to the resolution are the member, the complainant and the Society (s. 12).
  - c. There is no resolution unless all parties agreed to the resolution, which will be documented in a signed agreement and enforced by the Society (s. 13(1) and (3)). If there is no resolution, the CRC must notify the parties in writing and refer the matter back to the Secretary (s. 13(3)).
  - d. Confidentiality attaches to the information obtained by the CRC during resolution, but disclosure is permitted in accordance with the *Rules of Professional Conduct* (s. 14(1) and (2)). In resolution, all communications with the CRC and the CRC's notes and records are deemed to be without prejudice to any party (s. 14(3)).
  - e. Subject to Part III, procedures for the resolution function are to be determined by the CRC (s.15).

### INFORMATION

#### QUARTERLY REPORT FROM THE PROFESSIONAL REGULATION DIVISION

81. The report from the Professional Regulation Division for the quarter ending March 2003 appears on the following pages. The report includes file management and statistical information on Complaints Resolution, Complaints Review, Investigations, Discipline and Trustee Services.

### APPENDIX 1

#### BY-LAW 20 REVIEW OF COMPLAINTS

BY-LAW 20  
Made: January 28, 1999  
Amended:  
May 28, 1999  
April 26, 2001  
January 24, 2002

#### REVIEW OF COMPLAINTS

### Complaints Review Commissioners

1. Each lay benchers is a Complaints Review Commissioner.

### Function

2. (1) Subject to subsection (2), the function of a Complaints Review Commissioner is to review the Society's disposition of a complaint against a member.

### Same

(2) A Complaints Review Commissioner shall not review the disposition of a complaint against a member by,

- (a) the chair and vice-chairs of the Discipline Committee as it was constituted before February 1, 1999;
- (b) a committee of benchers acting under section 33 of the Act as that section read before February 1, 1999;
- (c) Convocation acting under section 33 of the Act as that section read before February 1, 1999;
- (d) the Proceedings Authorization Committee;
- (e) the Hearing Panel; or
- (f) the Appeal Panel.

### Request to review disposition of complaint

3. (1) A complainant who is dissatisfied with the Society's disposition of his or her complaint against a member may request the Society to refer the disposition of the complaint to a Complaints Review Commissioner for review.

### Referral of disposition of complaint to Commissioner

(2) If a request is made under subsection (1), unless a complaint was disposed of by the persons or body mentioned in subsection 2 (2), the Society shall refer the disposition of a complaint to a Complaints Review Commissioner for review.

### Review by Commissioner of disposition of complaint

4. (1) A Complaints Review Commissioner shall review every disposition of a complaint referred to him or her under subsection 3 (2) and shall decide whether the Society's disposition of a complaint was appropriate.

### Referral to Society for further investigation

(2) A Complaints Review Commissioner may, before or after deciding whether the Society's disposition of a complaint was appropriate, refer a complaint to the Society and direct the Society to investigate the complaint further.

### Procedure on review



5. The procedure applicable to a review by a Complaints Review Commissioner of the Society's disposition of a complaint shall be determined by the Complaints Review Commissioner and, without limiting the generality of the foregoing, the Complaints Review Commissioner may decide who may make submissions to him or her, when and in what manner.

#### Independent counsel

6. The Complaints Review Commissioners may retain independent counsel on such terms and conditions as they consider appropriate to provide them with advice on the performance of their duties and the exercise of their duties under this By-Law.

#### Two or more Commissioners may review disposition of complaint

7. Despite any provision in this By-Law, two or more Complaints Review Commissioners may sit together to review the Society's disposition of a complaint and sections 2, 4 and 5 apply, with necessary modifications, to the review of the Society's disposition of a complaint by two or more Commissioners.

#### Commencement

8. This By-Law comes into force on February 1, 1999.

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

- (1) Copy of the Quarterly Report from the Professional Regulation Division.

(pages 38 – 74)

#### Re: By-Law on the Complaints Resolution Commissioner

It was moved by Mr. Ducharme, seconded by Ms. Ross that the By-Law on the office of the Complaints Resolution Commissioner set on page 4 of the Report be approved.

An amendment was accepted by the mover and seconder that the word "only" be added to paragraph 6(2) of the By-Law set out on page 5 of the Report.

The paragraph reads as follows:

"(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:"

The Ducharme/Ross motion as amended was adopted.

#### By-Law on the Complaints Resolution Commissioner

### THE LAW SOCIETY OF UPPER CANADA

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

THAT, pursuant to the authority contained in paragraphs 13 and 38 of subsection 62 (0.1) of the *Law Society Act*, a by-law be made as follows:

#### COMPLAINTS RESOLUTION COMMISSIONER

#### PART I GENERAL

#### Definitions

1. In this By-Law,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a member or student member;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

#### Provision of funds by Society

2. (1) The money required for the administration of this By-Law and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

#### Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this By-Law and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

#### Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the standing committee of Convocation responsible for professional regulation matters a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the committee shall lay the report before Convocation not later than at its regular meeting in June.

#### Delegation of powers and duties of Secretary: Professional Regulation Counsel

4. If the Secretary for any reason is unable to do so, an employee or officer of the Society who holds the office of Professional Regulation Counsel may exercise the powers and perform the duties of the Secretary under this By-Law.

#### Complaints against benchers and Society employees

5. In Parts II and III, a reference to the Secretary shall be deemed, with respect to a complaint that concerns the conduct of a bencher or employee of the Society, to be a reference to the Treasurer.

## PART II REVIEW OF COMPLAINTS

#### Reviewable complaints

6. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
  - (c) the complaint has not been previously reviewed by the Commissioner; and
  - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

#### Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a member to a complainant.

2. Requirements imposed on a member under By-Law 17 [Filing Requirements] or 19 [Handling of Money and Other Property].
3. Negligence of a member or student member.

Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 9 (1).

Right to request referral

7. (1) A complainant may request the Secretary to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
  - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
  - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

8. (1) The Secretary shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 7.

Notice

(2) The Secretary shall notify in writing the member or student member who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 7 that the complaint has been referred to the Commissioner for review.

Fresh evidence

9. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner’s opinion is significant, about the conduct of the member or student member who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Secretary shall notify in writing the member or student member who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, the Secretary shall consider the recommendation and notify in writing the Commissioner, complainant and member or student member who is the subject of the complaint of whether the Secretary will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Secretary with a recommendation that the Society take further action in respect of the complaint, or the member or student member who is the subject of the complaint, and the Secretary determines not to follow the recommendation of the Commissioner, the Secretary shall provide the Commissioner, complainant and member or student member who is the subject of the complaint with a written explanation for the determination.

Procedure

10. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: member, student member

(4) The member or student member who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, *etc.*

(5) At the time that the Secretary refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

### PART III RESOLUTION

#### Discretionary referral of complaints

11. (1) The Secretary may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;
  - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
  - (c) the complaint has not been referred to the Proceedings Authorization Committee;
- E. no resolution of the complaint has been attempted by the Society; and
  - F. the complainant and the member or student member who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

#### Parties

12. The parties to a resolution of a complaint by the Commissioner are the complainant, the member or student member who is the subject of the complaint and the Society.

#### Outcome of Resolution

13. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

#### No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Secretary.

#### Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

#### Confidentiality: Commissioner

14. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

#### Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's Rules of Professional Conduct.

#### Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

#### Procedure

15. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

Item for Information Only

- Professional Regulation Division Quarterly Report

REPORT OF THE SPECIAL COMMITTEE ON THE SOCIETY'S DOCTOR OF LAWS PROGRAM

Mr. Arnup presented the Report of the Special Committee on the Society's Doctor of Laws Program for approval by Convocation.

SPECIAL COMMITTEE ON THE SOCIETY'S DOCTOR OF  
LAWS PROGRAM  
April 25, 2003

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Report to Convocation

Purpose of Report: Decision

Prepared by John D. Arnup, Q.C., LSM

REPORT OF THE SPECIAL COMMITTEE ON THE SOCIETY'S DOCTOR OF LAWS PROGRAM

In October 2002 the Special Committee on the Society's Law Society Medal program presented its report to Convocation, which approved it. Shortly afterwards, the Treasurer asked the Special Committee to conduct a similar review of the Society's program concerning the conferring of the degree of Doctor of Laws, *honoris causa*. The members of the Special Committee are John Arnup (Chair), Sydney Robins, Laura Legge, Susan Elliott and Marion Boyd. This is their report.

Background:

When the Society and the Ontario universities began discussing the creation of law faculties in the universities, it was recognized early in the discussions that since the Society was going to continue to operate the Osgoode Hall Law School, the Society would be granting to its graduates the same degrees as the universities would be granting to the graduates of the faculties of law. There was never any controversy over this. The Government of Ontario agreed with this conclusion and in 1957, shortly after the historic agreement between the Law Society and the universities, amended The Law Society Act by adding to the section setting out the powers of the Benchers the words "and may provide for the granting of and grant degrees in law".<sup>1</sup>

The Society then began to confer upon the graduates of its law school the degree of "Bachelor of Laws" (LL.B.) and, in due course, the universities who now had law faculties did the same.

The first honorary degree conferred by the Law Society pursuant to the power granted by the 1957 statute was conferred on June 23, 1960, upon John D. Falconbridge, Q.C., long time dean of the Osgoode Hall Law School, and nationally renowned author of text-books on mortgages and on banking and bills of exchange. He was an internationally renowned scholar and writer on conflict of laws.

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<sup>1</sup> Stat. Ont. 1957, c.59, s.1

After the Osgoode Hall Law School moved to York University, the honorary degree of LL.D. was the only academic degree left within the powers given to the Society.<sup>2</sup>

As the number of graduates from Ontario law schools has steadily increased, added to by transfers from other provinces, it has been found necessary to increase the number of Calls to the Bar in Toronto and to have one or more Call ceremonies in London and Ottawa, each of which cities now has its own bar admission course. This requires the selection of more persons to address the graduating class at each of these Convocations, and the practice has developed of conferring an LL.D. at each Convocation on the person also chosen to give the Convocation address. We will have more to say about this below.

Up to April 1, 2003, 85 degrees have been granted, 23 in the last four years.

#### Our Research:

1. We requested and were provided with every reference in the minutes of Convocation to the LL.D. degree. At the time of the institution of the degree there were no criteria established as to the qualifications of the proposed recipient, and no protocol as to the process of selection. None has been established since. Clearly it is time, after forty-three years of experience, for Convocation to consider both criteria for recipients and, at least, guidelines for the process of selection.
2. Because of the lack of protocol concerning selection, the Chair wrote to all of the surviving Treasurers in whose tenure of office LL.D.'s were awarded (fourteen in all) asking them to indicate, on a confidential basis, what steps they took leading to the selection of recipients. Thirteen replies were received, by letter or orally. (Four ex-Treasurers in this group were on this Committee)

Not surprisingly, there was considerable difference in the methods of selection reported, but also a helpful similarity or approach; and your Committee is grateful to the responders, who were quite interested in the project.

3. The Chair also circulated a memorandum to all Benchers, including life Benchers, inviting their comments on any and all aspects of the LL.D. program. Three replies were received, which this Committee has considered.

#### Tradition or Myth?

1. After some years of operation of the LL.D. program, this sentence emerged: "The granting of the LL.D. degree by the Society is the prerogative of the Treasurer." If this meant that the Treasurer was in sole control of the nomination of candidates, it was incorrect. From the beginning the role of the Treasurer in the selection process was important, and still is, but no Treasurer ever assumed the authority to act alone. Every single Treasurer consulted some of his/her colleagues, usually senior Benchers and often the chairs of committees. We have concluded that since the practice has been universal, it should now be formalized as part of a protocol for selection of recipients.
2. Commencing in 1979 the degree has been conferred upon a former Treasurer. To date, seventeen former Treasurers have been so honoured. At some stage this sentence emerged. "It is tradition (sic) that sooner or later a former Treasurer is given an LL.D."

The practice exists, but not simply because it is a "tradition". Treasurers are elected to that office by their peers in Convocation. They are invariably persons who have been outstanding in their achievements in practice and in Convocation, and have had the respect of their fellow Benchers.

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<sup>2</sup> To this day, as part of the Call to the Bar Ceremonies the Treasurer uses the words traditionally uttered by all Treasurers "... I confer upon each of you the degree of barrister-at-law..." This is not the place to discuss this historical legacy.

The practice should continue, not because it is a “tradition” but because of the proven merits of the recipients.

#### Our Conclusions:

1. Too many LL.D.’s have been granted in recent years. At the outset of the program it was the view of each Treasurer and of Convocation that the power to grant the degree should be exercised sparingly. The effect of granting several degrees each year tends to weaken the prestige that ought always to be one of its important attributes.

There are two reasons advanced for the prolixity of awards, which are related. When the degree was first awarded, there was only one principal Call to the Bar. Today there are five, in three cities. It is the view of Treasurers that one attribute of proposed recipients should be his or her ability to make an appropriate Convocation address to graduates, who have worked so long and hard to reach this stage of their life. To be invited to address a Call to the Bar Convocation of the Law Society is, itself, a high honour.

It is doubtless true that the ability to deliver such an address is important, but we urge that consideration be given in the future to the question whether the person chosen to give the address must also be given an honorary degree. Consideration should also be given to the possibility of the Treasurer being the prime speaker, and perhaps at two or more of the Call Convocations. The opportunity thus given, was aptly put by Allan Rock, P.C., Q.C., in his reply to the Chair of this Committee:

“We must remember that these ceremonies take place when hundreds of young people are celebrating a milestone and embarking on a life’s journey. It is, therefore, a wonderful opportunity to inspire and motivate by putting a living example of service and/or achievement in front of them.”

We raise the question: why shouldn’t this be the Treasurer himself/herself? The same speech could be given at two or more Call Convocations (some Benchers present may hear it more than once, but the speech is aimed at the new graduates).

The number of Call Convocations is not going to get less, and we ought not to keep on granting one or more honorary degrees at all of them.

2. It is desirable that some criteria be established, but in our view they should be expressed in broad and general terms. There has been general agreement since the beginning that the granting of the degree is in recognition of outstanding achievements in service and benefit to the legal profession of Ontario or the administration of justice whether in practice, academia, the judiciary or authorship. It would be inappropriate for us to comment upon any specific past appointments. We say only that it is difficult to fit a few of them into a classification delineating outstanding service in and of benefit to the legal profession of Ontario.
3. At the beginning of each calendar year the Treasurer should appoint a committee, to be called “The Advisory LL.D. Awards Committee”, whose mandate is to advise and assist the Treasurer in making a recommendation to Convocation of recipients of the L.L.D. degree in that year. We suggest a committee of five including the Treasurer who should chair it. The recommendation of the Treasurer, after approval by the Advisory Committee, should be presented to Convocation for its approval at an in camera session. As pointed out by one of the past Treasurers, one justification for presenting the recommendation of the Treasurer to Convocation is to guard against the possibility that in Convocation some information may come to light that makes a proposed award undesirable. It is highly unlikely that a proposed award, brought forward by the Treasurer and approved by the Advisory LL.D. Awards Committee would be rejected by Convocation but Benchers will not feel they have been presented with a fait accompli.



John D. Arnup, Q.C., LSM  
Chair  
April 25, 2003

It was moved by Mr. Arnup, seconded by Mr. Feinstein that the Report be adopted.

It was moved by Mr. Gottlieb, seconded by Mr. Aaron that the Law Society should advertise in the Ontario Reports for nominations for the honorary LL.D.

Lost

#### ROLL-CALL VOTE

Aaron	For	MacKenzie	Against
Arnup	Against	Marrocco	Against
Bindman	For	Millar	Against
Campion	For	Minor	Against
Carey	Against	Mulligan	Against
Carpenter-Gunn	Against	Pilkington	For
Cherniak	Against	Porter	Against
Coffey	Against	Potter	Against
Copeland	Against	Puccini	For
Crowe	For	Ross	Abstain
Curtis	For	Ruby	Abstain
Diamond	Against	Simpson	Against
Ducharme	Against	Topp	Against
Epstein	Against	White	Against
Feinstein	Against	Wilson	Abstain
Finkelstein	Against	Wright	Against
Finlayson	Against		
Go	Abstain		
Gottlieb	For		
Harris	Against		
Laskin	Against		

Vote: 25 Against; 8 For; 4 Abstentions

An amendment was accepted by the mover and seconder that the words “the rule of law or the cause of justice” be inserted in paragraph 2 on page 6 of the Report and the words “of Ontario or the administration of justice whether in practice, academia, the judiciary or authorship” be deleted.

The sentence reads as follows:

“There has been general agreement since the beginning that the granting of the degree is in recognition of outstanding achievements in service and benefit to the legal profession, the rule of law or the cause of justice.”

Convocation adopted the Report as amended.

Carried

The issue of the Special Calls was referred back to the Committee.

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CONVOCATION RECONVENED AT 3:00 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Bindman, Boyd, Carpenter-Gunn, Cherniak, Crowe, Curtis, Diamond, Ducharme, Feinstein, Finlayson, Gottlieb, Harris, Laskin, MacKenzie, Marrocco, Millar, Minor, Porter, Potter, Puccini, Ross, Ruby, Swaye, Topp (by telephone) and Wright.

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## REPORT OF THE PROFESSIONAL DEVELOPMENT, COMPETENCE & ADMISSIONS COMMITTEE

Mr. Cherniak presented the Report of the Professional Development, Competence & Admissions Committee for approval by Convocation.

Professional Development, Competence & Admissions Committee  
April 25, 2003

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Report to Convocation

Purpose of Report:      Decision  
                                    Information

Prepared by the Policy Secretariat  
(Julia Bass 416-947-5228  
Sophia Sperdakos 416-947-5209)

### OVERVIEW OF POLICY ISSUES

#### PROPOSED BY-LAW AND RULE AMENDMENTS REGARDING CONFIDENTIALITY OF PRACTICE REVIEWS/COMPETENCE HEARINGS

##### Request to Convocation

1. That Convocation approves the proposed amendments to By-law 24 and Rule 3.04.1 of the Rules of Practice and Procedure in accordance with the Motions set out at Appendices 2 and 3.

##### Summary of the Issue

2. In April 2002 Convocation approved the Committee's recommendations regarding changes to the policy on confidentiality of practice reviews and competence hearings. While most of the changes Convocation approved do not need to be included in By-laws or Rules of Practice and Procedure, two provisions do.
3. The first proposed amendment is to By-law 24 (Professional Competence), which deals with, among other issues, the practice review process. The proposed amendment embodies Convocation's decision that a review of a member's practice and the fact that a review is being, or has been conducted will not be made public. The proposed amendment also reflects Convocation's decision that, in general, a proposal order made under By-law 24 will not be public, unless it results in a suspension or limitation of a member's rights and privileges.
4. The second proposed amendment is to the Rules of Practice and Procedure. One of the decisions Convocation made provides that where a tribunal presiding over a professional competence proceeding, *limits* or *suspends* a member's rights and privileges, the *order* and the *decision* should be made public. This necessitates changes to subsections 3.04.1(5), (6), and (7).
5. The proposed amendments are contained in the Motions set out at Appendices 2 and 3.

#### PROPOSED AMENDMENTS TO BY-LAWS 11 AND 13

#### Request to Convocation

6. That Convocation approve the Motion set out at Appendix 6 to
  - a. amend By-law 11 to delete sections 4.01, 4(2)(e) and 4.1(2)(e); and
  - b. amend By-law 13 to provide that sections 2.1(5) and 2.3(4.1) also apply to section 4.1 of By-law 11.

#### Summary of the Issue

7. By-law 11, entitled Call to the Bar and Admission and Enrolment as Solicitor makes provision for, among other things, the method by which a lawyer from another jurisdiction in Canada may become a member of the Ontario bar.
8. In March 2003, Convocation amended By-law 11 to implement the mobility provisions in the National Mobility Agreement (NMA) regarding transfer from another jurisdiction within Canada to Ontario. In particular, it amended By-law 11 to remove the requirement for lawyers from jurisdictions that implement the NMA to write transfer examinations.
9. Given the approval of the mobility provisions in March 2003, the Committee has now taken the opportunity to review By-law 11 to determine whether any other aspects of the transfer provisions should be amended. In its view the provision in By-law 11 that requires transfer applicants to have been engaged in active practice, articling or a bar admission course (or any combination of the three) for fourteen months of the three-year period immediately before transfer process, should be deleted. The Committee is of the view that this provision should be deleted for all lawyers, whether from a jurisdiction that has signed and implemented the NMA or not. The provision serves no competence-related purpose and is not in keeping with the spirit of enhanced mobility.
10. In March 2003, Convocation also amended By-law 13 to ensure that lawyers transferring to Ontario pursuant to the NMA would be subject to the Society's requirements with respect to the Private Practice Refresher Program. Currently, this amendment applies only to lawyers transferring from jurisdictions that have implemented the NMA. The Committee is of the view that it should apply as well to those from non-signatory jurisdictions since it is important that all transfer candidates be subject to the same standards applied to members of the Law Society.

### PROPOSED BY-LAW IMPLEMENTING THE REDESIGNED SPECIALIST CERTIFICATION PROGRAM

#### Request to Convocation

11. That Convocation approve the Motion containing the proposed By-law on Specialist Certification set out at Appendix 7.

#### Background

12. In June 2002, Convocation approved the redesign of the specialist certification program. In September 2002 Convocation was provided with a copy of the operational standards of the program, for its information.
13. The proposed Specialist Certification By-law set out at Appendix 7 implements the Redesigned Specialist Certification Program approved by Convocation in June 2002, as well as incorporating the operational standards of the program.

### THE REPORT

#### Terms Of Reference/Committee Process

14. The Committee met on March 13, 2003 and April 10, 2003. Committee members in attendance at the March 13, 2003 meeting were Earl Cherniak (Chair), Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Carol Curtis, Todd Ducharme, Abe Feinstein, Janet Minor, and Rich Wilson. Staff members

in attendance were Julia Bass, Ian Lebane, Diana Miles, Janine Miller and Sophia Sperdakos. Justice Colin Campbell also attended the meeting. Committee members in attendance at the April 10, 2003 meeting were Kim Carpenter-Gunn (Vice-Chair), Bill Simpson (Vice-Chair), Todd Ducharme, Abe Feinstein, Janet Minor, Greg Mulligan, Dan Murphy, and Rich Wilson. Staff in attendance were Julia Bass, Diana Miles, Dulce Mitchell, Ian Lebane, Elliot Spears, Sophia Sperdakos, and Ursula Stojanowicz.

