

30<sup>th</sup> April, 2009

## MINUTES OF CONVOCATION

Thursday, 30<sup>th</sup> April, 2009  
9:00 a.m.

### PRESENT:

The Treasurer (W. A. Derry Millar), Anand, Backhouse, Banack, Boyd, Bredt (by telephone), Caskey, Chahbar, Chilcott, Conway, Crowe, Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold (by telephone), Gottlieb, Hainey, Halajian, Hare, Hartman, Heintzman, Henderson, Krishna, Lawrie, Legge, Lewis, McGrath, MacKenzie, Minor, Murray, Pawlitza, Porter (by telephone), Potter, Pustina, Rabinovitch, Robins, Rothstein, Ruby, Sandler, Schabas, Silverstein, Swaye, Symes, Wardlaw and Wright (by telephone).

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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### TREASURER'S REMARKS

The Treasurer announced the establishment of an award in memory of the late Honourable Marvin A. Catzman. The award will be given annually by the Catzman family, the Advocates' Society and the Chief Justice of Ontario's Advisory Committee on Professionalism to a member of the profession who has demonstrated a high degree of professionalism and civility.

Congratulations were extended to Doug Lewis who has been chosen as one of two recipients of Osgoode Hall's 2009 Gold Key Award, Public Sector. Mr. Lewis will receive this award in a ceremony to be held on May 20, 2009.

Congratulations were also extended to former Treasurer, Gavin MacKenzie, who completed his eighth Boston Marathon on April 20.

The Treasurer made an announcement regarding requests from lawyers, paralegals, and members of the public and media who wish to attend the public proceedings of Convocation. Convocation's proceedings are open to the public with the exception of *in camera* items. To ensure that there is space available in Convocation Room for those who must be present in the room when we receive a request to attend Convocation, a staff member will take that person to the Media Room to view the proceedings.

The Treasurer announced that the parental leave motion, which was to be brought before the Annual General Meeting on May 13th, has been withdrawn in light of the establishment of the Law Society's Parental Leave Program effective March 12, 2009.

#### DRAFT MINUTES OF CONVOCATION

The Draft Minutes of Convocation of February 26, 2009 and Special Convocation on March 26, 2009 were confirmed.

#### MOTION – APPOINTMENTS

It was moved by Ms. Rothstein, seconded by Mr. Henderson, –

THAT Janet Minor be appointed a trustee of the Law Foundation of Ontario.

THAT Dow Marmur be appointed to the Complaints Resolution Commissioner Selection Committee established under Ontario Regulation 31/99.

Carried

#### REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

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#### CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, April 30, 2009.

ALL OF WHICH is respectfully submitted

DATED this 30<sup>th</sup> day of April, 2009

CANDIDATES FOR CALL TO THE BAR  
April 30th, 2009

Michael David Adams  
Zahra Fatima Ahmed  
David Greig Cowie  
Tal Cyngiser  
David Charles Dingwall  
Andrea Elaine Gendron  
Hannah Louise King  
James Clarence McIlhargey  
Jerry Spencer Theodore Pitzul

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

Carried

AUDIT COMMITTEE REPORT

Ms. Symes presented the Report.

Report to Convocation  
April 30, 2009

Audit Committee

Committee Members  
Beth Symes (Chair)  
Ab Chahbar (Vice Chair)  
Melanie Aitken  
Larry Banack  
Marshall Crowe  
Seymour Epstein  
Glen Hailey  
Doug Lewis

Purpose of Report: Decision  
Information

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

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### Committee Review of In Camera Reports (In Camera)

### Investment Compliance Reporting

## COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on April 7, 2009. Committee members in attendance were Beth Symes (c), Ab Chahbar (v-c), Melanie Aitken (conference), Marshall Crowe, Seymour Epstein, Glenn Hainey and Doug Lewis.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Fred Grady, Andrew Cawse and Brenda Albuquerque-Boutilier.
3. Also in attendance were Paula Jesty, Sam Persaud and Trevor Ferguson from Deloitte & Touche LLP.
4. Also in attendance were David Thompson, Chair, LibraryCo Inc. as well as Kathleen Waters (President & CEO) and Steve Jorgenson (Vice President Finance & Treasurer) from LAWPRO.
5. Dan Markovich from Hewitt Associates, investment consultants, also attended.