15. The Committee is reporting on the following matters:

Policy – For Decision

- Proposed By-law and Rules Amendments regarding Confidentiality of Practice Reviews/Competence Hearings (Not reached at March Convocation)
- Proposed Amendments to By-laws 11 and 13
- Proposed By-law Implementing the Redesigned Specialist Certification Program

PROPOSED BY-LAW AND RULE AMENDMENTS REGARDING CONFIDENTIALITY OF PRACTICE  
REVIEWS/COMPETENCE HEARINGS

Background

16. In April 2002 Convocation approved the Committee's recommendations regarding changes to the policy on confidentiality of practice reviews and competence hearings. The Executive Summary from the Report to Convocation is set out at Appendix 1.
17. While most of the changes Convocation approved do not need to be included in By-laws or Rules of Practice and Procedure, two provisions do.
18. The first proposed amendment is to By-law 24 (Professional Competence), which deals with, among other issues, the practice review process. The proposed amendment embodies Convocation's decision that a review of a member's practice and the fact that a review is being, or has been conducted will not be made public. As the proposed amendment is worded, the information about a practice review would not be disclosed except to the extent that, for example, it was part of a conduct proceeding, open to the public, under the Act.
19. The proposed amendment also reflects Convocation's decision that, in general, a proposal order made under By-law 24 will not be public, unless it results in a suspension or limitation of a member's rights and privileges.
20. Appendix 2 contains
- a. the proposed Motion amending By-law 24; and
  - b. (for background) the relevant excerpt from the Committee's April 2002 Report to Convocation.
21. The second proposed amendment is to the Rules of Practice and Procedure. One of the decisions Convocation made provides that where a tribunal presiding over a professional competence proceeding *limits* or *suspends* a member's rights and privileges, the *order* and the *decision* should be made public. This necessitates changes to subsections 3.04.1(5), (6), and (7). Currently they are worded as follows:

(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 the member's rights and privileges, the order and the decision of the tribunal are a matter of public record.

(6) Subject to subrule (7), 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 limiting the member's rights and privileges, the tribunal shall determine what aspects of the order shall be made public in order to protect the public interest.

(7) Where the hearing of an application for a determination of professional competence 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.

22. Appendix 3 contains
  - a. the proposed motion amending Rule 3.04.1; and
  - b. (for background) the relevant excerpt from the Committee's April 2002 Report to Convocation.

#### Request to Convocation

23. That Convocation approves the proposed amendments to By-law 24 and Rule 3.04.1 of the Rules of Practice and Procedure in accordance with the Motions at Appendices 2 and 3.

#### PROPOSED AMENDMENTS TO BY-LAWS 11 AND 13

##### By-law 11

24. By-law 11, entitled Call to the Bar and Admission and Enrolment as Solicitor, makes provision for, among other things, the method by which a lawyer from another jurisdiction may transfer to Ontario and become a member of the Ontario bar.
25. In March 2003 Convocation amended By-law 11 so that it addresses the changes and additions necessitated by the Law Society's approval of the National Mobility Agreement (NMA). The amended By-law is set out at Appendix 4.
26. One aspect of the By-law 11 that was not amended states that a person seeking to transfer to Ontario may be called to the bar if, among other things, for a period or periods totalling at least fourteen months within the three year period immediately before,
  - a. the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar;<sup>1</sup> or
  - b. the person passed the final transfer examination of the transfer examinations<sup>2</sup>

the person was engaged in one of the following activities or any combination of them:

    - i. the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside of Ontario;
    - ii. the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario;
    - iii. service under articles of clerkship in Ontario.
27. This provision dates back to 1956. The original policy referred only to a three-year requirement. It is not clear how or why three years was determined appropriate. It appears that the introduction of the policy followed the culmination of debate at the Canadian Bar Association mid-winter meetings from 1948-56 on the development of uniform standards for admission and transfer.
28. In 1994 the provision was amended as a result of a decision of the Quebec Superior Court, which held that a Quebec requirement for three years practice in another jurisdiction in order to be eligible for transfer was unconstitutional and represented an unreasonable barrier.

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<sup>1</sup> Applicable to signatory jurisdictions under the National Mobility Agreement

<sup>2</sup> Applicable to non-signatory jurisdictions

29. At that time the Law Society received a legal opinion that it could require transfer applicants to comply with standards for admission that were equivalent to those required of students proceeding through the Bar Admission Course. The Law Society approved the introduction of the requirement described in paragraph 26 above. It appears to have interpreted the term “standards for admission” to mean the length of the BAC, rather than a measure of content of the program. Accordingly, transfer candidates were required to have been involved in the activities described in paragraph 26 above for a period of seventeen months, subsequently reduced to fourteen months (in both cases the length of the BAC).
30. The provision appears to have been intended to avert the possibility that a newly called lawyer from a jurisdiction with a shorter bar admission course could transfer to Ontario in less time than it would take an Ontario student to be called to the bar.
31. Given both the changes to the BAC and the more liberal attitude to mobility, the continued necessity of sections 4(2)(e), [applicable to transferees from signatory jurisdictions under the NMA] and 4.1(2)(e)[applicable to transferees from non-signatory jurisdictions] seems doubtful. This is particularly true given the view expressed by the National Mobility Task Force, and accepted by signatory jurisdictions including the Law Society, that admissions standards across the country are remarkably similar.
32. It is clear from the fact that the time frame for the required period of activities in sections 4(2)(e) and 4.1(2)(e) are exactly the length of the BAC that the provision does not really address “standards”. Rather, it sought to protect Ontario students at a time when the Ontario’s BAC was many months longer than that of other jurisdictions. This is no longer the case.
33. The Committee is of the view that the provision should no longer apply to transferring lawyers whether they are from jurisdictions that have implemented the NMA or not. It recommends the deletion of sections 4(2)(e) and 4.1(2)(e).
34. As section 4.01 is a definitional section for sections 4(2)(e) and 4.1(2)(e), it should also be deleted.

#### By-law 13

35. In March 2003 Convocation also amended By-law 13 to ensure that lawyers transferring from another province that had implemented the NMA would, like all other Law Society members, be designated as a Category A, B, or C lawyer. This characterization would be done mirroring their status in the jurisdiction from which they transferred. For the purposes of calculating whether such transferring lawyers would become subject to the Private Practice Refresher Program the calculation of the period in which they were in a given category would include the period in which they were in that category in the jurisdiction from which they transferred. The amended By-law 13 is set out at Appendix 5.
36. The purpose of the amendment was to ensure that a transferring lawyer meets the same standards as a member of the Law Society with respect to the PPRP requirements. The Committee is of the view that this amendment to By-law 13, which currently applies only to section 4 of By-law 11 dealing with lawyers transferring from jurisdictions that have implemented the NMA, should be extended to apply as well to section 4.1 dealing with lawyers transferring from non-signatory jurisdictions. To do otherwise would allow lawyers from non-signatory jurisdictions to potentially avoid the application of the PPRP.
37. The proposed amendments to By-laws 11 and 13 are contained in the Motion at Appendix 6.

#### Request to Convocation

38. That Convocation approve the Motion set out at Appendix 6 to
  - a. amend By-law 11 to delete sections 4.01, 4(2)(e) and 4.1(2)(e); and
  - b. amend By-law 13 to provide that sections 2.1(5) and 2.3(4.1) also apply to section 4.1 of By-law 11.

PROPOSED BY-LAW IMPLEMENTING THE REDESIGNED SPECIALIST CERTIFICATION PROGRAM  
APPROVED BY CONVOCATION IN JUNE 2002

## Background

39. In June 2002, Convocation approved the redesign of the specialist certification program. In September 2002 Convocation was provided, for information, with the operational standards of the program.
40. The proposed Specialist Certification By-law set out at Appendix 7 implements the Redesigned Specialist Certification Program approved by Convocation in June 2002, as well as incorporating the operational standards of the program.

## Request to Convocation

41. That Convocation approve the Motion containing the proposed By-law on Specialist Certification set out at Appendix 7.

## INFORMATION

## REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE BY THE WORKING GROUP OF THE COMMITTEE ON FEBRUARY 10, 2003 AND APPROVED BY THE COMMITTEE ON MARCH 24, 2003

42. The Committee is pleased to report final approval of the following lawyers' applications for certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation	James Norton (Toronto) Gary L. Petker (Waterloo)
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Environmental Law	Rosalind H. Cooper (Toronto)
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43. The Committee is pleased to report final approval of the following lawyers' applications for re-certification, on the basis of the review and recommendation of the Certification Working Group.

Civil Litigation	Larry Culver (Hamilton) Aubrey Kauffman (Toronto) Michael L. Lamont (Hamilton) David G. Price (Mississauga) Gerald E. Taylor (Waterloo) Paul Vickery (Ottawa) David S. Wilson (Toronto)
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Environmental Law	J. M. Madeleine Donahue (Toronto)
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## APPENDIX 1

## EXECUTIVE SUMMARY (REPORT TO CONVOCATION-APRIL 2002)

## CONFIDENTIALITY OF PRACTICE REVIEWS AND COMPETENCE PROCEEDINGS

In accordance with Convocation's direction in February 2002, the Committee has again reviewed the 1999 policy on confidentiality of practice reviews. The Committee, with the exception of one of those members who participated in the meeting, recommends that the Law Society adopt the following approach:

- The fact that a member is in practice review will not be disclosed outside the Law Society.
- The terms of a proposal order made in a practice review will only be disclosed outside the Law Society if the terms limit a member's rights and privileges.
- The fact that a competence proceeding has been authorized by the Proceedings Authorization Committee ("PAC") against a member will continue to be disclosed only to the complainant(s) in the proceeding.

- Where a tribunal in a competence proceeding suspends or limits a member's rights and privileges the terms of the order and the decision will be public and disclosed upon request.
- The Complaints Review Commissioners will be entitled to advise a complainant that they intend to request that a member be directed into practice review, but not to disclose that a member is in practice review.
- Communications between the practice review department and other departments within the Law Society will be permitted, allowing for the flow of information and where, appropriate, its use in proceedings or resolution of matters affecting members.

Issue	Request to Convocation
<p>a. Should the confidentiality policy with respect to practice reviews cease to apply to internal communications within the Law Society?</p>	<p>Convocation is requested to consider whether,</p> <ul style="list-style-type: none"> <li>•to accept the Committee's recommendation and reverse its September 1999 policy so that confidentiality of practice reviews would cease to apply with respect to internal Law Society communications, permitting the free flow and use of information among regulatory departments and in proceedings; or</li> <li>•continue the policy.</li> </ul> <p>Convocation is further requested to consider whether, in the event it decides to revoke the policy of confidentiality with respect to internal communications, the decision will apply to,</p> <ul style="list-style-type: none"> <li>•practice reviews currently ongoing; or</li> <li>•those commenced after the policy is changed, as the Committee recommends.</li> </ul>
<p>b(i) What should the policy be with respect to external communications and specifically, should the fact that a member is in practice review be confidential or public?</p>	<p>Convocation is requested to consider whether the fact that a member is in practice review should,</p> <ul style="list-style-type: none"> <li>•be made public; or</li> <li>•not be made public, as the Committee recommends.</li> </ul>
<p>b(ii) Should the terms of a proposal order be confidential or public?</p>	<p>Convocation is requested to consider whether,</p> <ul style="list-style-type: none"> <li>•only a proposal order that limits a member's right and privileges should be made public, as the Committee recommends; or</li> <li>•all proposal orders should be made public.</li> </ul> <p>Convocation is further requested to consider whether, in the event it decides that a proposal order that limits a member's rights and privileges should be public,</p> <ul style="list-style-type: none"> <li>•such information should be released only on request, as the Committee recommends; or</li> <li>•the Law Society should publish such information.</li> </ul> <p>Convocation is further requested to consider whether, if such information should be made public only on request, this decision should be reviewed in September 2003, as the Committee recommends.</p>



<p>c. Should the fact that a competence hearing has been authorized be made public generally or to the complainant(s) only, as is currently the case?</p>	<p>Convocation is requested to consider whether the fact that a competence proceeding has been authorized,</p> <ul style="list-style-type: none"> <li>•should continue to be made known to the complainant(s) only, as the Committee recommends; or</li> <li>•should be made available to members of the general public and the profession.</li> </ul> <p>If the information should be made public, which is not the Committee's recommendation, Convocation is further requested to consider whether it should be made available,</p> <ul style="list-style-type: none"> <li>•on request only; or</li> <li>•through the Law Society publishing such information.</li> </ul>
<p>d. Under what circumstances should the order in a competence proceeding be public?</p>	<p>Convocation is requested to consider, whether in professional competence proceedings where a tribunal suspends <i>or limits</i> the member's rights and privileges, the order and the decision should be public, as the Committee recommends.</p> <p>If the answer is yes, whether the Law Society should,</p> <ul style="list-style-type: none"> <li>•publish the information, as the Committee recommends, or</li> <li>•simply make it available to those members of the public who inquire about members' status.</li> </ul> <p>If the Law Society should publish the information, whether it should do so,</p> <ul style="list-style-type: none"> <li>•before the expiry of the period for filing an appeal from the decision, as the Committee recommends, or</li> <li>•after.</li> </ul>
<p>e. Should Complaints Review Commissioners (CRCs), in appropriate circumstances, inform a complainant whose complaint is not being proceeded with that a member is in practice review or that the CRCs are requesting that the member enter practice review?</p>	<p>Convocation is requested to consider whether, as the Committee recommends, the CRCs should, in appropriate circumstances, be free to indicate to a complainant that they will be requesting that a member be ordered into practice review, provided that, at the same time, they advise the complainant of,</p> <ol style="list-style-type: none"> <li>a) the confidential nature of practice reviews;</li> <li>b) the reasons for such confidentiality; and</li> <li>c) that as a result of the policy the complainant will not be entitled to know if the review has been directed.</li> </ol>

## APPENDIX 2

## THE LAW SOCIETY OF UPPER CANADA

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

## BY-LAW 24

## [PROFESSIONAL COMPETENCE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT By-Law 24 [Professional Competence], made by Convocation on March 26, 1999 and amended by Convocation on May 28, 1999, April 26, 2001, January 24, 2002 and October 31, 2002, be further amended as follows:

1. Section 6 of By-Law 24 [Professional Competence] is amended by adding the following:

Review of practice is not public information

(4) A direction under subsection 49.4 (1) of the Act that a review of a member's or bencher's practice be conducted and the fact that a review of a member's or bencher's practice is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

Interdiction de rendre publique une inspection professionnelle

(4) L'ordre, donné en application du paragraphe 49.4 (1) de la Loi, d'effectuer l'inspection des activités professionnelles d'un membre, d'un conseiller ou d'une conseillère et le fait qu'une telle inspection est ou a été effectuée ne doivent pas être rendus publics, sauf dans le cadre d'une instance introduite en application de la Loi.

2. Section 15 of the By-Law is amended by adding the following:

Order is not public information

(6.1) An order made under subsection 42 (7) of the Act shall not be made public.

Order limiting member's rights and privileges is public information

(6.2) Despite subsection (6.1), an order made under subsection 42 (7) of the Act that suspends or limits a member's rights and privileges is a matter of public record.

Interdiction de rendre publique une ordonnance

(6.1) L'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi ne doit pas être rendue publique.

Caractère public de l'ordonnance restreignant les droits et privilèges

(6.2) Malgré le paragraphe (6.1), l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi qui suspend ou restreint les droits et privilèges d'un membre est du domaine public.

Excerpt from April 2002 PD&C Committee Report to Convocation

b(i). What should the policy be with respect to external communications and specifically, should the fact that a member is in practice review be confidential or public?

54. Pursuant to section 49.12(1) in Part II of the Act,

A bencher, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, *review*, search, seizure or proceeding under this Part. [emphasis added]

55. The Law Society does not disclose to the general public *the fact* of an investigation. This is in part because many possible results may flow from such an investigation, including a determination that no further action should be taken against the member. A practice review is also considered to be an investigation into a member's practice and is included under the provisions of section 49.12. As such, if the fact that an investigation is taking place is not disclosed it is arguable that the fact that a practice review is underway should also remain confidential from the general public.
56. The Committee accepts this analysis and is of the view that the fact that a member is in practice review should not be disclosed to the public. The practice review process involves an analysis of the member's practice and results in recommendations to improve competence-related deficiencies, all in the public interest. As such, the member is under some scrutiny during this period, even if the public is not notified of the fact of the practice review. Moreover, the results of a practice review may be that no recommendations or only minor recommendations for improvement are suggested, yet the consequences to the member may be far more serious if the fact of the investigation is made public.<sup>1</sup>

#### Request to Convocation

57. Convocation is requested to consider whether the fact that a member is in practice review should,
- a. be made public; or
  - b. not be made public, as the Committee recommends. [Approved]

#### b(ii). Should the terms of a proposal order be confidential or public?

58. As described above, following the completion of a practice review, recommendations may be made to the member and may be included in a proposal order. If the member accepts the terms of the proposal order it is then presented to a single bencher, appointed by the Chair of the PD&C Committee, to be reviewed and finalized. Once made the order is enforceable in the same manner as any other Law Society order. In the event of a breach of the order a Hearing Panel may suspend the member.
59. Currently, there is no policy as to whether the fact of the proposal order, or its terms, should be public.
60. Proposal orders may contain a wide range of provisions for improvement of a member's practice, ranging from suggestions for better filing and tickler systems, or attendance at CLE, for example, to much more significant provisions that, for example, restrict a member from practising in certain substantive areas, or require a member to practise only in association with others.
61. In considering whether information concerning the proposal order should be public it is important to balance the remedial component of the program with the need to ensure the public is protected. In the Committee's view, if the recommendations are directed at improving the management of the practice or the nature of the members' approach to clients, without limiting the member's right to practise, such information can properly remain confidential. The public interest is protected by,
- a. the fact that a proposal order has been agreed to in order to address deficiencies;
  - b. the efficient and appropriate time line provided to the member by the end of which the member is to have addressed the deficiencies;
  - c. the ongoing monitoring of the member's progress under the terms of the order; and
  - d. the remedies available to the Law Society if the member is unwilling or unable to improve.

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<sup>1</sup>In its February report the Committee indicated that the lay bencher on the Committee raised a concern about this issue on behalf of the CRCs. She indicated that if a practice review cannot be disclosed for the reasons set out above, then the CRC would not be able to advise a complainant, whose complaint is not being pursued by the Law Society, that steps are being taken to address the quality of legal services provided by the member, through a practice review. As will be seen in the discussion in section (e) the lay bencher's concerns have now been somewhat addressed so that she does not oppose the proposal to not disclose to the public the fact that a member is in practice review.

Because no limitations have been placed on the member's right to practise, it must be assumed that the deficiencies are not so severe as to endanger the public.

62. If, on the other hand, the members' rights and privileges are limited by virtue of the order, it is the Committee's view that it would be contrary to the public interest not to reveal that fact to a member of the public or another lawyer inquiring about the member's standing with the Law Society. Such limitation or restriction goes fundamentally to the member's competence to provide legal services. If there is disclosure of such limitations or restrictions, if members of the public in need of a family lawyer, for example, contact the Law Society to inquire about a particular lawyer they can be told that he or she is restricted from practising family law.
63. In practice, such a "balancing approach" would mean that in response to inquiries about a member's practice, where the proposal order does not limit the member's rights, the Law Society would simply indicate that there are no limitations on the member's rights and privileges. Where such limitations exist they would be disclosed.
64. The final issue in this regard is whether the Law Society should publish the fact that there are limitations on the member's right to practise, as is done where there is a finding of professional misconduct or conduct unbecoming a barrister and solicitor. The alternative is to take a more passive approach, simply responding to inquiries should they be made.
65. There is a distinction between a conduct hearing (or even a competence hearing) and a proposal order, in that at the conclusion of a hearing a finding is made against the member, whereas this is not the case with the proposal order, which is a consensual process. The member is co-operating with a process designed to ameliorate practice deficiencies and, as such, the more passive approach may be in the public interest, to encourage that co-operation. Moreover, since the member is under scrutiny during the term of the proposal order there is less likelihood, in any event, that the member will breach the restrictions.
66. The Committee is of the view that where limitations are placed on the member's right to practise, that information should be public. As to whether the Law Society should publish the names of such members or simply provide the information to a member of the public or the profession who contacts the Law Society, the Committee is of the view that for a period of 18 months the Society should take the more passive approach, reviewing the decision at the end of that time. In this way, there is an opportunity to assess the implications of the passive approach.

#### Request to Convocation

67. Convocation is requested to consider whether,
  - a. only a proposal order that limits a member's right and privileges should be made public, as the Committee recommends; [Approved]
  - or
  - b. all proposal orders should be made public.
68. Convocation is further requested to consider whether, in the event it decides that a proposal order that limits a member's rights and privileges should be public,
  - a. such information should be released only on request, as the Committee recommends; [Approved]
  - or
  - b. the Law Society should publish such information.
69. Convocation is further requested to consider whether, if such information should be made public only on request, this decision should be reviewed in September 2003, as the Committee recommends. [Approved]

THE LAW SOCIETY OF UPPER CANADA  
 RULES OF PRACTICE AND PROCEDURE  
 MADE UNDER SECTION 61.2 OF THE *LAW SOCIETY ACT*

RULE 3 ACCESS TO HEARINGS AND NON-PUBLICATION ORDERS

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT Rule 3 [Access to Hearings and Non-Publication Orders] of the Rules of Practice and Procedure made under section 61.2 of the *Law Society Act* be amended as follows:

1. Subrule 3.04.1 (1) of Rule 3 [Access to Hearings and Non-Publication Orders] is amended by deleting “, (6) and (7)”/“, (6) et (7)” and substituting “and (6)”/“et (6)”.
2. Subrules 3.04.1 (5), (6) and (7) of the Rule are deleted and the following substituted:
  - (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 of the tribunal 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.
  - (5) Lorsque l’audition d’une requête en établissement de la compétence professionnelle s’est déroulée à huis clos et que le tribunal a rendu une ordonnance qui suspend ou restreint les droits et privilèges du membre, la décision et l’ordonnance du tribunal sont du domaine public.
  - (6) Lorsque l’audition d’une requête en établissement de la compétence professionnelle s’est déroulée à huis clos et que la décision et l’ordonnance du tribunal ne sont pas par ailleurs du domaine public, le Barreau divulgue au plaignant ou à la plaignante, lorsque possible, la décision du tribunal et les aspects de l’ordonnance que ce dernier autorise à lui divulguer.