## FOR DECISION

## General Fund – Audited Financial Statements for the year ended December 31, 2008

## Motion

6. That Convocation approve the audited, annual financial statements for the General Fund for the year ended December 31, 2008.
7. Ms. Paula Jesty and Mr. Sam Persaud of our auditors, Deloitte & Touche LLP, will be in attendance.

General Fund  
Management Discussion and Analysis  
For the year ended December 31, 2008

8. The Society's General Fund is composed of a number of funds included in these financial statements.
  - o The Unrestricted Fund is the Society's operating fund representing the bulk of its revenues and expenses related to the licensing and regulation of lawyers and paralegals.
  - o There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, County Libraries, Special Projects, Repayable Allowance, Endowment and the Working Capital Reserve funds.
  - o The presentation of the 2008 financial statements has changed from 2007 to improve the reporting of paralegal related expenditures. In 2007, revenues and expenses related to paralegals were reported as a restricted fund. Expenditures related to paralegals were not reported on a functional basis. For 2008, this has been changed to include revenues and expenses related to paralegals in the Unrestricted Fund with total revenues and expenses, and subsequent fund balance, related to paralegals reported separately on the Statement of Changes in Fund Balances.
9. Separate financial statements are prepared for the Compensation Fund, LibraryCo Inc. and the Combined Errors and Omissions Insurance Fund. In addition, a separate Performance Highlights section of the Annual Report provides greater qualitative analysis on progress towards the priorities of Convocation.

## Results of Operations

10. A summary of revenues, expenses and surplus for the Society's General Fund is set out below. Further detailed discussion and analysis of operations follow this summary.

	2008 \$'000s	2007 \$'000s	2008 General Fund Summary
Total revenues	72,738	65,697	<ul style="list-style-type: none"> <li>• \$57.7 million unrestricted fund revenue – lawyers</li> <li>• \$4.8 million unrestricted fund revenue – paralegals</li> <li>• \$10.3 million restricted funds</li> </ul>
Expenses – (Total expenses net of expenses allocated to Compensation Fund)	68,800	66,087	<ul style="list-style-type: none"> <li>• \$54.4 million unrestricted fund expenses – lawyers</li> <li>• \$2.7 million unrestricted fund expenses – paralegals</li> <li>• \$11.7 million restricted funds expenses</li> </ul>
Surplus / (Deficit) for the year	3,938	(390)	<ul style="list-style-type: none"> <li>• \$3.2 million – lawyers</li> <li>• \$2.1 million – paralegals</li> <li>• (\$1.4) million – restricted funds</li> </ul>

## Balance Sheet

### Cash and short-term investments

11. Cash and short-term investments of \$22.4 million have increased by \$2.2 million from 2007 in line with the surplus for the year and paralegal receipts, offset by the reduction in total liabilities.

### Portfolio investments

12. Portfolio, or long-term investments, increased slightly to \$10.8 million from \$10.5 million and comprise North American equities (16%) and Canadian fixed income investments (84%). The portfolio is managed in compliance with the General Fund's investment policy. Fixed income investments include a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments include a diversified mix of equities listed on the major U.S. and Canadian stock exchanges.

### Capital assets

13. Capital assets are recorded at cost and amortized over their useful lives according to the Society's capital asset policy. Capital asset additions are typically financed from the Society's Capital Allocation Fund.
14. The decrease in capital assets from \$21.5 million to \$19.5 million reflects the accumulated amortization for the period offset by \$1.1 million in additions, for projects such as upgrading the barristers' lounge area, various mechanical and electrical upgrades, as well as software upgrades.

#### Accounts payable and accrued liabilities

15. Accounts payable and accrued liabilities are largely related to amounts due but not yet paid for regulation costs such as counsel fees, accrued payroll charges and licensing process administration. The total has decreased from \$6.6 million in 2007 to \$6.5 million in 2008. During the year, a legal claim was settled allowing for the release of the related provision.

#### Deferred revenue

16. Deferred revenue, representing fees paid in advance, has decreased from \$8.9 million to \$6.1 million. The balance is made up of \$5.6 million in 2009 lawyer fee revenue and \$500,000 in 2009 paralegal fee revenue. The timing of these remittances from members does not follow a pattern.

#### Unclaimed trust funds

17. Unclaimed trust funds continue to increase, reaching \$1.8 million in 2008 (2007- \$1.6 million). These are trust monies turned over to the Society by lawyers who are unable to locate or identify the clients to whom the monies are owed. In 2008, the Society returned just over \$28,000 to three claimants. By statute, the Society administers the unclaimed trust funds, in perpetuity, and is entitled to reimbursement for administrative expenses to a limit of the annual income earned on funds held. Net income, if any, is available for transfer to the Law Foundation of Ontario. To date, administrative expenses have exceeded income and no transfers to the Law Foundation of Ontario have been made.

#### Other trust funds

18. Included in the notes to the financial statements, but not the balance sheet, is a reference to other trust funds held by the Society. The Society administers client funds for lawyers under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet as they are held temporarily and with a restricted administrative mandate. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. At the end of 2008, total funds held in trust amounted to \$2.5 million (2007- \$1.2 million). The volume and value of balances depend on trusteeships at the time.

#### Statement of Revenues and Expenses

##### Revenues

19. Annual fees have increased from \$44.1 million in 2007 to \$47.7 million in 2008. The number of lawyers increased by approximately 980 and the lawyer fee increased by \$52 to \$1,653 per lawyer. 2008 was the first year of paralegal licensing and over 2,300 paralegal licenses were issued over the course of the year.
20. The major components of professional development and competence ("PD&C") revenues are the lawyer and paralegal licensing process and post-call education (CLE) programs for lawyers. The main reason for the increase in total PD&C revenues from \$10.8 million to \$14.6 million was \$2.8 million in fees attributable to the initial influx of

grant-parented paralegal entrants and subsequent entrants to the paralegal licensing process. Registration revenue for CLE increased by 15% with attendance increasing from 17,000 CLE attendees in 2007 to 18,600 in 2008, although there were more reduced-fee programs in 2008. Total fees for the lawyer licensing process increased by 16% with enrolment up from 1,476 in 2007 to 1,516 lawyer candidates in 2008, and the licensing fee up from \$2,750 to \$2,940 per lawyer candidate.

21. Included in investment income is a \$3.75 million (2007: \$3.25 million) transfer of surplus investment income from the Errors and Omissions Insurance Fund, assisting the increase in total investment income to \$4.8 million from \$4.4 million. Investment income for the year is analyzed below:

	2008	2007
Interest and dividends	\$1,248,000	\$1,414,000
Realized capital gains	\$38,000	\$ 181,000
Unrealized capital losses	(\$215,000)	(\$414,000)
Excess investment income transferred from the E&O Insurance Fund	\$3,750,000	\$3,250,000
 Total		
	\$4,821,000	\$4,431,000

22. The significant weighting of our investments towards fixed income securities, shorter durations and unrealized currency gains arising from the depreciation in the Canadian dollar, have limited the effects of the current financial turmoil on the General Fund.
23. Returns on the Fund's portfolio investments are set out below:

Investment Type	% of Portfolio	One Year Actual Return 2008	One Year Benchmark Return 2008	One Year Actual Return 2007
Fixed Income	84	7.3%	8.6%	4%
Canadian Equities	9	(31.1%)	(33%)	4%
U.S. Equities	7	(25.4%)	(21.9%)	(17%)
Total Fund	100	2.9%	3.3%	2%

24. Other revenues have decreased from \$6.4 million to \$5.5 million as one-time CanLII funding of \$1.2 million from the Law Foundation in 2007 was not repeated. Also in other revenues are a variety of items such as lawyer referral service fees, Ontario Reports royalties, catering revenues, litigation and enforcement cost recoveries, charges for fee payment plans and other miscellaneous revenues.

## Expenses

25. Total net expenses of \$68.8 million have increased from \$66.1 million in 2007, with increases generally spread across most departments as discussed below.