Excerpt from April 2002 PD&C Committee Report to Convocation

- d. Under what circumstances should the order in a competence proceeding be public?
79. If Convocation agrees with the view that where a proposal order limits a member’s rights and privileges that fact should be made public,[Convocation did agree with this] then it is inconsistent to continue to have Rule 3.04.1(6) of the Rules of Practice and Procedure, which leaves it in the discretion of the tribunal to determine which aspects of the order should be made public and which aspects should be revealed to the complainant(s). It is arguable that there is an even greater responsibility to make known to the public limits on a member’s rights after an adjudicated decision in a competence hearing than there is with respect to a proposal order, which is a consensual document.
80. Even capacity proceedings do not follow the approach used for competence hearings. Instead, where the Hearing Panel makes an order suspending *or limiting* the members’ rights, the order is a matter of public record, but the reasons are not to be made public.

81. If Convocation agrees that these types of orders should be public, another issue is whether the orders should be published, or whether the information should simply be made available upon request. Given that a finding against a member will now have been made it is difficult to contemplate how the public interest is served unless the order is published, as is the case with conduct orders.
82. Further, given Convocation's decision in January 2002 that orders in conduct proceedings should be published in the *Ontario Lawyers Gazette*, without waiting for the disposition of any appeal, the Committee is of the view that the procedure for competence orders should follow the same approach.

#### Request to Convocation

83. Convocation is requested to consider,
  - a. whether in professional competence proceedings where a tribunal suspends *or limits* the member's rights and privileges, the order and the decision should be public, as the Committee recommends;
  - b. if the answer is yes, whether the Law Society should publish the information, as the Committee recommends, or simply make it available to those members of the public who inquire about members' status; and
  - c. if the Law Society should publish the information, whether it should do so before the expiry of the period for filing an appeal from the decision, as the Committee recommends, or after.

[Convocation approved all three Committee recommendations. Only (a) requires a Rule amendment.]

#### APPENDIX 4

##### BY-LAW 11

Made: January 28, 1999

Amended:

February 19, 1999

March 26, 1999

April 26, 2001

June 28, 2002

March 27, 2003

##### CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR

Interpretation: "Society official"

0.1 In this By-Law, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing all or part of this By-Law.

Requirement to qualify both for call to bar and admission and enrolment as solicitor

1. Every applicant for admission to membership in the Society, other than student membership in the Society, shall qualify both for call to the bar and admission and enrolment as a solicitor.

#### Application

2. (1) A person who qualifies under this By-Law to be called to the bar and admitted and enrolled as a solicitor shall apply to the Society to be called and admitted and enrolled.

#### Application fee

(2) Every application made under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

#### Approval of application

(3) A person is not entitled to be called to the bar and admitted and enrolled as a solicitor, even though the person qualifies under this By-Law to be called and admitted and enrolled, until the person's application to be called and admitted and enrolled is approved by Convocation.

### QUALIFYING THROUGH BAR ADMISSION COURSE

#### Successful completion of Bar Admission Course

3. (1) Subject to subsection (2), a person who has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, and who presents a certificate of successful completion of the Bar Admission Course may be called to the bar and admitted and enrolled as a solicitor.

#### Bar Admission Course completed more than three years prior to date of completion

(2) If a person presents a certificate of successful completion of the Bar Admission Course dated earlier than three years prior to the date on which the person applies under subsection 2 (1) to be called to the bar and admitted and enrolled as a solicitor, the person may be called to the bar and admitted and enrolled as a solicitor only after he or she has completed such further experience and studies as a Society official considers are necessary to ensure that the person is familiar with current law and practice.

### TRANSFER FROM JURISDICTION OUTSIDE ONTARIO

#### Interpretation: active practice of law

4.01 (1) In subsections 4 (2) and 4.1 (2), active practice of law includes service in a legal capacity with the Canadian Military Prosecution Service under the Director of Military Prosecutions of the Canadian Forces.

#### Interpretation: pre-call education program

(2) In subsections 4 (2) and 4.1 (2), a person is engaged in the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario when the person,

- (a) is enrolled and participates in a teaching or education program prescribed by that governing body of the legal profession that is not a law course offered in a university; or
- (b) serves under articles of clerkship to a member of that governing body of the legal profession in accordance with its rules, regulations or by-laws.

#### Application of section

4. (1) This section applies to a person if,
- (a) the person is authorized to practise law in a province or territory of Canada outside Ontario; and
  - (b) the governing body of the legal profession in the province or territory of Canada outside Ontario in which the person is authorized to practise law would not require a member to pass an examination in order to transfer to that province or territory.

#### Qualifying for call to bar and admission and enrolment as solicitor

- (2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,
- (a) is authorized to practise law in a province or territory of Canada outside Ontario;
  - (b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;
  - (c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on

Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;

- (d) has certified, in a form provided by the Society, that the person has reviewed and understands the materials reasonably required by a Society official; and
- (e) for a period or periods totalling at least fourteen months within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section, was engaged in one of the following activities or any combination of them:
  - (i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,
  - (ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,
  - (iii) service under articles of clerkship in Ontario.

#### Application of section

4.1 (1) This section applies to a person if section 4 does not apply to the person.

#### Qualifying for call to bar and admission and enrolment as solicitor

- (2) A person may be called to the bar and admitted and enrolled as a solicitor if the person,
  - (a) is qualified to practise law in a province or territory of Canada outside Ontario;
  - (b) has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership;
  - (c) is a graduate of a law course that is offered by a university in Canada and is approved by Convocation, or has a certificate of qualification issued by the National Committee on Accreditation appointed by the Federation of Law Societies of Canada and the Council of Canadian Law Deans;
  - (d) has passed the transfer examinations prescribed by Convocation and, unless otherwise permitted by a Society official, has passed each transfer examination within the three year period immediately before the day on which the person applies under section 4.2 for a determination as to whether the person qualifies to be called to the bar and admitted and enrolled as a solicitor under this section; and
  - (e) for a period or periods totalling at least fourteen months within the three year period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause (d), was engaged in one of the following activities or any combination of them:
    - (i) the active practice of law as a member of a governing body of the legal profession of any province or territory of Canada outside Ontario,
    - (ii) the pre-call education program of a governing body of the legal profession of a province or territory of Canada outside Ontario,
    - (iii) service under articles of clerkship in Ontario.



#### Application

4.2 (1) A person who wishes to qualify under section 4 or 4.1 for call to the bar and admission and enrolment as a solicitor shall apply to a Society official for a determination as to whether the person meets the requirements mentioned in section 4 or 4.1, as the case may be.

#### Application form

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

#### Application fees

- (3) A person who makes an application under subsection (1) shall pay,
- (a) an application fee, if any, in an amount determined by Convocation, when the person submits the form; and
  - (b) any other fees required to be paid by the Society in relation to the assessment of the person's application, including examination fees, preparatory course fees and materials fees.

#### Certificate of standing

(4) A person who makes an application under subsection (1) shall provide to the Society a certificate of standing from the governing body of the legal profession in each province and territory of Canada outside Ontario and in each jurisdiction outside Canada of which the person is or was a member,

- (a) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4, that was issued during the three month period immediately before the day on which the person makes the application; and
- (b) in the case of a person who makes an application for a determination as to whether the person meets the requirements in section 4.1, that was issued during the three month period immediately before the person passed the final transfer examination of the transfer examinations mentioned in clause 4.1 (2) (d).

#### Documents, explanations, release, etc.

(5) For the purposes of assisting the Society official to consider an application, a person who makes an application under subsection (1) shall provide,

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

### LAW TEACHERS

#### Dean of law school in Ontario

5. (1) The dean of a law school in Ontario that is approved by Convocation may, after he or she has entered upon the second consecutive year in that position, and provided he or she has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, be called to the bar and admitted and enrolled as a solicitor without examination.

#### Faculty members of law school in Ontario

(2) A full-time member of the faculty of a law school in Ontario that is approved by Convocation may, after he or she has entered upon the third consecutive year in that position, and provided he or she has fulfilled the requirements of the Act for admission to membership in the Society, other than student membership or temporary membership, be called to the bar and admitted and enrolled as a solicitor without examination.

### CALL DAY

When person may be called to bar and admitted and enrolled as solicitor

6. (1) A person who is entitled to be called to the bar and admitted and enrolled as a solicitor may be called and admitted and enrolled on any day on which there is a meeting of Convocation.

Procedures on call day: appearance before Convocation

(2) A person who is entitled to be called to the bar and admitted and enrolled as a solicitor shall appear before Convocation in the court apparel of a barrister.

Same: order of presentation to Convocation

(3) At a meeting of Convocation, persons who are entitled to be called to the bar and admitted and enrolled as solicitors shall be presented to Convocation by a bencher or an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of so doing in the alphabetical order of their surnames.

Same: conferring degree of barrister-at-law and call to bar

(4) At a meeting of Convocation, after a person is presented to Convocation under subsection (3), the Treasurer shall confer the degree of barrister-at-law upon him or her and shall call him or her to the bar.

Same: admission and enrolment as solicitor

(5) Immediately after a person is called to the bar under subsection (4), he or she shall be presented to the Court of Appeal for Ontario or the Ontario Court of Justice by a bencher present in court and the court may cause the person to be admitted and his or her name to be enrolled as a solicitor on the rolls of the Society.

Same: administration of oaths

(6) Immediately after the court has caused a person to be admitted and his or her name to be enrolled as a solicitor on the rolls of the Society under subsection (5), the presiding judge shall administer in either the English or French language the Barristers Oath, the Solicitors Oath and, if the person so wishes, the Oath of Allegiance as follows:

1. Barristers Oath: You are called to the Degree of Barrister-at-law to protect and defend the rights and interest of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God.
2. Serment de l'avocat-plaideur/l'avocate-plaideuse: Le diplôme d'avocat-plaideur/l'avocate-plaideuse vous est conféré pour que vous protégiez et défendiez les droits et intérêts de vos concitoyens et concitoyennes qui font appel à vos services. Dans toutes les causes qui vous seront confiées, vous agirez loyalement et de votre mieux. Vous ne négligerez les intérêts de qui que ce soit ni ne chercherez à détruire ses biens. Vous ne participerez à aucun pacte de *quota litis* ni ne soutiendrez une partie sans intérêt légitime. Vous ne refuserez pas de défendre des causes raisonnablement fondées ni n'intenterez d'actions frivoles. Vous ne détournerez pas la loi pour favoriser ou défavoriser qui que ce soit, mais, en toutes choses, vous agirez avec loyauté et intégrité. En bref, vous respecterez et défendrez les intérêts de la Reine et de vos concitoyens et concitoyennes conformément à la constitution et aux lois de cette province. Vous jurez d'observer et d'appliquer toutes ces règles en votre âme et conscience. Ainsi Dieu vous soit en aide.
3. Solicitors Oath: You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God.

4. Serment du procureur/ de la procureure: Vous promettez de même sincèrement et jurez d'exercer avec loyauté et honnêteté votre profession de procureur/procureure, en votre âme et conscience. Ainsi Dieu vous soit en aide.
5. Oath of Allegiance: You do swear that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law. So help you God.
6. Serment d'allégeance: Vous jurez fidélité et allégeance à Sa Majesté la Reine Élisabeth II (ou le souverain régnant), à ses héritiers, héritières, successeurs et successeuses conformément à la loi. Ainsi Dieu vous soit en aide.

#### Commencement

8. This By-Law comes into force on February 1, 1999.

### RÈGLEMENT ADMINISTRATIF N° 11

#### L'ADMISSION AU BARREAU

Interprétation : « responsable du Barreau »

0.1 « responsable du Barreau » Dirigeant, dirigeante, employé ou employée du Barreau que le directeur général ou la directrice générale charge d'appliquer tout ou partie du présent règlement administratif.

#### Conditions d'admission au Barreau

1. Les candidats et les candidates à l'admission au Barreau, autrement qu'à titre de membre étudiant, doivent posséder les qualités requises pour être à la fois reçus au barreau et admis comme procureurs.

#### Demande

2. (1) Quiconque possède les qualités requises aux termes du présent règlement administratif pour être à la fois reçu au barreau et admis comme procureur présente une demande en ce sens au Barreau.

#### Frais de dossier

- (2) Toute demande présentée aux termes du paragraphe (1) est accompagnée du paiement des frais fixés par le Conseil.

#### Approbation de la demande

- (3) Nul n'a le droit d'être reçu au barreau et d'être admis comme procureur, bien que possédant les qualités requises à cette fin aux termes du présent règlement administratif, tant que le Conseil n'a pas approuvé sa demande.

### ADMISSION PAR LA VOIE DU COURS DE FORMATION PROFESSIONNELLE

#### Réussite du Cours de formation professionnelle

3. (1) Sous réserve du paragraphe (2), quiconque satisfait aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire, et présente un certificat de réussite du Cours de formation professionnelle peut être reçu au barreau et admis comme procureur.

#### Réussite du Cours de formation professionnelle plus de trois ans avant la date de la demande

- (2) Quiconque présente un certificat de réussite du Cours de formation professionnelle qui date de plus de trois ans avant la date de présentation de la demande prévue au paragraphe 2 (1) ne peut être reçu au barreau et admis comme procureur qu'après avoir acquis l'expérience et fait les études qu'un ou une responsable du Barreau juge nécessaires à une bonne connaissance du droit et de la pratique du droit actuels.

### TRANSFERT EN PROVENANCE D'UN RESSORT AUTRE QUE L'ONTARIO

Interprétation : exercice actif de la profession d'avocat

4.01 (1) Aux paragraphes 4 (2) et 4.1 (2), «exercice actif de la profession d'avocat» s'entend en outre de la prestation de services juridiques au sein du Service canadien des poursuites militaires sous le Directeur - poursuites militaires des Forces canadiennes.

Interprétation : programme de formation professionnelle

(2) Aux paragraphes 4 (2) et 4.1 (2), une personne prend part au programme de formation professionnelle de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario lorsque, selon le cas :

- a) elle est inscrite et participe à un programme d'enseignement et de formation qui est prescrit par cet organisme et qui est distinct du cours de droit d'une université;
- b) elle effectue un stage auprès d'un membre de cet organisme conformément aux règles, règlements ou règlements administratifs qui s'appliquent à celui-ci.

Champ d'application de l'article

4. (1) Le présent article s'applique aux personnes qui :

- a) d'une part, sont autorisées à exercer la profession d'avocat dans une province ou un territoire du Canada autre que l'Ontario;
- b) d'autre part, sont autorisées à exercer le droit dans une province ou un territoire du Canada autre que l'Ontario dont l'organisme de réglementation de la profession juridique n'exigerait pas de ses membres qu'ils subissent un examen avant de les admettre par voie de transfert.

Conditions de réception au barreau et d'admission comme procureur

(2) Peut être reçu au barreau et admis comme procureur quiconque remplit les conditions suivantes :

- a) il est autorisé à exercer la profession d'avocat dans une province ou un territoire du Canada autre que l'Ontario;
- b) il satisfait aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire;
- c) il est diplômé d'un cours de droit offert par une université canadienne et approuvé par le Conseil ou titulaire d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit constitué par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada;
- d) il atteste, sur un formulaire fourni par le Barreau, avoir étudié et compris les documents requis raisonnablement par un ou une responsable du Barreau;
- e) pendant une période totale, continue ou non, d'au moins quatorze mois au cours des trois ans qui précèdent la date à laquelle il présente, en vertu de l'article 4.2, une demande de confirmation du fait qu'il remplit les conditions de réception au barreau et d'admission comme procureur prévues au présent article, il a exercé une ou plusieurs des activités suivantes :
  - (i) l'exercice actif de la profession d'avocat à titre de membre de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,
  - (ii) la participation au programme de formation professionnelle de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,

- (iii) un stage en Ontario.

#### Champ d'application de l'article

4.1 (1) Le présent article s'applique aux personnes auxquelles ne s'applique pas l'article 4.

#### Conditions de réception au barreau et d'admission comme procureur

- (2) Peut être reçu au barreau et admis comme procureur quiconque remplit les conditions suivantes :
  - a) il est autorisé à exercer la profession d'avocat dans une province ou un territoire du Canada autre que l'Ontario;
  - b) il satisfait aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire;
  - c) il est diplômé d'un cours de droit offert par une université canadienne et approuvé par le Conseil ou titulaire d'un certificat de compétence délivré par le Comité national sur les équivalences des diplômes de droit constitué par la Fédération des ordres professionnels de juristes du Canada et le Conseil des doyens et des doyennes des facultés de droit du Canada;
  - d) il a réussi les examens de transfert prescrits par le Conseil et, à moins d'autorisation contraire d'un ou d'une responsable du Barreau, il les a tous réussis au cours des trois ans qui précèdent la date à laquelle il présente, en vertu de l'article 4.2, une demande de confirmation du fait qu'il remplit les conditions de réception au barreau et d'admission comme procureur prévues au présent article;
  - e) pendant une période totale, continue ou non, d'au moins quatorze mois au cours des trois ans qui précèdent la date à laquelle il a réussi le dernier de tous les examens de transfert visés à l'alinéa d), il a exercé une ou plusieurs des activités suivantes :
    - (i) l'exercice actif de la profession d'avocat à titre de membre de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,
    - (ii) la participation au programme de formation professionnelle de l'organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario,
    - (iii) un stage en Ontario.

#### Demande

4.2 (1) Quiconque souhaite être reçu au barreau et admis comme procureur en vertu de l'article 4 ou 4.1 présente à un ou à une responsable du Barreau une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4 ou 4.1, selon le cas.

#### Formulaire de demande

(2) Toute demande présentée en application du paragraphe (1) est faite sur le formulaire fourni par le Barreau.

#### Frais de demande

- (3) Quiconque présente une demande en application du paragraphe (1) verse les frais suivants :
  - a) les frais de demande fixés par le Conseil, le cas échéant, lors de la présentation de la demande;
  - b) les autres frais exigés par le Barreau en ce qui a trait à l'évaluation de la demande, notamment les frais d'examen, de cours préparatoires et de documentation.

#### Certificat de membre en règle

(4) Quiconque présente une demande en application du paragraphe (1) fournit au Barreau un certificat de membre que chaque organisme de réglementation de la profession juridique d'une province ou d'un territoire du Canada autre que l'Ontario ou d'un ressort étranger dont il est ou était membre a délivré :

- a) au cours des trois mois qui précèdent la date de présentation de la demande, dans le cas d'une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4;
- b) au cours des trois mois qui précèdent la date de réussite du dernier de tous les examens de transfert visés à l'alinéa 4.1 (2) d), dans le cas d'une demande de confirmation du fait qu'il remplit les conditions prévues à l'article 4.1.

#### Documents, explications et renonciations

(5) Pour faciliter l'examen par le ou la responsable du Barreau d'une demande présentée en application du paragraphe (1), son auteur fait ce qui suit :

- a) il ou elle fournit au ou à la responsable les documents et les explications qu'exige ce dernier ou cette dernière;
- b) il ou elle fournit, à la personne désignée nommément par le ou la responsable, les renonciations, directives et consentements nécessaires pour lui permettre de communiquer au Barreau les renseignements qu'exige celui-ci.

### PROFESSEURS DE DROIT

#### Doyens des facultés de droit ontariennes

5. (1) Les doyens et doyennes des facultés de droit ontariennes qu'approuve le Conseil peut, après avoir entamé leur deuxième année consécutive à ce poste et à la condition de satisfaire aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire, être reçus au barreau et admis comme procureurs sans examen.

#### Professeurs des facultés de droit ontariennes

(2) Les professeurs et les professeuses à temps plein des facultés de droit ontariennes qu'approuve le Conseil peuvent, après avoir entamé leur troisième année consécutive d'enseignement à ce poste et à la condition de satisfaire aux exigences de la Loi en ce qui a trait à l'admission au Barreau, autrement qu'à titre de membre étudiant ou de membre provisoire, être reçus au barreau et admis comme procureurs sans examen.

### ASSERMENTATION

#### Moment de la réception au barreau et de l'admission comme procureur

6. (1) Quiconque a le droit d'être reçu au barreau et d'être admis comme procureur peut l'être n'importe quel jour de réunion du Conseil.

#### Marche à suivre lors de la cérémonie : présentation au Conseil

(2) Quiconque a le droit d'être reçu au barreau et d'être admis comme procureur se présente devant le Conseil en tenue d'audience.

#### Idem : ordre de présentation au Conseil

(3) Lors de la réunion du Conseil, le conseiller ou la conseillère ou la personne que le directeur général ou la directrice générale charge de ce faire lui présente les personnes qui ont le droit d'être reçues au barreau et d'être admises comme procureurs par ordre alphabétique.

#### Idem : diplôme d'avocat-plaideur

(4) Lors de la réunion du Conseil, le trésorier ou la trésorière confère à la personne qui a été présentée au Conseil aux termes du paragraphe (3) le diplôme d'avocat-plaideur/d'avocate-plaideuse et cette personne est alors reçue au barreau.

Idem : admission comme procureur

(5) Immédiatement après sa réception au barreau aux termes du paragraphe (4), la personne est présentée, par l'un des conseillers présents, à la Cour d'appel de l'Ontario ou à la Cour de justice de l'Ontario; la Cour peut ordonner que la personne soit admise comme procureur et que son nom soit inscrit à ce titre au tableau du Barreau.

Idem : serments

(6) Immédiatement après que la Cour a ordonné que la personne soit admise comme procureur et que son nom soit inscrit à ce titre au tableau du Barreau, le ou la juge qui préside l'audience lui fait prêter les serments d'avocat-plaideur/d'avocate-plaideuse et de procureur/procureure et, si elle le souhaite, le serment d'allégeance selon la formule suivante :

1. Barristers Oath : You are called to the Degree of Barrister-at-law to protect and defend the rights and interests of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interest of all citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God.
2. Serment de l'avocat-plaideur/l'avocate-plaideuse : Le diplôme d'avocat-plaideur/d'avocate-plaideuse vous est conféré pour que vous protégiez et défendiez les droits et intérêts de vos concitoyens et concitoyennes qui font appel à vos services. Dans toutes les causes qui vous seront confiées, vous agirez loyalement et de votre mieux. Vous ne négligerez les intérêts de qui que ce soit ni ne chercherez à détruire ses biens. Vous ne participerez à aucun pacte de *quota litis* ni ne soutiendrez une partie sans intérêt légitime. Vous ne refuserez pas de défendre des causes raisonnablement fondées ni n'intenterez d'actions frivoles. Vous ne détournerez pas la loi pour favoriser ou défavoriser qui que ce soit, mais, en toutes choses, vous agirez avec loyauté et intégrité. En bref, vous respecterez et défendrez les intérêts de la Reine et de vos concitoyens et concitoyennes conformément à la constitution et aux lois de cette province. Vous jurez d'observer et d'appliquer toutes ces règles en votre âme et conscience. Ainsi Dieu vous soit en aide.
3. Solicitors Oath : You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God.
4. Serment du procureur/de la procureure : Vous promettez de même sincèrement et jurez d'exercer avec loyauté et honnêteté votre profession de procureur/procureure, en votre âme et conscience. Ainsi Dieu vous soit en aide.
5. Oath of Allegiance : You do swear that you will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), Her heirs and successors according to law. So help you God.
6. Serment d'allégeance : Vous jurez fidélité et allégeance à Sa Majesté la Reine Élisabeth II (ou le souverain régnant), à ses héritiers, héritières, successeurs et successeuses conformément à la loi. Ainsi Dieu vous soit en aide.