### Professional regulation expenses

26. Professional regulation expenses increased from \$15.6 million in 2007 to \$16.5 million in 2008. The increase is due to increased budgeted expenditures across the regulatory division. The overall increase was reduced by a year-over-year decline of approximately \$1 million in counsel fee expenditures.

### Professional development and competence expenses

27. Professional development and competence expenses of \$15.8 million (2007 - \$15.1 million) increased marginally in areas such as Practice Review, post-call education, Library and Spot Audit. There were reductions in exam and course administration expenditures within the licensing process.

### Administrative expenses

28. Administrative expenses of \$8.6 million, increased from \$8.2 million in 2007, comprise Finance, Information Systems and Human Resources departmental expenses. The increase was spread across all three areas as operations of the Law Society were enhanced and services expanded in line with the cumulative increase in members over recent years.

### Other expenses

29. Other expenses include bench-related payments, payments to the Federation of Law Societies and the virtual reference library CANLII, insurance and audit fees, catering costs, payments to the County & Districts Law Presidents Association, the Ontario Lawyers Assistance Program, Pro Bono Law Ontario, the Ontario Law Commission, severance payments and other miscellaneous expenses of the Society. These other expenses have increased to \$6.6 million from \$6.2 million in 2007.

### Client Service Centre ("CSC")

30. 2008 was the first year for the new Corporate Training department in the CSC. The increase in expenses in the CSC from \$4.6 million in 2007 to \$5.2 million in 2008 was also attributable to the increased volumes of activity, particularly in Complaints Services.

### Capital Allocation Fund

31. Expenses in the Capital Allocation Fund have decreased from \$1.6 million to \$714,000 as the 2007 amount included a repayment of \$600,000 to the LFO based on the sale of the Society's Ottawa property.

## County Libraries Fund

32. In 2008, the county library levy increased by 5% resulting in the increased expenses from \$7.2 million in 2007 to \$7.7 million in 2008.

## Statement of Changes in Fund Balances

### Unrestricted Fund

33. In addition to the previous discussion on operational revenues and expenses, there were several interfund transfers between the unrestricted fund and the Society's restricted funds.
- o Convocation approved the transfer of \$2.7 million from the Unrestricted Fund to the Working Capital Reserve to raise the Working Capital Reserve balance to \$10.7 million, approximately equivalent to two months' operating expenses for the Law Society.
  - o Transfer to the Repayable Allowance Fund of \$100,000. This is an annual transfer of funds raised through the lawyers' licensing process to provide funding for repayable allowances.
  - o Transfer of \$63,000 from the Unrestricted Fund to the County Library Fund to offset the deficit generated by fee revenue not achieving budget as a result of fewer full fee paying equivalent lawyers than budgeted.
34. The Unrestricted Fund balance is now \$5.2 million - \$3.9 million in the lawyers' fund and \$1.3 million in the paralegals' fund. A portion of this accumulated balance, \$1.2 million - \$1.1 million for lawyers and \$100,000 for paralegals - has been earmarked for the reduction of annual fees in 2009. The unutilized balance in the paralegal fund is available to provide for contingencies related to paralegal regulation. The 2009 budget includes an additional transfer of \$1.7 million from the Working Capital Reserve, also to reduce lawyer annual fees, although this full amount may not be required to balance revenues and expenditures.

### Restricted Funds

35. The Capital Allocation Fund is the funding source for approved capital projects. The fund is augmented on an annual basis by a portion of members fees (\$75 in 2008, unchanged for seven years) dedicated to capital funding. The fund increased from \$3.9 million to \$4.8 million during the year. Expenditures capitalized and reported as capital assets are maintained in the Invested in Capital Assets Fund which has decreased to \$19.5 million as amortization for the year exceeded the value of assets capitalized.
36. In 2008, the \$7.7 million in County Library expenses show a small increase from previous years. The Society levied \$235 per lawyer, an increase of 5%, then collected and remitted these funds for county library purposes to LibraryCo Inc.
37. The Working Capital Reserve of \$10.7 million increased by \$2.7 million during the year. Convocation approved the transfer of \$2.7 million from the Unrestricted Fund Balance to the Working Capital Reserve to increase the Working Capital Reserve to an amount approximately equal to two months' operating expenses. As part of the 2009 budget process, \$1.7 million was to be appropriated from this reserve to mitigate the increase in the annual fee for lawyers. The actual results of operations for 2008, and the larger than

expected surplus may negate the need for this transfer. The results of operations in the 2009 will dictate the outcome of this budgeted transfer.