Entrée en vigueur

8. Le présent règlement administratif entre en vigueur le 1<sup>er</sup> février 1999.

## BY-LAW 13

Made: January 28, 1999

Amended:

March 26, 1999

December 10, 1999

March 22, 2001

February 20, 2002

October 31, 2002

March 27, 2003

## MEMBERS

## HONORARY MEMBERS

Authority to make persons honorary members

1. Convocation may make any person an honorary member.

## LIFE MEMBERS

Life member: eligibility

2. (1) Every member of the Society who has been entitled to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a period of fifty years is a life member.

Period of fifty years

- (2) The following periods of time may be counted towards the period of fifty years required by subsection (1):

1. A period of time during which the member's membership is in abeyance under section 31 of the Act.
2. A period of time during which the member's membership is interrupted by war service.
3. Subject to subsection (3), a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for failure to pay a fee or levy.
4. In the absolute discretion of the standing committee of Convocation responsible for admissions matters, a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for a reason other than failure to pay a fee or levy.

Period of suspension for non-payment: limit on time that may be counted

- (3) The total amount of time that may be counted under paragraph 3 of subsection (2) towards the period of fifty years required by subsection (1) is one year.

Period of suspension for non-payment: exception to limit

- (4) Despite subsection (3), in appropriate circumstances, the committee may permit a period of time in excess of one year to be counted under paragraph 3 of subsection (2) towards the period of fifty years required by subsection (1).

Exercise of powers by committee

- (5) The performance of any duty, or the exercise of any power, given to the standing committee of Convocation responsible for admissions matters under this section is not subject to the approval of Convocation.

## CATEGORIES OF MEMBERS



#### Categories of members

2.1 (1) The following are the categories of members:

1. Category A members.
2. Category B members.
3. Category C members.

#### Category A members

(2) Every member who is required to pay, and is not exempt from the payment of, insurance premium levies under By-Law 16 is a category A member.

#### Category B members

(3) Every member who is not a category A member or a category C member is a category B member.

#### Category C members

(4) Every member who is exempt from the payment of the annual fee under section 4 of By-Law 15, or who is exempt from the requirement to file an annual report under section 2 of By-Law 17, is a category C member.

#### Member by transfer

(5) A person who becomes a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11 is, immediately the person becomes a member, a category A, category B or category C member, as the case may be, if immediately before the person became a member, the person had in the jurisdiction from which the person transferred to Ontario the rights and privileges of that category of member.

#### Category A members: rights and privileges

2.2 (1) Subject to any order made against the member under the Act, a category A member may practise law without any restrictions.

#### Category B members: rights and privileges

(2) Subject to any order made against the member under the Act, a category B member may practise law subject to the following restrictions:

1. The member is not permitted to practise law through a partnership.
2. The member is not permitted to practise law through a professional corporation.
3. The member is not permitted to practise law through a sole proprietorship.
4. The member is not permitted to practise law through any arrangement which permits two or more members to share all or certain common expenses but to practise law as independent practitioners.

#### Category C members: rights and privileges

(3) A category C member is not permitted to practise law.

#### Interpretation: "Private Practice Refresher Program"

2.3. (1) In this section, "Private Practice Refresher Program" means the program, administered by the Society for the purposes of ensuring that category B and category C members have the practice skills necessary to become category A members, consisting of the following modules:

1. Time management.
2. File management.

3. Financial management.
4. Client relationships/communication.
5. Technology and equipment.
6. Professional management.
7. Personal management.
8. Professional responsibility

Interpretation: "Society official"

(2) In this section, "Society official" means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this section.

Changing status: from category B or category C to category A

(3) A category B member or a category C member may become a category A member by applying to the Society for a change in status.

Immediate change in status

(4) An application for a change in status made under subsection (3) shall be considered by a Society official and the Society official shall grant the change in status unless, for 80 percent or more of the five years immediately preceding the date of the application, the member has been a category B member or a category C member.

Member by transfer

(4.1) For the purposes of determining the entitlement to a change of status under subsection (4) of a person who became a member by transferring from a jurisdiction outside Ontario under section 4 of By-Law 11, the Society official shall consider the period of time that the member was a category B or category C member and the period of time that the person had the rights and privileges of that category of member in the jurisdiction from which the person transferred to Ontario.

Change in status upon successful completion of program

(5) If the Society official cannot grant the change in status under subsection (4), the Society official shall grant the change in status after the member has successfully completed the required modules of the Private Practice Refresher Program.

Conditional change in status

(6) Despite subsections (4) and (5), the Society official may grant the change in status conditional on the member successfully completing the required modules of the Private Practice Refresher Program within a specified period of time and practising only as an employee or partner of, and under the supervision of, a category A member approved by the Society official.

Same

(7) If a category B member or a category C member, who is granted a conditional change in status under subsection (6), breaches any condition to which the change in status is subject, the change in status is revoked and, despite subsection (6), the Society official shall grant no further conditional change in status to the member

Private Practice Refresher Program: required modules

(8) If a category B member or a category C member, who applies to the Society for a change of status under subsection (3), is not entitled to be granted the change in status under subsection (4), the Society official shall determine the modules of the Private Practice Refresher Program that must be successfully completed by the member.

#### Information to be provided by member

(9) For the purposes of assisting the Society official to make the determination under subsection (8), the member shall provide the official with information on the activities engaged in by the member during the five years immediately preceding the date of the member's application for a change in status and such other information relating to the member's practice skills as may be required by the official.

#### Redetermination by bencher

(10) A member who is dissatisfied with a Society official's determination under subsection (8) may apply to an elected bencher appointed for the purpose by Convocation for a redetermination of the modules of the Private Practice Refresher Program that must be successfully completed by the member.

#### Procedure on redetermination

(11) Subject to subsection (12), the procedure applicable to a redetermination under subsection (10) shall be determined by the bencher and, without limiting the generality of the foregoing, the bencher may decide who may make submissions to him or her, when and in what manner.

#### Written submissions

(12) Unless the bencher permits a person to make oral submissions to him or her, all submissions to the bencher shall be in writing.

#### Commencement

3. This By-Law comes into force on February 1, 1999.

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### RÈGLEMENT ADMINISTRATIF N<sup>o</sup> 13

#### LES MEMBRES

##### MEMBRES HONORAIRES

#### Pouvoir de conférer le titre de membre honoraire

1. Le Conseil peut conférer à toute personne le titre de membre honoraire.

##### MEMBRES À VIE

#### Admissibilité des membres à vie

2. (1) Les membres du Barreau habilités à pratiquer le droit en Ontario à titre d'avocat plaidant, de procureur ou d'avocat plaidant et de procureur, pendant cinquante ans sont membres à vie.

#### Période de cinquante ans

(2) Les périodes qui suivent peuvent entrer dans le calcul de la période de cinquante ans exigée par le paragraphe (1) :

1. La période d'interruption de la qualité de membre pour cause de nomination à une charge judiciaire visée à l'article 31 de la Loi.
2. La période d'interruption de la qualité de membre pour cause de service militaire.
3. Sous réserve du paragraphe (3), la période de suspension du droit d'exercer le droit en Ontario à titre d'avocat plaidant, de procureur ou d'avocat plaidant et de procureur en raison du non-paiement de cotisations ou de droits.
4. À l'entière discrétion du Comité permanent du Conseil chargé des questions d'admission, la période de suspension du droit d'exercer le droit en Ontario à titre d'avocat plaidant, de procureur ou d'avocat plaidant et de procureur pour une raison autre que le non-paiement de cotisations ou de droits.

Période de suspension pour cause de non-paiement : restriction de la période qui peut entrer dans le calcul

(3) La période totale qui peut, en vertu de la disposition 3 du paragraphe (2), entrer dans le calcul de la période de cinquante ans exigée au paragraphe (1) est d'un an.

Période de suspension pour cause de non-paiement : exception à la restriction

(4) Malgré le paragraphe (3), lorsque les circonstances s'y prêtent, le comité peut permettre qu'une période de plus d'un an entre, en vertu de la disposition 3 du paragraphe (2), dans le calcul de la période de cinquante ans exigée au paragraphe (1).

Exercice des pouvoirs d'un comité

(5) L'exercice des pouvoirs et des fonctions que le présent article confère au Comité permanent du Conseil chargé des questions d'admission n'est pas assujéti à l'approbation du Conseil.

## CATÉGORIES DE MEMBRES

Catégories de membres

2.1 (1) Les catégories de membres sont les suivantes :

1. La catégorie A.
2. La catégorie B.
3. La catégorie C.

Membres de la catégorie A

(2) Est membre de la catégorie A tout membre qui est tenu de payer les cotisations d'assurance prévues au règlement administratif n° 16 et qui n'est pas exonéré de leur paiement.

Membres de la catégorie B

(3) Est membre de la catégorie B tout membre qui n'est ni membre de la catégorie A ni membre de la catégorie C.

Membres de la catégorie C

(4) Est membre de la catégorie C tout membre qui est exonéré du paiement de la cotisation annuelle en application de l'article 4 du règlement administratif n° 15 ou qui est dispensé de l'obligation de présenter un rapport annuel en application de l'article 2 du règlement administratif n° 17.

Membre par voie de transfert

(5) Quiconque devient membre par voie de transfert en provenance d'un ressort autre que l'Ontario en application de l'article 4 du règlement administratif n° 11 est, dès qu'il le devient, membre de la catégorie A, de la catégorie B ou de la catégorie C, selon le cas, si, immédiatement avant de le devenir, il avait, dans ce ressort, les droits et privilèges de cette catégorie de membre.

Droits et privilèges des membres de la catégorie A

2.2 (1) Sous réserve de toute ordonnance rendue à leur encontre en application de la Loi, les membres de la catégorie A peuvent exercer le droit sans restrictions.

Droits et privilèges des membres de la catégorie B

(2) Sous réserve de toute ordonnance rendue à leur encontre en application de la Loi, les membres de la catégorie B peuvent exercer le droit avec les restrictions suivantes :

1. Il leur est interdit d'exercer le droit par l'intermédiaire d'une société de personnes.
2. Il leur est interdit d'exercer le droit par l'intermédiaire d'une société professionnelle.

3. Il leur est interdit d'exercer le droit par l'intermédiaire d'un cabinet individuel.
4. Il leur est interdit d'exercer le droit par l'intermédiaire de tout arrangement qui permet à deux ou à plusieurs membres de partager tout ou partie de frais communs tout en exerçant le droit de façon indépendante.

#### Droits et privilèges des membres de la catégorie C

- (3) Il est interdit aux membres de la catégorie C d'exercer le droit.

Interprétation : « Programme de recyclage en pratique privée »

- 2.3. (1) La définition qui suit s'applique au présent article.

« Programme de recyclage en pratique privée » Le programme que le Barreau dispense en vue de faire en sorte que les membres de la catégorie B et de la catégorie C possèdent les habiletés à exercer nécessaires pour devenir membres de la catégorie A et qui comporte les modules suivants :

1. Gestion du temps.
2. Gestion des dossiers.
3. Gestion financière.
4. Relation avec la clientèle/communication.
5. Technologie et équipement.
6. Gestion professionnelle.
7. Gestion personnelle.
8. Responsabilité professionnelle.

Interprétation : « responsable du Barreau »

- (2) La définition qui suit s'applique au présent article.

« responsable du Barreau » Personne, qu'il s'agisse d'un dirigeant, d'une dirigeante, d'un employé ou d'une employée du Barreau, que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent article.

#### Passage de la catégorie B ou de la catégorie C à la catégorie A

- (3) Les membres de la catégorie B ou de la catégorie C peuvent devenir membres de la catégorie A en présentant une demande de changement de catégorie au Barreau.

#### Changement immédiat de catégorie

- (4) Un ou une responsable du Barreau étudie la demande de changement de catégorie présentée en application du paragraphe (3) et accorde le changement à moins que le membre n'ait été un membre de la catégorie B ou de la catégorie C pendant au moins 80 pourcent de la période de cinq ans qui précède la date de la demande.

#### Membre par voie de transfert

- (4.1) Pour établir si la personne qui est devenue membre par voie de transfert en provenance d'un ressort autre que l'Ontario en application de l'article 4 du règlement administratif n° 11 a droit au changement de catégorie prévu au paragraphe (4), le ou la responsable du Barreau tient compte de la durée de la période pendant laquelle elle a été membre de la catégorie B ou de la catégorie C et celle de la période pendant laquelle elle avait, dans ce ressort, les droits et privilèges de cette catégorie de membre.

#### Changement de catégorie à la réussite du programme

(5) Si elle ou il ne peut accorder le changement de catégorie en application du paragraphe (4), la ou le responsable du Barreau l'accorde après que le membre a réussi les modules requis du Programme de recyclage en pratique privée.

#### Changement conditionnel de catégorie

(6) Malgré les paragraphes (4) et (5), le ou la responsable du Barreau peut accorder le changement de catégorie à la condition que le membre réussisse les modules requis du Programme de recyclage en pratique privée dans un délai précisé et n'exerce qu'à titre d'employé ou d'associé et sous la supervision d'un membre de la catégorie A qu'il ou elle approuve.

#### Idem

(7) Le changement conditionnel de catégorie qui est accordé au membre de la catégorie B ou de la catégorie C en vertu du paragraphe (6) est annulé s'il enfreint quelque condition dont le changement est assorti et le ou la responsable du Barreau ne doit pas accorder d'autre changement conditionnel de catégorie à ce membre.

#### Modules requis du Programme de recyclage en pratique privée

(8) Le ou la responsable du Barreau décide quels modules du Programme de recyclage en pratique privée doit réussir le membre de la catégorie B ou de la catégorie C qui demande au Barreau un changement de catégorie en vertu du paragraphe (3) et qui n'a pas le droit de se le faire accorder en application du paragraphe (4).

#### Obligation du membre de fournir des renseignements

(9) Afin d'aider le ou la responsable du Barreau à prendre la décision prévue au paragraphe (8), le membre lui fournit des renseignements sur ses activités au cours de la période de cinq ans qui précède la date de sa demande de changement de catégorie et tout autre renseignement sur ses habiletés à exercer qu'il ou elle exige.

#### Nouvelle décision d'un conseiller

(10) Le membre qui est mécontent de la décision que prend un ou une responsable du Barreau en application du paragraphe (8) peut demander à la conseillère ou au conseiller élu nommé à cette fin par le Conseil de décider à nouveau quels modules du Programme de recyclage en pratique privée il doit réussir.

#### Procédure lors de la nouvelle décision

(11) Sous réserve du paragraphe (12), le conseiller ou la conseillère fixe la procédure applicable à la nouvelle décision prévue au paragraphe (10) et, notamment, peut décider qui lui présentera des observations et à quel moment et de quelle façon il pourra le faire.

#### Observations écrites

(12) Toutes les observations présentées au conseiller ou à la conseillère le sont par écrit, à moins qu'il ou elle ne permette à quelqu'un de lui en présenter oralement.

#### Entrée en vigueur

3. Le présent règlement administratif entre en vigueur le 1<sup>er</sup> février 1999.

#### APPENDIX 6

### THE LAW SOCIETY OF UPPER CANADA BY-LAWS MADE UNDER SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

#### MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on April 25, 2003, be amended as follows:

BY-LAW 11  
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Section 4.01 of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is deleted.
2. Clauses 4 (2) (e) and 4.1 (2) (e) of the By-Law are deleted.

BY-LAW 13  
[MEMBERS]

3. Subsection 2.1 (5) of By-Law 13 [Members] is amended by inserting “or 4.1” / “ou 4.1” after “section 4” / “l’article 4”.
4. Subsection 2.3 (4.1) of the By-Law is amended by inserting “or 4.1” / “ou 4.1” after “section 4” / “l’article 4”.

APPENDIX 7

THE LAW SOCIETY OF UPPER CANADA

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

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 4 and 14 of subsection 62 (0.1) and paragraph 11 of subsection 62 (1) of the *Law Society Act*, a by-law be made as follows:

SPECIALIST CERTIFICATION  
PART I  
GENERAL

Definitions

1. In this By-Law,

“Board” means the Specialist Certification Board;

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

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

Exercise of powers by Committee

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

PART II  
SPECIALIST CERTIFICATION BOARD

Board to be established

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

Composition of Board

- (2) The Board shall consist of seven persons appointed by the Committee as follows:
1. Four benchers who are not lay benchers.
  2. One lay bencher.
  3. Two persons who are certified specialists who are not benchers.

Term

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

Appointment at pleasure

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

Chair

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

Term of Office

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

Appointment at pleasure

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

Function of Board

5. It is the function of the Board,
- (a) to establish specialty committees;
  - (b) to oversee the work of the specialty committees;
  - (c) subject to section 12, to establish standards for the certification of members as specialists;
  - (d) to determine the areas of law in respect of which members may be certified as specialists;
  - (e) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the specialty committees and the Board of an application under section 17 and the consideration by the Board of an application under section 22, subsection 31 (3), subsection 31 (5), subsection 31 (6) or section 33 and the exercise by the Board of its discretion under subsection 31 (2) or subsection 32 (2);
  - (f) to develop for the Committee's approval policies relating to the certification of members as specialists;
  - (g) to recommend to the Committee the amount of the fees payable by applicants for specialist certification and certified specialists under this By-Law; and



- (h) to certify members as specialists.

#### Quorum

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

#### Meeting

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

#### Meeting by telephone conference, *etc.*

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

#### Annual report to Committee

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

#### Confidentiality

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

#### Exceptions

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

### PART III SPECIALTY COMMITTEES

#### Board to establish committees

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

#### Composition of specialty committee

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

#### Eligibility for appointment

- (3) Only the following members may be appointed to a specialty committee:
- 1. If there are members certified as specialists in the area of law in respect of which a specialty committee has been established, a member certified as a specialist in the area of law.
  - 2. If there are no members certified as specialists in the area of law in respect of which a specialty committee has been established, a member who practises law in the area of law and undertakes to

become certified as a specialist in the area of law within three years of certification in the area of law being available.

#### Term

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

#### Appointment at pleasure

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

#### Chair and vice-chair

11. (1) For each specialty committee, the Board shall appoint,

(a) one member of the specialty committee as chair of the committee; and

(b) one member of the specialty committee as vice-chair of the committee.

#### Term of Office

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

#### Appointment at pleasure

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

#### Function of specialty committee

12. It is the function of a specialty committee,

(a) to develop for the Board's approval standards for the certification of members as specialists;

(b) to review and accredit continuing legal education programs for purposes of sections 16 and 29;

(c) to specify the number of hours of self study and accredited continuing legal education programs to be completed by applicants and certified specialists;

(d) to review applications from members for certification as specialists; and

(e) to recommend to the Board members for certification as specialists.

#### Quorum

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

#### Meeting

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

#### Meeting by telephone conference, *etc.*

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

#### Confidentiality

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

#### Exceptions

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

#### PART IV SPECIALIST CERTIFICATION

##### Requirements for certification

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

1. The member has engaged in the practice of law for at least seven years immediately before the day on which the member applies for certification.
2. The member has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
  - i. Two years immediately before the day on which the member applies for certification.
  - ii. Any other three years.
3. The member has comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
4. In each of the five years in which the member practised in the area of law, the member has completed in the area of law,
  - i. the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
  - ii. the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.
5. The member is not the subject and has no record, within the five year period immediately before the day on which the member applies for certification, of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction.
6. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law.
7. The member is not, in any jurisdiction in which the member is authorized to practise law, the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence.
8. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no serious claims or substantial number of claims made against

the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law.

Same

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

Interpretation: practice in area of law

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

Application for certification

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

Application form

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

Accompanying documents, *etc.*

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

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

Documents, explanations, releases, *etc.*

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

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

Application to be considered by specialty committee

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

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

#### Interview

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

#### Same

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

#### Report to committee

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

#### Notice

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

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

#### Application to be considered by Board

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

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

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

#### Notice

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

#### Re-determination of application

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

#### Timing

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

#### Determination

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

#### Decision final

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

#### Issuance of certificate

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

#### Continuation of certification

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

#### PART V CERTIFIED SPECIALISTS

##### Definition

25. In this Part,

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

##### Specialist designation

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

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

##### Same

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

##### Requirement to pay annual fee

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

##### Payment due

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

##### Certified specialists

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

##### Members certified after January 1

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

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

where,

A is the annual fee, and

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

#### Payment due

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

#### Requirement to submit annual report

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

#### Report form

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

#### Continuing legal education requirements

29. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

- (a) the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
- (b) the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.

#### Proof of compliance

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

#### Deemed failure to comply

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

#### Notice to Society

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

#### Automatic abeyance

31. (1) A certified specialist's specialist certification is in abeyance while,

- (a) the certified specialist's membership is in abeyance under subsection 31 (1) of the Act;
- (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
- (c) the certified specialist is, in any jurisdiction in which the certified specialized is authorized to practise law, the subject of a review of the certified specialist's practice for the purpose of determining if the certified specialist is meeting standards of professional competence; or



- (d) the certified specialist has serious claims or substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice in any jurisdiction in which the certified specialist is authorized to practise law.

Abeyance by Board: discretion

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

Abeyance by Board: mandatory

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

Restoration

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

Same

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

Same

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

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

Revocation

32. (1) A certified specialist's specialist certification is automatically revoked immediately,
- (a) the certified specialist ceases to practise law in Ontario;
  - (b) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 16 (3);
  - (c) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
  - (d) the certified specialist fails to pay an annual fee or submit an annual report;
  - (e) the certified specialist fails to meet the requirement set out in section 29; or
  - (f) the certified specialist's specialist certification has been in abeyance for more than 12 months.

Same

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

Application for certification after revocation

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

#### Surrender of certification

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

#### Same

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

### PART VI TRANSITION

#### Existing certified specialists

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

#### Annual fee

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

#### Due date 2003

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

#### Existing applicants

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

#### Certification of existing applicants

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

#### Re: By-Law and Rule Amendments regarding Confidentiality of Practice Reviews/Competence Hearings

It was moved by Mr. Cherniak, seconded by Mr. Ducharme that the proposed amendments to By-Law 24 and Rule 3.04.1 of the Rules of Practice and Procedure in accordance with the Motions set out at Appendices 2 and 3 be approved.

Carried Unanimously

#### ROLL-CALL VOTE

Arnup	For	MacKenzie	For
Bindman	For	Marrocco	For
Carpenter-Gunn	For	Millar	For

Cherniak	For	Minor	For
Crowe	For	Porter	For
Curtis	For	Potter	For
Diamond	For	Puccini	For
Ducharme	For	Ross	For
Feinstein	For	Swaye	For
Gottlieb	For	Wright	For
Laskin	For		

By-Law 24 and Rule 3.04.1 of the Rules of Practice and Procedure Amendments

THE LAW SOCIETY OF UPPER CANADA

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

BY-LAW 24

[PROFESSIONAL COMPETENCE]

THAT By-Law 24 [Professional Competence], made by Convocation on March 26, 1999 and amended by Convocation on May 28, 1999, April 26, 2001, January 24, 2002 and October 31, 2002, be further amended as follows:

2. Section 6 of By-Law 24 [Professional Competence] is amended by adding the following:

Review of practice is not public information

(4) A direction under subsection 49.4 (1) of the Act that a review of a member's or benchers' practice be conducted and the fact that a review of a member's or benchers' practice is being or has been conducted shall not be made public, except as required in connection with a proceeding under the Act.

Interdiction de rendre publique une inspection professionnelle

(4) L'ordre, donné en application du paragraphe 49.4 (1) de la Loi, d'effectuer l'inspection des activités professionnelles d'un membre, d'un conseiller ou d'une conseillère et le fait qu'une telle inspection est ou a été effectuée ne doivent pas être rendus publics, sauf dans le cadre d'une instance introduite en application de la Loi.

2. Section 15 of the By-Law is amended by adding the following:

Order is not public information

(6.1) An order made under subsection 42 (7) of the Act shall not be made public.

Order limiting member's rights and privileges is public information

(6.2) Despite subsection (6.1), an order made under subsection 42 (7) of the Act that suspends or limits a member's rights and privileges is a matter of public record.

Interdiction de rendre publique une ordonnance

(6.1) L'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi ne doit pas être rendue publique.

Caractère public de l'ordonnance restreignant les droits et privilèges

(6.2) Malgré le paragraphe (6.1), l'ordonnance rendue en vertu du paragraphe 42 (7) de la Loi qui suspend ou restreint les droits et privilèges d'un membre est du domaine public.

Re: Amendments to By-Laws 11 and 13 re: transfer candidates

It was moved by Mr. Cherniak, seconded by Mr. Ducharme that Convocation approve the Motion set out at Appendix 6 to amend By-Law 11 to delete sections 4.01 4(2)(e) and 4.1(2)(e); and amend By-Law 13 to provide that sections 2.1(5) and 2.3(4.1) also apply to section 4.1 of By-Law 11.

Carried

Amendments to By-Laws 11 and 13

THE LAW SOCIETY OF UPPER CANADA  
BY-LAWS MADE UNDER  
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

THAT the By-Laws made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act* in force on April 25, 2003, be amended as follows:

BY-LAW 11  
[CALL TO BAR AND ADMISSION AND ENROLMENT AS SOLICITOR]

1. Section 4.01 of By-Law 11 [Call to Bar and Admission and Enrolment as Solicitor] is deleted.
2. Clauses 4 (2) (e) and 4.1 (2) (e) of the By-Law are deleted.

BY-LAW 13  
[MEMBERS]

3. Subsection 2.1 (5) of By-Law 13 [Members] is amended by inserting "or 4.1" / "ou 4.1" after "section 4" / "l'article 4".
4. Subsection 2.3 (4.1) of the By-Law is amended by inserting "or 4.1" / "ou 4.1" after "section 4" / "l'article 4".

Re: Specialist Certification By-Law

It was moved by Mr. Cherniak, seconded by Mr. Porter that the motion containing the proposed By-Law on Specialist Certification as set out in Appendix 7 of the Report be approved.

Carried

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

THAT, pursuant to the authority contained in paragraphs 4 and 14 of subsection 62 (0.1) and paragraph 11 of subsection 62 (1) of the *Law Society Act*, a by-law be made as follows:

SPECIALIST CERTIFICATION  
PART I  
GENERAL

Definitions

1. In this By-Law,

“Board” means the Specialist Certification Board;

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

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

Exercise of powers by Committee

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

PART II  
SPECIALIST CERTIFICATION BOARD

Board to be established

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

Composition of Board

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

4. Four benchers who are not lay benchers.

5. One lay bencher.

6. Two persons who are certified specialists who are not benchers.

Term

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

Appointment at pleasure

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

Chair

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

Term of Office

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

Appointment at pleasure

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

#### Function of Board

5. It is the function of the Board,

- (j) to establish specialty committees;
- (k) to oversee the work of the specialty committees;
- (l) subject to section 12, to establish standards for the certification of members as specialists;
- (m) to determine the areas of law in respect of which members may be certified as specialists;
- (n) to make, subject to this By-Law, rules of practice and procedure with respect to the consideration by the specialty committees and the Board of an application under section 17 and the consideration by the Board of an application under section 22, subsection 31 (3), subsection 31 (5), subsection 31 (6) or section 33 and the exercise by the Board of its discretion under subsection 31 (2) or subsection 32 (2);
- (o) to develop for the Committee's approval policies relating to the certification of members as specialists;
- (p) to recommend to the Committee the amount of the fees payable by applicants for specialist certification and certified specialists under this By-Law; and
- (q) to certify members as specialists.

#### Quorum

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

#### Meeting

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

Meeting by telephone conference, *etc.*

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

#### Annual report to Committee

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

#### Confidentiality

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

#### Exceptions

- (3) Subsection (1) does not prohibit,
  - (a) disclosure required in connection with the administration of the Act, the regulations or the by-laws;
  - (b) disclosure required of a member of the Board under the Society's Rules of Professional Conduct;
  - (c) disclosure of information that is a matter of public record; and

- (d) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure.

### PART III SPECIALTY COMMITTEES

#### Board to establish committees

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

#### Composition of specialty committee

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

#### Eligibility for appointment

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

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

#### Term

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

#### Appointment at pleasure

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

#### Chair and vice-chair

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

#### Term of Office

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

#### Appointment at pleasure

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

#### Function of specialty committee

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

- (j) to recommend to the Board members for certification as specialists.

#### Quorum

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

#### Meeting

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

#### Meeting by telephone conference, *etc.*

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

#### Confidentiality

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

#### Exceptions

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

### PART IV SPECIALIST CERTIFICATION

#### Requirements for certification

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

- 3. The member has engaged in the practice of law for at least seven years immediately before the day on which the member applies for certification.
- 4. The member has practised in the area of law for at least five of the seven years mentioned in paragraph 1 as follows:
  - iii. Two years immediately before the day on which the member applies for certification.
  - iv. Any other three years.
- 8. The member has comprehensive knowledge of the substantive law and the practices and procedures in the area of law.
- 9. In each of the five years in which the member practised in the area of law, the member has completed in the area of law,



- j. the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
  - ii. the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.
10. The member is not the subject and has no record, within the five year period immediately before the day on which the member applies for certification, of any order made against the member by a tribunal of the governing body of the legal profession in any jurisdiction.
  11. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in any jurisdiction in which the member is authorized to practise law.
  12. The member is not, in any jurisdiction in which the member is authorized to practise law, the subject of a review of the member's practice for the purpose of determining if the member is meeting standards of professional competence.
  8. The member has and has had, within the five year period immediately before the day on which the member applies for certification, no serious claims or substantial number of claims made against the member in the member's professional capacity or in respect of the member's practice in any jurisdiction in which the member is authorized to practise law.

Same

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

Interpretation: practice in area of law

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

Application for certification

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

Application form

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

Accompanying documents, *etc.*

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

- (a) a certificate of standing from the governing body of the legal profession in each jurisdiction of which the applicant is or was a member issued during the three month period immediately before the day on which the applicant makes the application;
- (b) written references from four members not one of whom is,
  - i. a person whose membership is in abeyance under subsection 31 (1) of the Act,
  - ii. a partner, an associate, a co-worker, an employer or an employee of the applicant,
  - iii. a relative of the applicant,

- ii. a member of a specialty committee established in respect of the area of law in which the applicant wishes to be certified as a specialist;
  - iv. a member of the Board,
  - v. a bencher, or
  - vi. an employee of the Society; and
- (c) an application fee in an amount determined by Convocation from time to time.

Documents, explanations, releases, *etc.*

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

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

Application to be considered by specialty committee

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

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

Interview

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

Same

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

Report to committee

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

Notice

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

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

Application to be considered by Board

21. Every application under section 17 shall be considered by the Board and the Board shall,
- (d) certify the applicant as a specialist if,
    - (i) the specialty committee recommends that the applicant be certified as a specialist;
    - (ii) the Board is satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); and
    - (iii) the Board is satisfied that,
      - i. the condition set out in subsection 16 (2) is not present; or
      - ii. it would not be contrary to the public interest to certify the applicant as a specialist; or
  - (b) not certify the applicant as a specialist if,
    - (i) the specialty committee does not recommend that the applicant be certified as a specialist;
    - (ii) the Board is not satisfied that the applicant meets the conditions set out in paragraphs 5 to 8 of subsection 16 (1); or
    - (iii) the Board is satisfied that,
      - (A) the condition set out in subsection 16 (2) is present; or
      - (B) it would be contrary to the public interest to certify the applicant as a specialist.

#### Notice

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

#### Re-determination of application

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

#### Timing

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

#### Determination

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

- (B) it would not be contrary to the public interest to certify the applicant as a specialist; or
- (e) not certify the applicant as a specialist if,
  - (r) the Board is not satisfied that the applicant meets the conditions set out in subsection 16 (1), or
  - (ii) the Board is satisfied that,
    - (A) the condition set out in subsection 16 (2) is present; or
    - (B) it would be contrary to the public interest to certify the applicant as a specialist.

#### Decision final

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

#### Issuance of certificate

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

#### Continuation of certification

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

### PART V CERTIFIED SPECIALISTS

#### Definition

25. In this Part,

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

#### Specialist designation

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

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

Same

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

Requirement to pay annual fee

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

Payment due

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

Certified specialists

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

Members certified after January 1

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

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

where,

A is the annual fee, and

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

Payment due

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

Requirement to submit annual report

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

Report form

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

Continuing legal education requirements

29. Every year a certified specialist shall complete in the area of law in which the specialist is certified,

- (a) the number of hours of self-study specified by the specialty committee established in respect of the area of law, and
- (b) the number of hours of accredited continuing legal education programs specified by the specialty committee established in respect of the area of law.

Proof of compliance

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

#### Deemed failure to comply

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

#### Notice to Society

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

#### Automatic abeyance

31. (1) A certified specialist's specialist certification is in abeyance while,
- (a) the certified specialist's membership is in abeyance under subsection 31 (1) of the Act;
  - (b) the certified specialist has terms, conditions, limitations or restrictions imposed on the certified specialist's authorization to practise law in any jurisdiction in which the certified specialist is authorized to practise law;
  - (f) the certified specialist is, in any jurisdiction in which the certified specialized is authorized to practise law, the subject of a review of the certified specialist's practice for the purpose of determining if the certified specialist is meeting standards of professional competence; or
  - (d) the certified specialist has serious claims or substantial number of claims made against the certified specialist in the certified specialist's professional capacity or in respect of the certified specialist's practice in any jurisdiction in which the certified specialist is authorized to practise law.

#### Abeyance by Board: discretion

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

#### Abeyance by Board: mandatory

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

#### Restoration

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

#### Same

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

#### Same

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

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

#### Revocation

32. (1) A certified specialist's specialist certification is automatically revoked immediately,
- (g) the certified specialist ceases to practise law in Ontario;
  - (h) the certified specialist ceases to practise in the area of law in which the certified specialist has been certified as a specialist within the meaning of subsection 16 (3);
  - (i) the certified specialist is the subject of any order made against the certified specialist by a tribunal of the governing body of the legal profession in any jurisdiction;
  - (j) the certified specialist fails to pay an annual fee or submit an annual report;
  - (k) the certified specialist fails to meet the requirement set out in section 29; or
  - (l) the certified specialist's specialist certification has been in abeyance for more than 12 months.

Same

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

Application for certification after revocation

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

Surrender of certification

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

Same

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

## PART VI TRANSITION

Existing certified specialists

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

Annual fee

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

Due date 2003

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

Existing applicants

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

Certification of existing applicants

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

#### REPORT ON RULES OF PROCEDURES FOR CONVOCATION

Mr. MacKenzie presented the Report on Rules of Procedures for Convocation for approval by Convocation.

Report to Convocation  
April 25, 2003

Report on Rules of Procedure for Convocation

Purpose of the Report: Decision

Prepared by the Policy Secretariat  
(Katherine Corrick (416) 947-5210)

#### OVERVIEW OF POLICY ISSUE

#### RULES OF PROCEDURE FOR CONVOCATION

Request to Convocation

1. Convocation is requested to approve by-law 8, as amended, set out in Appendix 1 of the Report.

Summary of the Issue

2. Current by-laws require that Convocation's meetings are to be conducted in accordance with the Standing Orders of the Legislative Assembly of Ontario. The procedures set out in the Standing Order are not applicable, or easily adapted, to Convocation's business.
3. A new set of rules designed to promote the efficient, orderly and fair conduct of Convocation's business and ensure that Convocation makes decisions on the basis of complete information has been incorporated into by-law 8, which is attached as Appendix 1 to this report.

#### THE REPORT

Introduction

4. On February 27, 2003, following Convocation's consideration of a motion brought by Heather Ross, seconded by Joanne St. Lewis, to develop procedures to govern Convocation's proceedings, the Treasurer requested that Gavin MacKenzie review the issue and report back to Convocation with appropriate rules of procedure.
5. On March 27, 2003, Mr. MacKenzie notified Convocation that he would be circulating a revised by-law 8 setting out a detailed set of rules governing Convocation's procedures for debate on April 25, 2003.

Background



6. Section 5 of by-law 8, made pursuant to the *Law Society Act*, provides that meetings of Convocation must be conducted in accordance with the by-laws, and where the by-laws are silent on a matter of procedure, in accordance with the Standing Orders of the Legislative Assembly of Ontario.
7. The by-laws are silent on rules of procedure for the meetings of Convocation.
8. The issue of the appropriate rules of procedure for Convocation was considered by the Strategic Planning Committee, which reported on the matter to Convocation on January 25, 2001. The Committee reported that, in its view, the Standing Orders of the Legislative Assembly of Ontario were inappropriate for the conduct of Convocation's business.
9. Following its consideration of the report, Convocation directed that rules of procedure for Convocation be drafted for incorporation into by-law 8.

#### Discussion

10. The Standing Orders of the Legislative Assembly of Ontario have been drafted to assist in the orderly conduct of government business in the legislature. They are written to support a very different decision-making process than the one engaged in by Convocation. They are based on certain characteristics of the Legislative Assembly that are fundamentally different from Convocation. They presume the existence of a party system and a highly structured system of bringing government bills before the House for debate.
11. For example, the method of providing notice of a motion is set out in section 53 of the Standing Orders of the Legislative Assembly of Ontario as follows,
 

All notices required by the Standing Orders of the House or otherwise shall be laid on the Table before 5:00 p.m. and printed on the *Orders and Notices* paper for the following day. Government notices of motion shall be distributed by the Clerk to the House Leaders of recognized Parties in the Legislature at the time of tabling.
12. The Standing Orders of the Legislative Assembly of Ontario are neither relevant to the meetings of Convocation, nor can they be easily adapted to Convocation's process.
13. A set of rules, relevant to the meetings of Convocation, and designed to enhance the efficiency of the decision-making process, ought to be approved in place of the Standing Orders.
14. Appendix 1 to this report sets out an amended by-law 8, which includes a set of detailed procedures to govern Convocation's proceedings. The objective of the rules is to promote the efficient, orderly and fair conduct of Convocation's business and ensure that Convocation makes decisions on the basis of complete information.
15. This bench is well positioned to consider a new set of rules for Convocation, having dealt, over the past four years, with the uncertainty and confusion that can occur without a clear set of procedural rules governing Convocation's proceedings.
16. By-laws are simply a codification of Convocation's policies. If, after approving the proposed by-law 8, Convocation determines that some parts of it are not suitable to its process, those parts can readily be amended. The by-law ought to be considered a living code of procedure that will be amended as Convocation deems necessary. The efficiency and efficacy of the rules can best be determined once Convocation begins to apply them.

#### Request to Convocation

17. Convocation is requested to approve by-law 8, as amended, set out in Appendix 1 of the Report.

THE LAW SOCIETY OF UPPER CANADA  
BY-LAWS MADE UNDER  
SUBSECTION 62 (0.1) OF THE *LAW SOCIETY ACT*

BY-LAW 8  
[CONVOCATION]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT By-Law 8 [Convocation], made by Convocation on January 28, 1999 and amended by Convocation on February 19, 1999 and March 26, 1999, be revoked and the following substituted:

CONVOCATION

INTERPRETATION

Definitions

1. In this By-Law,

“main motion” means a motion which is the subject of an amendment contained in a motion to amend;

“routine motion” means a motion, other than a motion to make, amend or revoke a by-law, to fulfil a duty or exercise a power under an Act, regulation, by-law or rule, such as a motion to elect a benchers or a motion to appoint a person to a committee or other body;

“question of privilege” means a question about any right enjoyed at a meeting of Convocation by the benchers present at the meeting collectively or by any benchers present at the meeting individually conferred by this By-Law or by practice, precedent, usage and custom;

“question of procedure” means a question about the procedure being following at any time at a meeting of Convocation;

“substantive motion” means a motion that is a self-contained proposal capable of expressing a decision of Convocation concerning a matter of import to the Society.

MEETINGS

Meetings conducted in accordance with By-Law

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

Waiving compliance, *etc.*

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

Matters of procedure unprovided for

(3) Any matter of procedure not provided for in this By-Law shall be determined by the Treasurer.

Place of meeting

3. (1) Subject to subsections (2) and (3), all meetings of Convocation shall be held in Osgoode Hall.

Place of special meeting

- (2) The Treasurer may convene a special meeting of Convocation at any place.

Meetings by telephone conference call, *etc.*

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

Regular meeting of Convocation

4. A regular meeting of Convocation shall be held on the fourth Thursday of each month, except the months of July, August and December.

Special meeting of Convocation

5. (1) The Treasurer may call a special meeting of Convocation at any time by giving at least twenty-four hours notice, or by directing the Secretary to give such notice, to each benchman.

Same

- (2) Upon the written request of ten benchmen who are entitled to vote in Convocation, the Secretary shall convene a special meeting of Convocation by giving at least twenty-four hours notice to each benchman.

Meetings open to public

6. (1) Subject to subsection (2), a meeting of Convocation shall be open to the public.

Public excluded

- (2) Convocation shall meet in the absence of the public to deal with any of the following matters:

1. Matters relating to the Society's personnel.
2. Litigation in which the Society is involved.
3. Negotiations with a government.
4. Intimate financial or personal matters or other matters in respect of which, in the opinion of Convocation, the need for privacy outweighs the public interest in disclosure.
5. Any matter at the instance of the Treasurer.

Order of business: regular meeting

7. (1) The order of business at a regular meeting of Convocation shall be as follows:

1. Treasurer's remarks.
2. Confirmation of the minutes of the last regular meeting of Convocation and any intervening special meeting of Convocation.
3. Calls to the bar.
4. Report from the Chief Executive Officer.
5. Business carried forward from the last regular meeting of Convocation and any intervening special meeting of Convocation.
6. Notices of motion.
7. Routine motions other than those contained in any report of a standing or other committee.

8. Reports by standing or other committees requiring a vote by the meeting of Convocation.
9. Substantive motions other than those contained in any report of a standing or other committee.
10. Motions to make, amend or revoke by-laws other than those contained in any report of a standing or other committee.
11. Motions to resume debating substantive motions the debates of which were previously deferred indefinitely and motions to put substantive motions to a vote where the vote was previously deferred indefinitely.
12. Deferred debates and votes.
13. Reports by standing and other committees not requiring a vote by the meeting of Convocation.

#### Treasurer's remarks

(2) At the beginning of a regular meeting of Convocation, the Treasurer may speak in respect of his or her work on behalf of the Society since the last regular meeting of Convocation and in respect of matters of import to the Society arising since the last regular meeting of Convocation.

#### Reports requiring vote

(3) A report of a standing or other committee requiring a vote by the regular meeting of Convocation shall be presented by the chair or a vice-chair of the committee in the form of the appropriate motion.

#### Reports not requiring vote

(4) A report of a standing or other committee not requiring a vote by the regular meeting of Convocation may be presented by the chair or a vice-chair of the committee with a brief statement by the chair or vice-chair.

#### No discussion or debate

(5) There shall be no discussion or debate of a report of a standing or other committee not requiring a vote by the regular meeting of Convocation.

#### Questions

(6) Despite subsection (5), a benchman may ask the chair or vice-chair who is presenting a report of a standing or other committee not requiring a vote by the regular meeting of Convocation a brief question about the report and the chair or vice-chair may provide a brief answer

#### Order of business: special meeting

8. (1) The order of business at a special meeting of Convocation shall be determined by the Treasurer.

#### Application of subss 7 (2) to (6)

(2) Subsections 7 (2) to (6) apply, with necessary modifications, to a special meeting of Convocation.

#### Minutes

9. (1) Except when Convocation meets as a committee of the whole, minutes shall be kept for all meetings of Convocation.

#### Approval of minutes

(2) At each regular meeting of Convocation, the minutes of the last regular meeting of Convocation and of any intervening special meeting of Convocation shall be confirmed by the meeting and shall be signed by the Treasurer or the benchman who presided at the meeting of Convocation to which the minutes relate.