#### Other Restricted Funds

38. Included in other restricted funds are the Repayable Allowance, Special Projects and the Endowment Funds
39. In 2008, the Law Society's Repayable Allowance program provided \$98,000 to 33 students (2007 - \$83,000 to 30 students).
40. The Society administers the J. Shirley Denison Endowment Fund established to provide relief and assistance to lawyers, students and former members. During the year, \$43,000 was paid to 13 applicants (2007 - \$47,000 to 11 applicants).
41. The Special Projects Fund is maintained to ensure that financing is available for ongoing projects that have been approved, funded but not completed in the fiscal year. The 2008 year-end balance was \$159,000 primarily to fund the Retention of Women in Private Practice initiative, the Governance Task Force and the Licensing and Accreditation Task Force.

General Fund  
Notes to Financial Statements  
*Stated in dollars except where indicated*  
For the year ended December 31, 2008

#### 1. Background

The Law Society of Upper Canada (the "Society") was founded in 1797 and incorporated in 1822 with the enactment of the *Law Society Act*. The *Law Society Act* was amended by the *Access to Justice Act* in 2007 to legislate the regulation of paralegals by the Society.

The *Law Society Act* S4.1 states that it is the function of the Society to ensure that:

- all persons who practise law in Ontario or provide legal services in Ontario meet standards of learning, professional competence and professional conduct that are appropriate for the legal services they provide; and
- the standards of learning, professional competence and professional conduct for the provision of a particular legal service in a particular area of law apply equally to persons who practise law in Ontario and persons who provide legal services in Ontario.

In carrying out its functions, duties and powers the Society, pursuant to S4.2 of the *Law Society Act*, shall have regard to the following principles:

- The Society has a duty to maintain and advance the cause of justice and the rule of law.
- The Society has a duty to act so as to facilitate access to justice for the people of Ontario.
- The Society has a duty to protect the public interest.
- The Society has a duty to act in a timely, open and efficient manner.
- Standards of learning, professional competence and professional conduct for members and restrictions on who may provide particular legal services should be

proportionate to the significance of the regulatory objectives sought to be realized.

The governing body of the Society, which is known as Convocation, carries out this mandate. Convocation comprises benchers and the Treasurer who presides over Convocation. At December 31, 2008, the Society had a membership of approximately 40,000 lawyers and 2,300 paralegals. The primary source of revenue is member annual fees, set by Convocation, based on the financial requirements of the restricted and unrestricted funds.

These financial statements present the financial position and operations of the Law Society of Upper Canada – General Fund, which is composed of a number of funds. The Unrestricted Fund, separated between lawyers and paralegals, is the Society's operating fund, representing the majority of its revenues and expenses. There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, County Libraries, Special Projects, Repayable Allowance, Endowment and Working Capital Reserve funds.

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

The General Fund financial statements do not purport to present all of the assets and liabilities under the control of the Society. Separate financial statements have been prepared for the following related entities, which have not been consolidated into the General Fund financial statements:

#### *Compensation Fund*

The Society maintains the Compensation Fund pursuant to section 51 of the Law Society Act to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member, in connection with the member's professional business or in connection with any trust of which the member was a trustee. The Compensation Fund has separate fund balances for lawyer members and paralegal members. Members' annual fees and investment income finance the Compensation Fund. The Compensation Fund reports fees collected by the General Fund on behalf of the Compensation Fund as revenues. The Compensation Fund reimburses the General Fund for certain administrative expenses, spot audit expense and a portion of the costs of operating the investigation and discipline functions of the Society. In 2008 these amounted to \$4,749,000 (2007 – \$4,282,000).