#### Publication of minutes

(3) Except in the case of the minutes of a meeting of Convocation held in the absence of the public, the minutes of a meeting of Convocation shall be made available to the public.

#### Transcript

10. (1) A full court reporter service shall be provided for all meetings of Convocation.

#### Publication

(2) The transcript of a meeting of Convocation open to the public is a matter of public record.

#### Adjournment for lack of quorum

11. (1) If at any time after a meeting of Convocation has commenced, the Treasurer's attention is directed to the apparent lack of a quorum, the Treasurer shall determine whether a quorum is present and, upon determining that a quorum is not present, the Treasurer shall adjourn the meeting without motion.

#### Same

(2) The matter before the meeting of Convocation immediately prior to an adjournment under subsection (1), and all matters listed on the agenda for the meeting of Convocation that are not reached prior to the adjournment, shall be deemed to be deferred to the next regular meeting of Convocation.

#### Removal of benchers from office for non-attendance

12. (1) Convocation may remove from office an elected bencher who fails to attend six consecutive regular meetings of Convocation.

#### Failure to attend three meetings

(2) When an elected bencher fails to attend three consecutive regular meetings of Convocation, the Secretary shall immediately send to the elected bencher a notice of the failure and of Convocation's authority under subsection (1) to remove him or her from office.

#### Failure to attend six meetings: report to Convocation

(3) When an elected bencher fails to attend six consecutive regular meetings of Convocation, the Secretary shall report the failure at the first regular meeting of Convocation thereafter.

### TREASURER

#### Treasurer to preside

13. The Treasurer shall preside over every meeting of Convocation.

#### Treasurer's rulings and decisions

14. (1) A ruling or decision of the Treasurer made under this By-Law is subject to an appeal to the meeting of Convocation except in the following cases:

1. A decision on a question of privilege or procedure.
2. A ruling that a bencher's remarks are out of order for the reason set out in clause 26 (3) (e).
3. A ruling that a motion is out of order for the reason set out in subsection 18 (3).
4. A decision under subsection 27 (1) to put a motion to a vote.
5. A decision to require a recorded vote.

#### Time for making appeal

(2) Where a bencher wishes to appeal a ruling or decision of the Treasurer, the appeal shall be made immediately after the ruling or decision.

## Debate

(3) Except in the case of an appeal of a ruling or decision of the Treasurer in respect of a bencher's language or behaviour, an appeal of a ruling or decision of the Treasurer may be debated and sections 24 to 26 apply, with necessary modifications, to the debate.

## Same

(4) The debate on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

## Disposition

(5) An appeal of a ruling or decision of the Treasurer shall be disposed of by a vote on the question: "Should the ruling or decision of the Treasurer be upheld?"

## Same

(6) Sections 27 to 32 apply, with necessary modifications, to a vote on an appeal of a ruling or decision of the Treasurer.

## Same

(7) The vote on an appeal of the Treasurer's decision under paragraph 5 of subsection 6 (2) shall be conducted in the absence of the public.

## Resolution: appeal of Treasurer's ruling

(8) A ruling or decision of the Treasurer shall be upheld if the majority of votes cast are in favour of upholding the ruling or decision of the Treasurer or if there is a tie vote on the appeal.

## ORDER AND DECORUM

Treasurer to preserve order, decorum, *etc.*

15. At a meeting of Convocation, the Treasurer shall preserve order, decorum, civility and courtesy and shall decide questions of privilege and procedure.

## Benchers not to interrupt Treasurer

16. (1) Benchers shall refrain from interrupting the Treasurer when he or she is speaking, making a ruling or decision or putting a motion or question to Convocation for a vote.

## Bencher not to interrupt other bencher

(2) Unless otherwise provided in this By-Law, when a bencher is speaking, no bencher other than the Treasurer shall interrupt the bencher speaking.

## Questions of privilege and procedure

17. (1) A bencher may raise a question of privilege or procedure at any time during a meeting of Convocation and may interrupt another bencher who is speaking to do so.

## Discussion

(2) Apart from the bencher raising the question, there shall be no discussion or debate of a question of privilege or procedure.

## Decision

(3) The Treasurer shall decide a question of privilege or procedure immediately after it is raised.

## Taken up immediately

(4) If the Treasurer decides that a *prima facie* case of privilege exists, it shall be taken into consideration immediately.

## MOTIONS

#### Permitted motions

18. (1) A benchner who is entitled to vote in Convocation may in accordance with this By-Law make any of the following motions at any meeting of Convocation:

1. A substantive motion.
2. A routine motion.
3. A motion to make, amend or revoke a by-law.
4. A motion to amend.
5. A motion to refer the subject matter of a substantive motion to a standing or other committee.
6. A motion to defer debating or voting on a substantive motion until a specified time or indefinitely.
7. A motion to resume debating a substantive motion.
8. A motion to put a substantive motion to a vote.
9. A motion to reconsider a past decision of Convocation.
10. A motion to adjourn a meeting of Convocation.

#### Motion to amend

(2) A motion to amend may propose the following amendments but it shall not alter the substance of a main motion:

1. The addition or deletion of words.
2. The variation of minor details.
3. The rephrasing of sentences.

#### Prohibited motions

- (3) No motion shall be made concerning a matter,
- (a) in respect of which a hearing may be conducted under the Act or by-laws; or
  - (b) that is pending before a court or tribunal for determination.

#### Notice required

19. (1) Notice is not required for a motion except in the following cases:

1. A substantive motion, other than a substantive motion contained in the report of a standing or other committee.
2. A motion to resume debating a substantive motion the debate of which was deferred indefinitely.
3. A motion to put a substantive motion to a vote where the vote was previously deferred indefinitely.

#### Method of giving notice

(2) Notice of a motion shall be given in writing by the benchner intending to make the motion delivering a copy of the text of the motion to the Secretary at least twenty days before the day fixed for the meeting of Convocation at which the benchner intends to make the motion.

Sending notice to all benchers

(3) The Secretary shall as soon as possible after receiving notice of a motion under subsection (2) send a copy of the text of the motion to all benchers entitled to vote in Convocation.

Substantive motion without notice

(4) Despite subsection (1), a bencher may make a substantive motion, other than a substantive motion contained in a report of a standing or other committee, without notice at a meeting of Convocation if the motion relates to a matter being considered by Convocation at that meeting.

Seconder required

20. (1) A motion must be seconded before it may be debated, if debate is permitted, and voted on.

Seconders

(2) Only benchers who are entitled to vote in Convocation may second a motion.

Introduction of certain motions

21. (1) Subject to subsection 7 (1), a substantive motion, a routine motion, a motion to make, amend or revoke a by-law, a motion to resume debating a substantive motion the debate of which was deferred indefinitely, a motion to put a substantive motion to a vote where the vote was previously deferred indefinitely or a motion to reconsider a past decision of Convocation may be moved at any time at a meeting of Convocation provided that no substantive motion, routine motion, motion to make, amend or revoke a by-law, motion to resume debating a substantive motion the debate of which was deferred indefinitely, motion to put a substantive motion to a vote where the vote was previously deferred or indefinitely or motion to reconsider a past decision of Convocation is before the meeting of Convocation at the time.

Same

(2) A motion to refer the subject matter of a substantive motion, other than a substantive motion contained in the report of a standing or other committee, to a standing or other committee, a motion to defer debating or voting on a substantive motion until a specified time or indefinitely or a motion to put a substantive motion to a vote may be moved at any time after the substantive motion has been moved and seconded at a meeting of Convocation but before it has been voted on at that meeting.

Same

(3) A motion to amend may be made at any time after a main motion is moved and seconded at a meeting of Convocation but before it has been voted on at that meeting provided that not more than one motion to amend is before the meeting at the time.

Same

(4) A motion to adjourn a meeting of Convocation may be made at any time.

Certain benchers to move certain motions

22. A substantive motion of which notice has been given shall be moved by the bencher who gave notice of the motion.

Withdrawal

23. (1) A bencher who has given notice of a motion may withdraw the same at any time.

Same

(2) A bencher who has moved a motion may withdraw the same at any time with the consent of the bencher who seconded the motion.

DEBATE



#### Debate on motions

24. A motion before a meeting of Convocation may be debated except in the following cases:

1. A motion to defer debating or voting on a substantive motion until a specified time or indefinitely.
2. A motion to put a substantive motion or a routine motion to a vote.
3. A motion to adjourn a meeting of Convocation.

#### Who may participate in debate

25. Every benchler, the Chief Executive Officer and any other person with the prior permission of the Treasurer may take part in any debate at a meeting of Convocation.

#### Order of speaking

26. (1) Subject to subsection (2), in a debate, benchers are entitled to speak to a motion in the following order:

1. The benchler who moved the motion.
2. The benchler who seconded the motion.
3. Any other benchler present at the meeting when recognized by the Treasurer.

#### Reserving right to speak

(2) The benchler who seconded the motion may reserve the right to speak to the motion until a later time in the debate.

#### Matters out of order in debate

- (3) In a debate, a benchler shall be called to order by the Treasurer if he or she,
  - (a) subject to subsections (4), (5) and (6), speaks to a motion more than once;
  - (b) directs his or her speech to matters other than the motion under discussion;
  - (c) persists in needless repetition or raises matters that have already been decided by Convocation;
  - (d) anticipates a matter already on the agenda of Convocation for consideration;
  - (e) refers to a matter,
    - (i) in respect of which a hearing may be conducted under the Act or by-laws; or
    - (ii) that is pending before a court or tribunal for determination;
  - (f) makes allegations against another benchler;
  - (g) imputes false, improper or ulterior motives to another benchler;
  - (h) charges another benchler with uttering a deliberate falsehood; or
  - (i) uses abusive or insulting language of a nature likely to create disorder.

#### Speaking twice

(4) A benchler may speak to a motion a second time only to explain a material part of his or her first speech which he or she believes may have been misunderstood, and in so doing, the benchler shall not introduce any new points.

Same

(5) A bencher who moves a motion may speak to the motion a second time immediately before the end of the debate to reply to any comments or questions raised during the debate.

Questions on speeches and replies

(6) At any time during the debate on a motion, a bencher may ask another bencher a brief question about that bencher's speech and that bencher may reply briefly.

Special rules of debate: motions to amend

(7) Immediately a motion to amend is made during the debate on a main motion or a previous motion to amend, the Treasurer shall interrupt that debate and call for a debate on the motion to amend.

Resumption of interrupted debate

(8) A debate that has been interrupted under subsection (7) shall be resumed immediately the motion to amend which caused the debate to be interrupted has been voted on.

## VOTING

Putting debatable motion to vote

27. (1) Subject to subsections (2) and (3), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been concluded.

Motion to put substantive motion to a vote

(2) Where a motion to put a substantive motion to a vote has carried, the Treasurer shall put the substantive motion to a vote immediately thereafter.

Motions to amend not put

(3) Where a substantive motion has carried and there are motions to amend the substantive motion that have not been put to a vote, the motions to amend shall not be put to a vote.

Putting non-debatable motion to vote

(4) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Putting debatable motion to vote

28. (1) Subject to subsections (2), (3) and (4), the Treasurer shall put a motion which may be debated to a vote when he or she is of the opinion that debate on the motion has been concluded.

Motion to amend accepted

(2) A motion to amend shall not be put to a vote if,

- (a) the benchers who moved and seconded a main motion consent to that motion being amended as proposed in the motion to amend; and
- (b) no other bencher who is entitled to vote in Convocation and who is present when the motion to amend is made objects to the main motion being amended as proposed in the motion to amend.

Motion to put substantive motion to vote

(3) Where a motion to put a substantive motion to a vote has carried, the Treasurer shall put the substantive motion to a vote immediately thereafter.

Motions to amend not put

(4) Where a substantive motion has carried and there are motions to amend the substantive motion that have not been put to a vote, the motions to amend shall not be put to a vote.

Putting non-debatable motion to vote

(5) The Treasurer shall put a motion which may not be debated to a vote immediately after the motion has received a seconder.

Treasurer may not vote

29. The Treasurer shall not vote on a motion except in the case of a tie when the Treasurer shall give a casting vote.

Proxy voting prohibited

30. Votes may not be cast by proxy.

Manner of voting

31. Voting shall be by a show of hands unless a recorded vote is required by the Treasurer or called for by a bencher entitled to vote in Convocation.

Recorded vote

32. (1) A recorded vote may be required by the Treasurer or called for by a bencher entitled to vote in Convocation either before a motion is put to a vote or immediately after the motion has been voted on by a show of hands.

Manner of conducting recorded vote

(2) When a recorded vote has been required or called for, the Treasurer shall put the subject motion to the meeting and the Secretary shall then call out the names of all benchers entitled to vote in Convocation and upon hearing his or her name, a bencher shall state his or her vote or if wishing not to vote shall state his or her abstention from the vote.

Resolution

33. A motion put to a meeting of Convocation shall carry if a majority of the votes cast are in favour of the motion.

## COMMITTEE OF THE WHOLE

Committee of the Whole

34. (1) At any time, the Treasurer may require a meeting of Convocation to resolve itself into a committee of the whole to consider any matter before the meeting at the time.

Appointment of chair

(2) Immediately after announcing his or her decision to require a meeting of Convocation to resolve itself into a committee of the whole, or, if there is an appeal of the Treasurer's decision, immediately after the decision is upheld, the Treasurer shall appoint a bencher as chair of the committee of the whole and shall then leave the chair.

Appointed bencher takes chair

(3) When the Treasurer leaves the chair, the bencher appointed as chair of the committee of the whole shall take the chair whereupon the meeting of Convocation resolves itself into a committee of the whole.

Rules of procedure

(4) Section 24 of the Act and section 6, subsection 11 (1) and sections 13 to 33 of this By-Law apply with necessary modifications to proceedings of a committee of the whole as if a reference to the Treasurer in those provisions were a reference to the chair of the committee of the whole.

Treasurer resumes chair

(5) When a committee of the whole has completed its proceedings, the chair of the committee shall leave the chair and the Treasurer shall then resume the chair whereupon the meeting of Convocation shall resume as such.

## Report to meeting

(6) When a meeting of Convocation resumes after it has sat as a committee of the whole, the chair of the committee shall report to the meeting on the proceedings of the committee and shall move any motion necessary to permit the meeting to give effect to the proceedings of the committee.

It was moved by Mr. MacKenzie, seconded by Ms. Ross that Convocation approve an amended By-Law 8 as set out in Appendix 1 of the Report.

It was moved by Mr. Ducharme, seconded by Mr. Porter that the Report be tabled.

Carried

ROLL-CALL VOTE

Arnup	Abstain	MacKenzie	Abstain
Bindman	For	Marrocco	For
Carpenter-Gunn	For	Millar	Against
Cherniak	For	Minor	Against
Crowe	For	Porter	For
Curtis	For	Potter	For
Diamond	For	Puccini	For
Ducharme	For	Ross	Against
Feinstein	For	Swaye	For
Finlayson	For	Topp	For
Gottlieb	For	Wright	Against
Laskin	Against		

Vote: 16 For; 5 Against; 2 Abstentions

REPORT OF THE INTER-JURISDICTIONAL MOBILITY COMMITTEE

Mr. Millar presented the Report of the Inter-Jurisdictional Mobility Committee for approval by Convocation.

Report to Convocation  
April 25, 2003

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Inter-Jurisdictional Mobility Committee

Purpose of the Report: Decision

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

OVERVIEW OF POLICY ISSUE

BY-LAW AND FEES RESPECTING FOREIGN LEGAL CONSULTANTS

### Request to Convocation

1. That Convocation approve the Motion containing the proposed By-law on Foreign Legal Consultants set out at Appendix 2.
2. That Convocation approve the recommendation that the application fee to become a Foreign Legal Consultant should be in the amount of \$500 plus GST and the annual renewal fee should be \$100 plus GST.

### Summary of the Issue

3. In November 2002 Convocation approved changes to the Law Society's policy on Foreign Legal Consultants (FLCs).
4. Pursuant to section 62. (0.1) of the *Law Society Act*, Convocation may make by-laws with respect to regulating FLCs.
5. Appendix 2 contains the proposed By-law that implements the policy Convocation approved in November 2002.
6. Pursuant to the proposed By-law there will be an application fee and annual renewal fee for those seeking to become and continue to be licensed as FLCs. Pursuant to the proposed By-law the fee is to be set in an amount approved by Convocation. The proposed application and renewal fees are discussed in paragraphs 18-24 of the report.

## THE REPORT

### Terms of Reference /Committee Process

7. On March 27, 2003 Committee members Derry Millar (Chair), Gavin MacKenzie, Gillian Diamond, Abe Feinstein, and George Hunter considered the proposed By-law and proposed fees.
8. The Committee is reporting on the following matters:

#### Policy – For Decision

- By-law Respecting Foreign Legal Consultants
- Fees Respecting Foreign Legal Consultants

### BY-LAW AND FEES RESPECTING FOREIGN LEGAL CONSULTANTS

#### (a) The By-law

9. In November 2002 Convocation approved changes to the Law Society's policy on Foreign Legal Consultants (FLCs). Appendix 1 contains the summary of the revised approved policy.
10. Pursuant to section 62. (0.1) of the *Law Society Act*, Convocation may make by-laws with respect to regulating FLCs as follows:

*Pursuant to section 62. (0.1) Convocation may make by-laws,*

*14. prescribing fees and levies relating to the functions of the Society, including fees for late compliance with any obligation, that must be paid to the Society by,*

...

*iv. persons who give legal advice respecting the law of a jurisdiction outside Canada, and applicants for licences to give such advice,*

*33. regulating the giving of legal advice respecting the law of a jurisdiction outside Canada, including requiring a licence issued by the Society, governing the issuance, renewal, suspension and revocation of licences and governing the terms and conditions that may be imposed on licences;*

11. Appendix 2 contains the proposed By-law that implements the policy Convocation approved in November 2002.
12. One of the proposed By-law provisions states that an FLC must have  
  
defalcation coverage that specifically extends to money or other property that may be received by the person in connection with the giving of legal advice in Ontario respecting the law of the foreign jurisdiction and is at least equivalent to the coverage available to a member with respect to the member's practice of law in Ontario.
13. Convocation approved this requirement in November 2002, as part of the revised FLC policy. Pursuant to the 1988 policy, FLCs licensed in the province were not required to have defalcation coverage. As such, those currently licensed and any new applicants will have to make arrangements for such coverage.
14. The Committee is aware that defalcation insurance may not be as easy for some foreign lawyers to arrange as for others, depending upon the size of the foreign law firm with which they are associated.
15. In the course of inquiries the Alberta law society made on this subject, it considered information it obtained that possibly only foreign lawyers from firms large enough to have theft coverage for their employees might be able to afford such coverage. As well, the coverage might not be as broad as that envisioned in defalcation insurance plans. Despite this information Alberta requires that FLCs carry defalcation insurance, in the public interest. As a result of similar inquiries the Law Society of British Columbia made and similar responses, it does not require FLCs to carry such coverage. The basis for this appears to be that since FLCs are not permitted to hold trust funds there is little risk of defalcation.
16. In November the Committee recommended and Convocation agreed that to protect the public defalcation coverage should be a requirement of the FLC policy. The proposed By-law reflects this decision. The Committee is of the view, however, that nothing in the By-law would preclude a re-examination of the issue in the future should circumstances warrant such a re-examination.
17. The proposed By-law also includes transitional provisions to address the situation of lawyers who are already FLCs when the proposed By-law comes into effect.

#### Request to Convocation

18. That Convocation approve the Motion containing the proposed By-law on Foreign Legal Consultants set out at Appendix 2.
- (b) FLC Fees
19. Under the 1988 policy a lawyer seeking to become an FLC was required to file an initial application to become licensed as an FLC in Ontario, but was not required to renew the license regularly or pay any fees. The amendments to the policy approved in November 2002 provide for a written application and annual renewal, as well as fees for each process, as determined from time to time by Convocation.

20. A search of the websites for the provinces of British Columbia, Manitoba, and Nova Scotia reveal that they all have an FLC application fee of \$500 and an annual renewal fee of \$100. The province of Alberta has an application fee of \$540 and an annual renewal fee of \$110. The province of British Columbia also has a \$100 late payment fee authorized by its legislation.
21. The Law Society of Upper Canada charges fees for a number of application processes. Examples of such fees include,
  - a. \$250 for the application to become a professional corporation;
  - b. \$250 for the initial application to become an MDP with one partner and \$50 for each additional person seeking to become a partner of the MDP;
  - c. \$250 to become a lawyer on the lawyer referral service;
  - d. \$321 for each application to become a specialist in an area of law and an annual fee of \$214 over each of the five years of the certification.
22. All Law Society fees are subject to GST.
23. In considering what might be the appropriate fees to charge, it is helpful to consider the nature of the administrative work involved in dealing with FLCs. Unlike applications made by members of the Law Society of Upper Canada, FLCs are not members. The Law Society must obtain information about them from other jurisdictions. Moreover, whereas under the 1988 policy FLCs were not required to renew their licences and they were not tracked once they were granted the initial licence, the new system will require the Law Society to maintain ongoing records for each FLC, track any issues arising with respect to them and process renewal applications yearly.
24. Given this and recognizing that other jurisdictions have similar processes, the Committee is of the view that it is more appropriate to charge \$500 for the initial application for a licence and \$100 for each annual renewal, than the lower fees charged for other applications as described above. Should it become clear, after a period of time processing applications and renewals, that the fees are either too high or too low, a request can be made to Convocation to amend the fee.

Request to Convocation

25. That Convocation approve the recommendation that the application fee to become a Foreign Legal Consultant should be in the amount of \$500 plus GST and the annual renewal fee should be \$100 plus GST.

APPENDIX 1

FOREIGN LEGAL CONSULTANTS APPROVED POLICY

(\* indicates provisions in 1988 policy)

The Committee's proposal includes the principle of reciprocity, namely that lawyers from foreign jurisdictions who wish to become registered as FLCs in Ontario may only do so if Ontario lawyers are entitled to FLC privileges in that foreign jurisdiction on a similar basis to that available to FLCs in Ontario.

The proposal is as follows:

Ontario lawyers in good standing who are also members of a foreign jurisdiction will be entitled to practise Ontario law and be licensed as foreign legal consultants (FLCs). This has not been permitted under the current policy.