#### *Lawyers' Professional Indemnity Company and Errors & Omissions Insurance Fund*

The Society provides professional liability insurance to lawyers through the Lawyers' Professional Indemnity Company ("LAWPRO") and the Errors and Omissions Insurance Fund ("E&O Fund"). Paralegals obtain this form of coverage through independent insurance companies.

Prior to 1990, the E&O Fund was set up in the Society's accounts to record professional liability insurance and related activities. LAWPRO, a wholly owned subsidiary of the Society, was incorporated in 1990 and took over the provision of lawyer's professional liability insurance. LAWPRO also provides excess and title insurance.

The E&O Fund provides the General Fund with income derived from its surplus earnings. This income, reported as Investment Income of the General Fund, amounted in 2008 to \$3,750,000 (2007 – \$3,250,000). LAWPRO paid the General Fund \$119,000 (2007 – \$186,000) primarily for shared information systems and governance costs.

#### *LibraryCo Inc.*

LibraryCo Inc. (“LibraryCo”), a wholly owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Society. LibraryCo was initially incorporated under the *Business Corporations Act* of Ontario in 2001. The Society holds all of the 100 Common shares. 25 of the 100 Special shares are held by the Toronto Lawyers Association (“TLA”) and 75 of the 100 Special shares are held by the County and District Law Presidents’ Association (“CDLPA”). The Society may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

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

The Society administers the operations of LibraryCo under an administrative services agreement signed in 2007. The total amount billed by the General Fund was \$592,000 (2007 - \$410,000) for administrative services and certain other services and publications. Included in accounts receivable are amounts due from LibraryCo of \$53,000 (2007 - \$43,000).

#### *Law Society Foundation*

The Law Society Foundation (“LSF”), a registered charity, was incorporated by Letters Patent in 1962. The objectives of the LSF are to foster, encourage and promote legal education in Ontario, provide financial assistance to licensing process candidates in Ontario, restore and preserve land and buildings of historical significance to Canada’s legal heritage, receive gifts of muniments and legal memorabilia of interest and significance to Canada’s legal heritage, maintain a collection of gifts of books and other written material for use by educational institutions in Canada, receive donations and maintain a fund for the relief of poverty by providing meals to persons in need. The Society provides facilities, administration, accounting, security and certain other services at no cost to the LSF. Trustees of the Foundation are elected by the members of the Foundation. Included in accounts receivable are amounts due from the LSF of \$13,219 (2007 - \$61,093).

## 2. Significant Accounting Policies

### *Basis of presentation*

The financial statements have been prepared in accordance with the accounting standards for not-for-profit organizations published by the Canadian Institute of Chartered Accountants (“CICA”) using the restricted fund method of reporting revenues. The General Fund is composed of Unrestricted Funds for lawyers and paralegals and a number of special purpose funds restricted by Convocation.

### *Unrestricted Fund*

The *Unrestricted Fund* accounts for the Society's program delivery and administrative activities related to the Society's licensing and regulation of lawyers and paralegals. This fund reports unrestricted resources.

### *Restricted Funds*

The *Capital Allocation Fund* is maintained to provide a source of funds for the acquisition and maintenance of the Society's capital assets. These include buildings and major equipment including computers. Amounts of assets capitalized, according to the Society's capital asset policy, are transferred to the Invested in Capital Assets Fund. Expenditures not capitalized are expended in the Capital Allocation Fund. At December 31, 2008 the balance was \$4,772,000 (2007 – \$3,917,000).

The *Invested in Capital Assets Fund* records transactions related to the Society's capital assets, specifically acquisitions, amortization and disposals. At December 31, 2008 the balance was \$19,490,000 (2007 – \$21,505,000), representing the net book value of the Society's capital assets at those dates.

The *County Libraries Fund* records transactions related to the Society's support of county law libraries. As approved by Convocation, the fund accumulates fees for county library purposes which are remitted to LibraryCo Inc. At December 31, 2008 the fund balance was nil (2007 – nil).

The *Working Capital Reserve* is maintained to ensure adequate cash reserves for the continuous financing of the General Fund operations for up to two months. At December 31, 2008, the balance was \$10,675,000 (2007 – \$7,975,000). In 2008, Convocation approved a transfer of \$2.7 million from the Unrestricted Fund.