Ontario lawyers will be entitled to employ, partner, associate, or affiliate with FLCs in Ontario, provided this is done in accordance with Law Society By-Laws. This has not been permitted under the current policy.

To become an FLC a lawyer, whether or not he or she is also a member of the Ontario bar, will,

- a. Apply in writing to be licensed;
  - b. Pay an application fee;
  - c. Provide information and consent to the disclosure of information from third parties in support of the application;
  - d. Renew the licence each year prior to expiration by completing the appropriate form;
- agree not to accept, hold, transfer or in any other manner deal with funds that would, if accepted, held, transferred or dealt with by a member, constitute trust funds;
  - submit to the Law Society's jurisdiction and comply with all Acts, rules, by-

e. Pay a renewal fee.

To be eligible for a licence as an FLC a lawyer must,

- have been actively engaged in the practice of law in the foreign jurisdiction for three of the last five years or, if fewer years than that, be supervised by an approved FLC;\*
  - be of good character; \*
  - be in good standing in the jurisdiction or jurisdictions in which he or she is a member;
  - maintain professional liability insurance for giving legal advice in Ontario respecting the law of the FLC's foreign jurisdiction, at least equivalent to that required of a member under the Society's insurance plan;\*
  - maintain defalcation coverage that specifically extends to money or other property that may be received by the person in respect of the giving of legal advice in Ontario respecting the law of the FLC's foreign jurisdiction and have coverage at least equivalent to the coverage available to a member;
  - be resident in Ontario; \*
- laws, and regulations, and rules of professional conduct; \*
- not in any way hold him/herself out as a member of the Ontario bar or qualified to act as a member of the Ontario bar \* (unless he or she is such a member);
  - state on all letterhead, advertising, and signs that he or she is an FLC and the



- name of the jurisdiction in which he or she is qualified to practise law; \*
- not represent clients in any court or public administrative body and not participate in the preparation of documents or instruments governed by the laws of Ontario unless the client retains an Ontario lawyer to act as well; \*
  - notify the Law Society promptly if he or she fails to complete, satisfactorily, any CLE requirements of home jurisdiction;
  - pay a licence fee in an amount determined by Convocation.

FLCs should be subject to the conduct, competence and capacity provisions of the *Law Society Act* and relevant accompanying provisions.

FLC licences should be subject to a regular mechanism for determining whether a licence should be renewed; renewed with terms; refused; or revoked during its term where an FLC is suspended or restricted under the conduct, capacity or competence provisions of the Act or where an FLC ceases to comply with the specified requirements for FLCs.

## APPENDIX 2

## THE LAW SOCIETY OF UPPER CANADA

BY-LAWS MADE UNDER  
SUBSECTION 62 (0.1) AND (1) OF THE LAW SOCIETY ACTMOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 25, 2003

MOVED BY

SECONDED BY

THAT, pursuant to the authority contained in paragraphs 14 and 33 of subsection 62 (0.1) of the *Law Society Act*, a by-law be made as follows:

## FOREIGN LEGAL CONSULTANTS

## Definitions

1. (1) In this by-law,

“foreign jurisdiction” means a jurisdiction outside Canada;

“Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members;

“Society official” means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

## Interpretation: giving legal advice

(2) For greater certainty, in this By-Law, giving legal advice in Ontario respecting the law of a foreign jurisdiction does not include,

- (a) appearing in Ontario on behalf of a person in a federal or provincial court or before a tribunal established under an Act of Parliament or the Legislature in Ontario;
- (b) preparing a document for use in a proceeding in Ontario in a federal or provincial court or before a tribunal established under an Act of Parliament or the Legislature in Ontario; or
- (c) preparing a document that relates to or deals with the laws of Ontario or the laws of Canada applicable in Ontario.

## Prohibition against giving foreign legal advice

2. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction except in accordance with this By-Law.

## Insurance and defalcation coverage

3. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law unless the person,

- (a) has professional liability insurance coverage for the giving of legal advice in Ontario respecting the law of the foreign jurisdiction which is at least equivalent to that required of a member under the Society’s insurance plan for the member’s practice of law in Ontario; and
- (b) has defalcation coverage which specifically extends to money or other property that may be received by the person in connection with the giving of legal advice in Ontario respecting the law

of the foreign jurisdiction and is at least equivalent to the coverage available to a member with respect to the member's practice of law in Ontario.

Application of Act, *etc.*

4. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the Rules of Professional Conduct apply, with necessary modifications, to a person who gives legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law.

Conflict

(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law or any Rule of Professional Conduct, the provisions of this By-Law prevail.

Application

5. (1) This section applies to a person if the foreign jurisdiction in respect of the law of which the person wishes to give legal advice in Ontario has provisions respecting the giving of legal advice by a member in that jurisdiction respecting the law of Ontario or Canada that are reasonably comparable to the provisions contained in this section.

Persons authorized to give foreign legal advice

(2) A person other than a member may give legal advice in Ontario respecting the law of a foreign jurisdiction if the person meets the following conditions:

1. The person is resident in Ontario.
2. The person is authorized to practise law in the foreign jurisdiction.
3. The person is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the person is a member.
4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
5. The person is of good character.
6. For a period totalling at least three years within the five-year period immediately before the person applies to be licensed as a foreign legal consultant, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Same

(3) A person other than a member may, under the direct supervision of a person qualified under subsection (2) or (4) to give legal advice in Ontario respecting the law of a foreign jurisdiction, give legal advice in Ontario respecting the law of the same foreign jurisdiction if the person meets the following conditions:

1. The person is resident in Ontario.
2. The person is authorized to practise law in the foreign jurisdiction.
3. The person is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the person is a member.
4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
5. The person is of good character.

6. For any period of time within the five-year period immediately before the person applies to be licensed as a foreign legal consultant, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Members authorized to give foreign legal advice

(4) A member may give legal advice in Ontario respecting the law of a foreign jurisdiction if the member meets the following conditions:

1. The member is resident in Ontario.
2. The member is authorized to practise law in the foreign jurisdiction.
3. The member is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the member is a member.
4. The member has no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in the foreign jurisdiction.

Application to Society

6. (1) A person, including a member, who wishes to give legal advice in Ontario respecting the law of a foreign jurisdiction shall apply in writing to the Society to be licensed as a foreign legal consultant.

Application fee

(2) Every application under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

Documents, explanations, releases, *etc.*

(3) For the purposes of assisting the Society to consider an application under subsection (1), the applicant shall provide,

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

Application to be considered by Society official

(4) Every application under subsection (1), in respect of which the application fee required under subsection (2) has been paid, shall be considered by a Society official, and,

- (a) if the Society official is satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, the Society official shall notify the applicant in writing that, upon payment of the licence fee, he or she will be licensed as a foreign legal consultant; or
- (b) if the Society official is not satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, the Society official shall notify the applicant in writing that his or her application to be licensed as a foreign legal consultant has been rejected.

Application to committee of benchers

(5) If a Society official rejects the application of a person to be licensed as a foreign legal consultant, the person may apply to a committee of benchers appointed for the purpose by Convocation for a reconsideration of his or her application to be licensed as a foreign legal consultant.

Time for application

(6) An application under subsection (5) shall be commenced by the person notifying a Society official in writing of the application within thirty days after the day the person receives notice of the Society official's rejection of the person's application to be licensed as a foreign legal consultant.

#### Parties

- (7) The parties to an application under subsection (5) are the applicant and the Society.

#### Quorum

- (8) An application under subsection (5) shall be considered and determined by at least three members of the committee of benchers.

#### Procedure

- (9) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (5) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

#### Same

- (10) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (5).

#### Decision on application

- (11) After considering an application under subsection (5), the committee of benchers shall,
- (a) if the committee is satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, direct a Society official to notify the applicant in writing that, upon payment of the licence fee, he or she will be licensed as a foreign legal consultant; or
  - (b) if the committee is not satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, direct a Society official to notify the applicant in writing that his or her application to be licensed as a foreign legal consultant has been rejected.

#### Decision final

- (12) The decision of the committee of benchers on an application under subsection (5) is final.

#### Conditions

7. (1) A licence issued to a person who qualified for the licence by meeting the conditions set out in subsection 5 (3) is subject to the condition that the person shall only provide legal advice in Ontario respecting the law of a foreign jurisdiction under the direct supervision of another person who is licensed as a foreign legal consultant to provide legal advice in Ontario respecting the law of the same foreign jurisdiction and who qualified for the licence by meeting the conditions set out in subsection 5 (2) or (4).

#### Same

- (2) A licence issued to a person who qualifies to provide legal advice in Ontario respecting the law of a foreign jurisdiction may include such terms and conditions as the Society official or the committee of benchers, as the case may be, considers appropriate.

#### Validity of licence

8. (1) Subject to its being revoked, a person's licence as a foreign legal consultant is valid for one year after the day on which it comes into effect.

#### Renewal of licence

- (2) Before expiry of a person's licence as a foreign legal consultant, the person may apply for its renewal and sections 6 and 7 apply, with necessary modifications, to an application for renewal.

#### Licence fee

9. The licence fee to be paid by a person who qualifies to be licensed as a foreign legal consultant shall be in an amount determined by Convocation from time to time.

#### Revocation of licence

10. A person's licence as a foreign legal consultant is automatically revoked immediately the person fails to comply with any of the conditions set out in subsection 5 (2), (3) or (4), as the case may be, fails to comply with any condition imposed on the person's licence, fails to comply with section 3 or fails to comply with section 13.

#### Handling of money and other property

11. A person who is licensed as a foreign legal consultant shall not in connection with the giving of legal advice in Ontario respecting the law of a foreign jurisdiction receive money or other property in trust for a person or otherwise handle money or other property that is held in trust for a person.

#### Marketing of Services

12. (1) A person who is licensed as a foreign legal consultant shall, when advertising or otherwise marketing his or her services as a foreign legal consultant, refer to him or herself as a foreign legal consultant, state the jurisdiction in respect of the law of which he or she is qualified to give legal advice in Ontario and state the professional title applicable to him or her in that jurisdiction.

#### Same

(2) A person, other than a member, who is licensed as a foreign legal consultant shall not, when advertising or otherwise marketing his or her services as a foreign legal consultant, use any designation or make any representation from which a person might reasonably conclude that the foreign legal consultant is a member.

#### Report to Society

13. A person who is licensed as a foreign legal consultant shall notify the Society immediately the person fails to comply with the continuing legal education requirements of any governing body of the legal profession of which the person is a member.

#### Transition

14. (1) Despite sections 5 and 6, if, before the day this By-Law comes into force, a person was expressly permitted by the Society to give legal advice in Ontario respecting the law of a foreign jurisdiction, the person shall be deemed to be licensed by the Society as a foreign legal consultant under this By-Law if,

- (a) section 5 would otherwise apply to the person; and
- (b) the person pays the licence fee.

#### Conditions

(2) A person deemed under subsection (1) to be licensed by the Society as a foreign legal consultant under this By-Law shall be subject to all terms and conditions subject to which the person was permitted by the Society to give legal advice in Ontario respecting the law of a foreign jurisdiction before the day this By-Law came into force.

#### Validity of licence

(3) For the purposes of section 8, the licence of a person deemed under subsection (1) to be licensed by the Society as a foreign legal consultant under this By-Law comes into effect on the day on which the person pays the licence fee.

#### Revocation of subs. (1)

- (4) Subsection (1) is automatically revoked on January 1, 2004.

#### Re: Foreign Legal Consultants By-Law

It was moved by Mr. Millar, seconded by Mr. MacKenzie that Convocation approve the proposed By-Law (English and French version) related to Foreign Legal Consultants set out in the Addendum.

Carried

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

THAT, pursuant to the authority contained in paragraphs 14 and 33 of subsection 62 (0.1) of the *Law Society Act*, a by-law be made as follows:

FOREIGN LEGAL CONSULTANTS

Definitions

1. (1) In this by-law,

“foreign jurisdiction” means a jurisdiction outside Canada;

“Society’s insurance plan” means the Society’s professional liability insurance plan and includes any professional liability insurance policy which the Society may have arranged for its members;

“Society official” means an officer or employee of the Society assigned by the Chief Executive Officer the responsibility of administering and enforcing the provisions of this By-Law.

Interpretation: giving legal advice

(2) For greater certainty, in this By-Law, giving legal advice in Ontario respecting the law of a foreign jurisdiction does not include,

- (a) appearing in Ontario on behalf of a person in a federal or provincial court or before a tribunal established under an Act of Parliament or the Legislature in Ontario;
- (b) preparing a document for use in a proceeding in Ontario in a federal or provincial court or before a tribunal established under an Act of Parliament or the Legislature in Ontario; or
- (c) preparing a document that relates to or deals with the laws of Ontario or the laws of Canada applicable in Ontario.

Prohibition against giving foreign legal advice

2. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction except in accordance with this By-Law.

Insurance and defalcation coverage

3. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law unless the person,

- (a) has professional liability insurance coverage for the giving of legal advice in Ontario respecting the law of the foreign jurisdiction which is at least equivalent to that required of a member under the Society’s insurance plan for the member’s practice of law in Ontario; and
- (b) has defalcation coverage which specifically extends to money or other property that may be received by the person in connection with the giving of legal advice in Ontario respecting the law of the foreign jurisdiction and is at least equivalent to the coverage available to a member with respect to the member’s practice of law in Ontario.

Application of Act, etc.

4. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the Rules of Professional Conduct apply, with necessary modifications, to a person who gives legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law.

#### Conflict

(2) In the event of a conflict between the provisions of this By-Law and the provisions of any other by-law or any Rule of Professional Conduct, the provisions of this By-Law prevail.

#### Application

5. (1) This section applies to a person if the foreign jurisdiction in respect of the law of which the person wishes to give legal advice in Ontario has provisions respecting the giving of legal advice by a member in that jurisdiction respecting the law of Ontario or Canada that are reasonably comparable to the provisions contained in this section.

#### Persons authorized to give foreign legal advice

(2) A person other than a member may give legal advice in Ontario respecting the law of a foreign jurisdiction if the person meets the following conditions:

1. The person is resident in Ontario.
2. The person is authorized to practise law in the foreign jurisdiction.
3. The person is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the person is a member.
4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
5. The person is of good character.
6. For a period totalling at least three years within the five-year period immediately before the person applies to be licensed as a foreign legal consultant, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

#### Same

(3) A person other than a member may, under the direct supervision of a person qualified under subsection (2) or (4) to give legal advice in Ontario respecting the law of a foreign jurisdiction, give legal advice in Ontario respecting the law of the same foreign jurisdiction if the person meets the following conditions:

1. The person is resident in Ontario.
2. The person is authorized to practise law in the foreign jurisdiction.
3. The person is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the person is a member.
4. The person has no terms, conditions, limitations or restrictions imposed on the person's authorization to practise law in the foreign jurisdiction.
5. The person is of good character.
6. For any period of time within the five-year period immediately before the person applies to be licensed as a foreign legal consultant, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

#### Members authorized to give foreign legal advice



(4) A member may give legal advice in Ontario respecting the law of a foreign jurisdiction if the member meets the following conditions:

1. The member is resident in Ontario.
2. The member is authorized to practise law in the foreign jurisdiction.
3. The member is not the subject of any order made against the person by a tribunal of any governing body of the legal profession of which the member is a member.
4. The member has no terms, conditions, limitations or restrictions imposed on the member's authorization to practise law in the foreign jurisdiction.

#### Application to Society

6. (1) A person, including a member, who wishes to give legal advice in Ontario respecting the law of a foreign jurisdiction shall apply in writing to the Society to be licensed as a foreign legal consultant.

#### Application fee

(2) Every application under subsection (1) shall be accompanied by an application fee in an amount determined by Convocation from time to time.

#### Documents, explanations, releases, *etc.*

(3) For the purposes of assisting the Society to consider an application under subsection (1), the applicant shall provide,

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

#### Application to be considered by Society official

(4) Every application under subsection (1), in respect of which the application fee required under subsection (2) has been paid, shall be considered by a Society official, and,

- (a) if the Society official is satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, the Society official shall notify the applicant in writing that, upon payment of the licence fee, he or she will be licensed as a foreign legal consultant; or
- (b) if the Society official is not satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, the Society official shall notify the applicant in writing that his or her application to be licensed as a foreign legal consultant has been rejected.

#### Application to committee of benchers

(5) If a Society official rejects the application of a person to be licensed as a foreign legal consultant, the person may apply to a committee of benchers appointed for the purpose by Convocation for a reconsideration of his or her application to be licensed as a foreign legal consultant.

#### Time for application

(6) An application under subsection (5) shall be commenced by the person notifying a Society official in writing of the application within thirty days after the day the person receives notice of the Society official's rejection of the person's application to be licensed as a foreign legal consultant.

#### Parties

- (7) The parties to an application under subsection (5) are the applicant and the Society.

#### Quorum

(8) An application under subsection (5) shall be considered and determined by at least three members of the committee of benchers.

#### Procedure

(9) The rules of practice and procedure apply, with necessary modifications, to the consideration by the committee of benchers of an application under subsection (5) as if the consideration of the application were the hearing of an application for admission under section 27 of the Act.

#### Same

(10) Where the rules of practice and procedure are silent with respect to a matter of procedure, the *Statutory Powers Procedure Act* applies to the consideration by the committee of benchers of an application under subsection (5).

#### Decision on application

(11) After considering an application under subsection (5), the committee of benchers shall,

- (a) if the committee is satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, direct a Society official to notify the applicant in writing that, upon payment of the licence fee, he or she will be licensed as a foreign legal consultant; or
- (b) if the committee is not satisfied that the conditions set out in subsection 5 (2), (3) or (4), as the case may be, are met, direct a Society official to notify the applicant in writing that his or her application to be licensed as a foreign legal consultant has been rejected.

#### Decision final

(12) The decision of the committee of benchers on an application under subsection (5) is final.

#### Conditions

7. (1) A licence issued to a person who qualified for the licence by meeting the conditions set out in subsection 5 (3) is subject to the condition that the person shall only provide legal advice in Ontario respecting the law of a foreign jurisdiction under the direct supervision of another person who is licensed as a foreign legal consultant to provide legal advice in Ontario respecting the law of the same foreign jurisdiction and who qualified for the licence by meeting the conditions set out in subsection 5 (2) or (4).

#### Same

(2) A licence issued to a person who qualifies to provide legal advice in Ontario respecting the law of a foreign jurisdiction may include such terms and conditions as the Society official or the committee of benchers, as the case may be, considers appropriate.

#### Validity of licence

8. (1) Subject to its being revoked, a person's licence as a foreign legal consultant is valid for one year after the day on which it comes into effect.

#### Renewal of licence

(2) Before expiry of a person's licence as a foreign legal consultant, the person may apply for its renewal and sections 6 and 7 apply, with necessary modifications, to an application for renewal.

#### Licence fee

9. The licence fee to be paid by a person who qualifies to be licensed as a foreign legal consultant shall be in an amount determined by Convocation from time to time.

#### Revocation of licence

10. A person's licence as a foreign legal consultant is automatically revoked immediately the person fails to comply with any of the conditions set out in subsection 5 (2), (3) or (4), as the case may be, fails to comply with any condition imposed on the person's licence, fails to comply with section 3 or fails to comply with section 13.

#### Handling of money and other property

11. A person who is licensed as a foreign legal consultant shall not in connection with the giving of legal advice in Ontario respecting the law of a foreign jurisdiction receive money or other property in trust for a person or otherwise handle money or other property that is held in trust for a person.

#### Marketing of Services

12. (1) A person who is licensed as a foreign legal consultant shall, when advertising or otherwise marketing his or her services as a foreign legal consultant, refer to him or herself as a foreign legal consultant, state the jurisdiction in respect of the law of which he or she is qualified to give legal advice in Ontario and state the professional title applicable to him or her in that jurisdiction.

#### Same

(2) A person, other than a member, who is licensed as a foreign legal consultant shall not, when advertising or otherwise marketing his or her services as a foreign legal consultant, use any designation or make any representation from which a person might reasonably conclude that the foreign legal consultant is a member.

#### Report to Society

13. A person who is licensed as a foreign legal consultant shall notify the Society immediately the person fails to comply with the continuing legal education requirements of any governing body of the legal profession of which the person is a member.

#### Transition

14. (1) Despite sections 5 and 6, if, before the day this By-Law comes into force, a person was expressly permitted by the Society to give legal advice in Ontario respecting the law of a foreign jurisdiction, the person shall be deemed to be licensed by the Society as a foreign legal consultant under this By-Law if,

- (a) section 5 would otherwise apply to the person; and
- (b) the person pays the licence fee.

#### Conditions

(2) A person deemed under subsection (1) to be licensed by the Society as a foreign legal consultant under this By-Law shall be subject to all terms and conditions subject to which the person was permitted by the Society to give legal advice in Ontario respecting the law of a foreign jurisdiction before the day this By-Law came into force.

#### Validity of licence

(3) For the purposes of section 8, the licence of a person deemed under subsection (1) to be licensed by the Society as a foreign legal consultant under this By-Law comes into effect on the day on which the person pays the licence fee.

#### Revocation of subs. (1)

- (4) Subsection (1) is automatically revoked on January 1, 2004.

### CONSEILLER JURIDIQUE ÉTRANGER

#### Définitions

1. (1) Dans le présent règlement administratif :

« régime d'assurance du Barreau » signifie le régime d'assurance responsabilité professionnelle du Barreau et comprend toute police d'assurance responsabilité professionnelle que le Barreau peut avoir souscrit pour ses membres;

« responsable du Barreau » La personne que le directeur général ou la directrice générale charge d'appliquer les dispositions du présent règlement administratif;

« territoire étranger » signifie un territoire à l'extérieur du Canada.

Interprétation : avis juridique

(2) Dans le présent règlement administratif, donner un avis juridique en Ontario à l'égard d'une loi d'un territoire étranger exclut :

- a) la comparution en Ontario au nom d'une personne devant un tribunal fédéral ou provincial ou un tribunal administratif créé en vertu d'une loi fédérale ou provinciale;
- b) la préparation d'un document qui est destiné à être utilisé dans une instance, en Ontario, devant un tribunal fédéral ou provincial ou un tribunal administratif créé en vertu d'une loi fédérale ou provinciale;
- c) la préparation d'un document qui concerne ou touche une loi fédérale ou provinciale applicable en Ontario.

Interdiction de donner un avis juridique à l'égard d'une loi d'un territoire étranger

2. Nul ne peut donner un avis juridique en Ontario à l'égard d'une loi d'un territoire étranger si ce n'est conformément au présent règlement.

Assurance et protection contre les détournements de fonds

3. Nul ne peut donner un avis juridique en Ontario à l'égard d'une loi d'un territoire étranger en vertu du présent règlement, sauf la personne qui possède :

- a) une assurance responsabilité professionnelle dont la protection est au moins équivalente à celle exigée d'un membre pour qu'il puisse exercer le droit en Ontario en vertu du régime d'assurance du Barreau, en ce qui concerne des avis juridiques donnés en Ontario à l'égard d'une loi d'un territoire étranger;
- b) une protection contre les détournements de fonds qui vise précisément l'argent ou d'autres biens qui peuvent avoir été reçus par la personne relativement aux avis juridiques donnés en Ontario à l'égard d'une loi d'un territoire étranger et qui est au moins équivalente à celle offerte à un membre qui exerce le droit en Ontario.

Application de la Loi, etc.

4. (1) La Loi et ses règlements d'application, les règlements administratifs, les règles de pratique et de procédure et le *Code de déontologie* s'appliquent, avec les adaptations nécessaires, à la personne qui donne, en vertu du présent règlement, des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger.

Incompatibilité

(2) En cas d'incompatibilité entre les dispositions du présent règlement et les dispositions de tout autre règlement administratif ou une règle du *Code de déontologie*, les dispositions du présent règlement l'emportent.

Application

5. (1) Le présent article s'applique à une personne si le territoire étranger dont relève la loi à l'égard de laquelle la personne souhaite donner un avis juridique en Ontario possède des dispositions concernant les avis juridiques donnés par un membre de ce territoire à l'égard d'une loi de l'Ontario ou du Canada qui sont raisonnablement comparables aux dispositions que renferme le présent article.

Personne autorisée à donner des avis juridiques à l'égard d'une loi d'un territoire étranger

(2) Une personne autre qu'un membre peut donner un avis juridique en Ontario à l'égard d'une loi d'un territoire étranger si cette personne satisfait aux conditions suivantes :

- 1. elle réside en Ontario;

2. elle est autorisée à exercer le droit dans le territoire étranger;
3. elle ne fait pas l'objet d'une ordonnance émise à son endroit par un tribunal ou un corps de réglementation de la profession juridique dont elle est membre;
4. elle n'est pas visée par des modalités, des conditions, des limites ou des restrictions imposées sur son autorisation d'exercer le droit dans le territoire étranger;
5. elle est de bonnes mœurs;
6. elle a exercé légalement le droit dans le territoire étranger pendant au moins trois années au cours des cinq années qui précèdent immédiatement sa demande d'obtention d'une licence de conseiller juridique étranger.

Idem

(3) Une personne autre qu'un membre peut, sous la supervision directe d'une personne qualifiée pour donner, en vertu du paragraphe (2) ou (4), des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger, donner des avis juridiques en Ontario à l'égard d'une loi du même territoire étranger si elle satisfait aux conditions suivantes :

1. elle réside en Ontario;
2. elle est autorisée à exercer le droit dans le territoire étranger;
3. elle ne fait pas l'objet d'une ordonnance émise à son endroit par un tribunal ou un corps de réglementation de la profession juridique dont elle est membre;
4. elle n'est pas visée par des modalités, des conditions, des limites ou des restrictions imposées sur son autorisation d'exercer le droit dans le territoire étranger;
5. elle est de bonnes mœurs;
6. elle a exercé légalement le droit dans le territoire étranger pendant une période quelconque au cours des cinq années qui précèdent immédiatement sa demande d'obtention d'une licence de conseiller juridique étranger.

Membre autorisé à donner des avis juridiques

(4) Un membre peut donner des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger s'il satisfait aux conditions suivantes :

1. il réside en Ontario;
2. il est autorisé à exercer le droit dans le territoire étranger;
3. il ne fait pas l'objet d'une ordonnance émise à son endroit par un tribunal ou un corps de réglementation de la profession juridique dont il est membre;
4. il n'est pas visé par des modalités, des conditions, des limites ou des restrictions imposées sur son autorisation d'exercer le droit dans le territoire étranger.

Demande auprès du Barreau

6. (1) Une personne, y compris un membre, qui souhaite donner des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger demande par écrit au Barreau l'obtention d'une licence de conseiller juridique étranger.

#### Droits

(2) Toute demande présentée en vertu du paragraphe (1) doit être accompagnée des droits de demande dont le montant est déterminé de temps à autre par le Conseil.

#### Documents, explications, renonciations, etc.

(3) Afin d'aider le Barreau à examiner une demande présentée en vertu du paragraphe (1), l'auteur de la demande fournit :

- a) au Barreau, les documents et explications qu'il peut exiger;
- b) à une personne nommée par une ou un responsable du Barreau, les renonciations, instructions et le consentement qui peuvent être exigés afin de permettre à la personne de présenter au Barreau les renseignements qu'il peut exiger.

#### Examen des demandes par un ou une responsable du Barreau

(4) Toute demande présentée en vertu du paragraphe (1) et pour laquelle les droits exigés en vertu du paragraphe (2) ont été versés est examinée par un ou une responsable du Barreau et :

- a) si elle ou il est convaincu que les conditions énoncées au paragraphe 5 (2), (3) ou (4), selon le cas, ont été satisfaites, la ou le responsable du Barreau informe l'auteur de la demande par écrit que, dès que les droits de licence auront été acquittés, il ou elle deviendra conseiller juridique étranger licencié;
- b) si elle ou il n'est pas convaincu que les conditions énoncées au paragraphe 5 (2), (3) ou (4), selon le cas, ont été satisfaites, le ou la responsable du Barreau informe l'auteur de la demande par écrit que sa demande d'obtention d'une licence de conseiller juridique étranger a été rejetée.

#### Demande au comité des conseillers

(5) La personne dont la demande d'obtention d'une licence de conseiller juridique étranger est rejetée par une ou un responsable du Barreau peut présenter sa demande à un comité de conseillers que forme le Conseil pour le réexamen de la demande.

#### Délai pour présenter une demande

- (6) La demande en vertu du paragraphe (5) doit être présentée par écrit au ou à la responsable du Barreau dans les trente jours suivant le jour où la personne a été informée par le ou la responsable du Barreau du rejet de sa demande d'obtention d'une licence de conseiller juridique étranger.

#### Parties

- (7) Les parties à une demande en vertu du paragraphe (5) sont l'auteur de la demande et le Barreau.

#### Quorum

(8) La demande présentée en vertu du paragraphe (5) doit faire l'objet d'un examen et d'une décision par au moins trois membres du comité des conseillers.

#### Règles

(9) Les règles de pratique et de procédure s'appliquent, avec les adaptations nécessaires, à l'examen que fait le comité des conseillers de la demande présentée en vertu du paragraphe (5) comme si cet examen constituait l'audience d'une demande d'admission présentée en vertu du paragraphe 27 de la Loi.

#### Idem

(10) Dans les cas où les règles de pratique et de procédure sont muettes sur une question de procédure, la *Loi sur l'exercice des compétences légales* s'applique à l'examen que fait le comité des conseillers de la demande présentée en vertu du paragraphe (5).

#### Décision concernant la demande

- (11) Après avoir examiné la demande présentée en vertu du paragraphe (5), le comité des conseillers :

- a) s'il est convaincu que les conditions énoncées au paragraphe 5 (2), (3) ou (4), selon le cas, ont été satisfaites, demande à une ou un responsable du Barreau d'informer l'auteur de la demande par écrit que, dès que les droits de licence auront été acquittés, il deviendra conseiller juridique étranger;
- b) s'il n'est pas convaincu que les conditions énoncées au paragraphe 5 (2), (3) ou (4), selon le cas, ont été satisfaites, demande à une ou un responsable du Barreau d'informer l'auteur de la demande par écrit que sa demande d'obtention d'une licence a été rejetée.

#### Caractère définitif de la décision

(12) La décision que rend le comité des conseillers à l'égard d'une demande présentée en vertu du paragraphe (5) est définitive.

#### Conditions

7. (1) Une licence délivrée à une personne satisfaisant aux conditions énoncées au paragraphe 5 (3) est assortie de la condition selon laquelle la personne donne des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger uniquement sous la supervision directe d'une autre personne détentrice d'une licence de conseiller juridique étranger l'autorisant à fournir des avis juridiques en Ontario à l'égard d'une loi du même territoire étranger et qui s'est qualifiée pour obtenir une licence parce qu'elle a satisfait aux conditions énoncées au paragraphe 5 (2) ou (4).

#### Idem

(2) Une licence délivrée à une personne qualifiée pour donner des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger peut renfermer les conditions et modalités que le ou la responsable du Barreau ou le comité des conseillers juge appropriées.

#### Validité de la licence

8. (1) Sous réserve de sa révocation, la licence de conseiller juridique étranger délivrée à une personne est valide pour une année à compter de la date à laquelle elle entre en vigueur.

#### Renouvellement de la licence

(2) La personne qui détient une licence de conseiller juridique étranger peut, avant l'expiration de la licence, présenter une demande de renouvellement. Les articles 6 et 7 s'appliquent, avec les adaptations nécessaires, à une demande de renouvellement.

#### Droits de licence

9. La personne qualifiée pour obtenir une licence de conseiller juridique étranger acquitte les droits de licence dont le montant est déterminé de temps à autre par le Conseil.

#### Révocation de la licence

10. La licence d'un conseiller juridique étranger est automatiquement et immédiatement révoquée lorsque la personne n'observe pas l'une des conditions énoncées au paragraphe 5 (2), (3) ou (4), selon le cas, les conditions imposées sur sa licence, ou l'article 3 ou 13.

#### Manutention d'argent et d'autres biens

11. La personne détentrice d'une licence de conseiller juridique étranger ne doit pas, en ce qui concerne les avis juridiques donnés en Ontario à l'égard d'une loi d'un territoire étranger, recevoir de l'argent ou d'autres biens en fiducie pour le compte d'une personne, ni manutentionner de l'argent ou d'autres biens détenus en fiducie pour le compte d'une personne.

#### Commercialisation des services

12. (1) La personne détentrice d'une licence de conseiller juridique étranger qui annonce ou commercialise ses services d'avis juridiques à l'égard d'une loi d'un territoire étranger précise qu'elle a le titre de conseiller juridique étranger, le territoire dont relève la loi à l'égard de laquelle elle est qualifiée pour donner, en Ontario, de tels avis juridiques et le titre professionnel qu'elle a dans ce territoire.

Idem

(2) Une personne, autre qu'un membre, détentrice d'une licence de conseiller juridique étranger ne doit pas, lorsqu'elle annonce ou commercialise ses services d'avis juridiques à l'égard d'une loi d'un territoire étranger, utiliser une désignation ou faire des déclarations qui pourraient amener une personne à conclure raisonnablement que le conseiller juridique étranger est un membre.

#### Déclaration au Barreau

13. La personne détentrice d'une licence de conseiller juridique étranger informe immédiatement le Barreau si elle ne se conforme pas aux exigences relatives à la formation juridique permanente d'un corps de réglementation de la profession juridique dont la personne est membre.

#### Transition

14. (1) Malgré les articles 5 et 6, si, avant le jour où le présent règlement administratif entre en vigueur, une personne a reçu l'autorisation expresse du Barreau de donner des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger, cette personne est réputée être détentrice d'une licence de conseiller juridique étranger délivrée par le Barreau en vertu du présent règlement si :

- a) l'article 5 peut s'appliquer autrement à cette personne;
- b) la personne verse les droits de licence.

#### Conditions

(2) La personne réputée, en vertu du paragraphe (1), détenir une licence de conseiller juridique étranger du Barreau en vertu du présent règlement, est assujettie aux conditions auxquelles elle est autorisée par le Barreau à donner des avis juridiques en Ontario à l'égard d'une loi d'un territoire étranger avant le jour où le présent règlement est entré en vigueur.

#### Validité de la licence

(3) Aux fins de l'article 8, la licence d'une personne réputée, en vertu du paragraphe (1), détenir une licence de conseiller juridique étranger du Barreau en vertu du présent règlement, entre en vigueur le jour où cette personne acquitte les droits de licence.

#### Révocation du paragraphe (1)

(4) Le paragraphe (1) est automatiquement révoqué le 1<sup>er</sup> janvier 2004.

It was moved by Mr. Millar, seconded by Mr. MacKenzie that the application fee to become a Foreign Legal Consultant should be \$500 plus GST and the annual renewal fee should be \$100 plus GST.

Carried

#### REPORTS FOR INFORMATION ONLY

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

- Report on Equity Initiatives and Resources in the Legal Profession
- Update of Guide to Developing a Policy Regarding Flexible Work Arrangements
- Update of Guide to Developing a Policy Regarding Workplace Equity in Law Firms

Equity and Aboriginal Issues Committee/  
Comité sur l'équité et les affaires autochtones  
April 25, 2003

Report to Convocation



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 9, 2003. Committee members in attendance were Paul Copeland (Chair), Derry Millar (Vice-Chair), Helene Puccini (Vice-Chair), Stephen Bindman, Thomas Carey, Janet Minor and Judith Potter. Others in attendance were Nathalie Boutet (representative of the Association des juristes d'expression française de l'Ontario), Senka Dukovich (representative of the Equity Advisory Group), Jeffery Hewitt (representative of Rotiio<sup>></sup> taties) and staff Josée Bouchard, Laura Cohen, Katherine Corrick, Anne D'Souza, Margaret Froh and Rudy Ticzon.
2. The Committee is reporting on the following matters:

### Information

- *Report on Equity Initiatives and Resources in the Legal Profession*
- *Update of Guide to Developing a Policy Regarding Flexible Work Arrangements*
- *Update of Guide to Developing a Policy Regarding Workplace Equity in Law Firms*
- Upcoming public education events

## INFORMATION

### REPORT ON EQUITY INITIATIVES AND RESOURCES IN THE LEGAL PROFESSION

#### Background

3. From November 21 to 23, 2002 over 60 representatives from organizations from across Canada met at Osgoode Hall in Toronto to establish contacts, create partnerships and discuss strategies and initiatives to promote equity and diversity within the legal profession. The Law Society of Upper Canada, with financial assistance from the Department of Canadian Heritage, hosted the national gathering. The invited participants included representatives from provincial law societies, the judiciary, law students' associations, law schools, government, community groups, human rights commissions and lawyers' associations.
4. The purpose of the gathering was:
  - to provide a forum for informed dialogue on equity and diversity issues facing the legal profession;
  - to bring together key stakeholders in the legal profession to share information about past and current policy and program initiatives to address equity and diversity issues; and
  - to encourage the development of collaborative strategies amongst various stakeholders for future policy and program development.
5. The organizers forwarded a questionnaire to representatives from invited organizations asking them to identify existing practices, successful and less successful initiatives, future strategies and initiatives, needs of communities and organizations and resources available for the development and implementation of equity and diversity initiatives.
6. Responses to the questionnaire served as a basis for sharing information with other participants at the gathering. The agenda for the gathering was developed based on the responses received by stakeholders

and was designed to encourage information sharing between participants. The workshops addressed themes such as principles of equity in legal education and professional development, increasing access of students from equity-seeking communities and Aboriginal and Francophone students, achieving success for the marginalized lawyer, changes to the culture of the legal profession, complaints mechanisms and access to the regulator.

7. The agenda for the gathering included keynote speakers, shorter descriptive presentations, a round table session and a small group workshop session.
8. The Law Society of Upper Canada ensured full coverage of the gathering in the Law Society of Upper Canada Gazette. All sessions were translated in French and English.

#### Report on Equity Initiatives and Resources in the Legal Profession

9. *A Report on Equity Initiatives and Resources in the Legal Profession* has been prepared and will be available in English and French on the Law Society of Upper Canada's website and websites of participating stakeholders. The report will also be available in paper format. The report outlines equity initiatives and resources identified by participating organizations during the consultation process, provides an overview of successful and less successful initiatives, identifies future measures to be undertaken by stakeholders to foster access to the legal profession and discusses needs and resources available for the development and implementation of equity and diversity initiatives. Finally, the report discusses strategies for moving forward and options for future directions.

#### UPDATE TO GUIDE TO DEVELOPING A POLICY REGARDING FLEXIBLE WORK ARRANGEMENTS

10. In 1996, the Law Society of Upper Canada adopted the *Guide to Developing a Policy Regarding Flexible Work Arrangements*.
11. The model policy has been updated to reflect legal developments in human rights and changes to the *Rules of Professional Conduct*.
12. The updated model policy is available in English on the Law Society's website and will be translated into French.

#### UPDATE TO GUIDE TO DEVELOPING A POLICY REGARDING WORKPLACE EQUITY IN LAW FIRMS

13. In 1996, the Law Society of Upper Canada adopted the *Guide to Developing a Policy Regarding Workplace Equity in Law Firms*.
14. The model policy has been updated to reflect legal developments in human rights and changes to the *Rules of Professional Conduct*.
15. The updated model policy is available in English on the Law Society's website and will be translated into French.

#### PUBLIC EDUCATION EVENTS

16. The following schedule identifies public education events to be held between April and July 2003:
  - a. Law Day events: week of April 14, 2003
  - b. Access to Justice Symposium: May 28, 2003
  - c. National Aboriginal Day: June 21, 2003 (Law Society event to be held June 12, 2003)

- d. Annual convention of the Association des juristes d'expression française de l'Ontario, Ottawa, June 19-22, 2003 (organized and hosted by AJEFO).
- e. Law Society of Upper Canada Annual Pride Week event: June 26, 2003.

#### Continuum of Legal Education Task Force Report

##### ■ Status Report

Continuum of Legal Education Task Force  
April 25, 2003

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#### Interim Report to Convocation

Purpose of Report: Information

Prepared by the Policy Secretariat  
(Julia Bass 416-947-5228  
Sophia Sperdakos 416-947-5209)

### INFORMATION

#### OVERVIEW

#### Summary of the Issue

1. In April 2002 the Task Force on the Continuum of Legal Education submitted an interim report to Convocation with a proposed new framework for admission to the Law Society of Upper Canada.
2. Convocation authorized the Task Force to seek input from lawyers, legal organizations, law schools, and BAC section heads, faculty, and students on the direction set out in the report.
3. In November 2002 the Task Force returned to Convocation to advise that its consultation process was ongoing and that it intended to study the matter further as a result of issues raised in the preliminary consultation process. The Task Force indicated it would return to Convocation in the spring with a further interim report and time lines.
4. This information report provides a further update on the Task Force's work and sets out a time line for the coming months.

### THE REPORT

#### Background

5. On April 25, 2002 the Task Force on the Continuum of Legal Education provided an interim report to Convocation outlining a proposed new direction for the bar admission course. The Task Force sought authorization from Convocation to consult on the proposed direction. Convocation authorized the consultation process.
6. As a result of the consultation process and the issues and comments raised the Task Force felt it was premature to finalize its report. In particular, the Task Force was of the view that the issues raised illustrated the need for further research and consultation with respect to how the details of the proposal might be implemented.

7. In November 2002, the Task Force provided Convocation with an interim information report, outlining the consultation process to that point and the need for further study. It indicated that it would return to Convocation in the spring with a further progress report and a proposed deadline for a final report.

#### Research Studies

8. As a result of the November 2002 information report to Convocation the Task Force directed two research projects as follows:
9. The Law Society of Upper Canada has retained the services of the PERFORMANCE ASSESSMENT GROUP<sup>1</sup> to report on a sound testing methodology for a new licensing system for the Ontario legal profession that utilizes the currently existing BAC materials. The report will present a psychometrically sound step-by-step approach to the development of a competency-based licensure program. The PERFORMANCE ASSESSMENT GROUP will make suggestions for the development of a new reliable, valid and defensible licensure system and compare this system with the licensure programs of other professional associations. The PERFORMANCE ASSESSMENT GROUP is expected to provide a final report in the early spring, 2003.
10. Professors Julie MacFarlane<sup>2</sup> and John Manwaring<sup>3</sup> will study the ramifications of the proposed Task Force recommendations, including whether skills training should be maintained, how to design the most effective skills training program and how the professional responsibility course could best be offered. Professors MacFarlane and Manwaring are expected to provide a final report at the end of May 2003.
11. The studies are important to ensure that the principles discussed in the April 2002 report are evaluated in the context of educational and testing principles and if appropriate revised to reflect the analysis. This will allow Convocation a more detailed perspective from which to make its decision on the Task Force's proposed approach.

#### Time line

12. Once the studies have been completed and the Task Force has analyzed them and considered the implications for the proposed model it provided to Convocation in April 2002, the Task Force proposes to return to the groups and individuals with which it consulted in the first phase of its process to seek their further input. This will take place over the summer and early autumn, 2003.

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<sup>1</sup> The Performance Assessment Group Inc.'s Directors, John Braham and Michael Williams, will undertake this research. Doctor John Braham has a PhD in Industrial/Organizational Psychology with a minor in psychometrics from Wayne State University, Detroit and has extensive expertise in all phases of the assessment program development and administration process. He has developed, administered, and maintained a number of licensure, certification and continuing competence programs.

Michael Williams has a Master of Applied Science degree in Industrial/Organizational Psychology and has completed work towards a PhD in Industrial/Organizational Psychology at the University of Waterloo, Ontario. Michael Williams' career has focused on applied measurement projects related to continuing competence, licensure, certification, employee selection, performance appraisal, program evaluation and applied research.

<sup>2</sup> Doctor MacFarlane has a PhD from the University of the South Bank in legal education. Doctor MacFarlane is an expert in adult education and pedagogy. She has been a consultant on program evaluation and curriculum development for a number of organizations such as the National Judicial Institute, the Centre for Professional Legal Studies in the U.K., the Law Society of Upper Canada, the Institute of Professional Legal Studies in New Zealand and various legal education institutions.

<sup>3</sup> Professor Manwaring is a Full Professor in the Faculty of Law, French Common Law Program of the University of Ottawa. Professor Manwaring is a consultant with the National Judicial Institute and has been involved in the design and delivery of the law teaching clinic program, a program designed to educate professors in law on adult education methodology.

13. The Task Force will then prepare a final draft report taking into account the additional information and consultation input. It will provide an information session to benchers in the autumn of 2003. It will then revise the draft report if necessary and provide the final report to Convocation by December 31, 2003.

CONVOCATION ROSE AT 4:35 P.M.

Confirmed in Convocation this 22<sup>nd</sup> day of May, 2003.

Treasurer