### *Other Restricted Funds*

Reported as Other Restricted Funds are:

The *Repayable Allowance Fund* provides candidates in the licensing process for lawyers with loans for tuition and living expenses. At December 31, 2008, the balance was \$71,000 (2007 – \$69,000).

The *Endowment Fund*, the J. Shirley Denison Fund, provides relief and assistance to lawyers, candidates in the lawyer licensing process and former lawyers who find themselves in difficult financial circumstances. Contributions for endowments are recognized as revenue in the Endowment Fund. At December 31, 2008, the Endowment Fund balance was \$180,000 (2007 – \$216,000) and the Society is in compliance with the terms of the endowment.

The *Special Projects Fund* is maintained to ensure that financing is available for ongoing special projects approved by Convocation. The balance at December 31, 2008 was \$159,000 (2007 – \$210,000).

### *Financial instruments*

Under the standards for recognizing and measuring financial instruments, all financial assets are classified into one of the following four categories: held for trading, held to maturity, loans and receivables or available for sale. All financial liabilities are classified into one of the following two categories: held for trading or other financial liabilities.

The General Fund's financial assets and financial liabilities are classified and measured as follows:

Asset / Liability	Category	Measurement
Cash and short-term investments	Held for trading	Fair value
Accounts receivable	Loans and receivables	Amortized cost
Portfolio investments	Held for trading	Fair value
Accounts payable and accrued liabilities	Other financial liabilities	Amortized cost
Unclaimed trust funds	Other financial liabilities	Amortized cost

Other amounts noted on the Balance Sheet such as prepaid expenses, capital assets and deferred revenue are not financial instruments.

The fair value of portfolio investments is determined by reference to published quotations in an active market at year end for fixed income and U.S. equity investments and by reference to transactional net asset value for the Canadian equity pooled fund. Transaction costs are expensed as incurred. The fair value of cash and short-term investments, accounts receivable, accounts payable and accrued liabilities and unclaimed trust funds approximate their carrying values due to their nature or capacity for prompt liquidation.

#### Currency risk

The risk that the fair value of financial instruments will fluctuate relative to the Canadian dollar is managed by the investment policy. At year-end, 7% of portfolio investments were invested in equities denominated in United States dollars (2007 – 6%). Foreign denominated bonds are not permitted, non-North American equities are not permitted and the range for equity holdings is between 5% and 20% of the portfolio. The General Fund has no other significant transactions denominated in a foreign currency

#### Interest rate risk

The risk that the fair value of financial instruments will fluctuate due to changes in market interest rates is managed by the investment policy as it arises from the General Fund's interest bearing investments. The General Fund has no interest bearing liabilities. An analysis of maturity dates for long-term fixed income securities is set out below.

	2008	(\$000's)	2007	(\$000's)
Maturity	Interest Rate Range		Interest Rate Range	
Within 5 years	3.55% - 7.15%	8,008	4.5% - 7.15%	7,228
Beyond 5 years	4% -5.65%	1,082	3.96% -6.15%	1,946
<b>Total</b>		<b>9,090</b>		<b>9,174</b>

Fluctuations in interest rates in cash and short-term investments do not have a significant effect on operations of the Society.

#### Market risk

The risk that the fair value of financial instruments will fluctuate due to changes in market prices is managed by the General Fund's investment policy which requires a diversified portfolio of government bonds, corporate bonds, and Canadian and United States equities meeting specified quality requirements as presented in Note 3.

#### Credit risk

Credit risk is the possibility that other parties may default on their financial obligations. At year end, the maximum exposure of the General Fund to credit risk in cash and short - and long-term fixed income investments was \$31,488,000 (2007 – \$29,339,000). In compliance with the investment policy, fixed income investments are in the financial obligations of governments, major financial institutions and commercial paper with investment grade ratings.

At year end, the maximum exposure of the General Fund to credit risk in accounts receivable was \$1,772,000 (2007 - \$1,400,000). This credit risk is minimized by the credit quality, for instance nearly half the balance is due from the Law Foundation of Ontario, and the diverse debtor base for the balance. The General Fund maintains an allowance for potential credit losses and losses in prior years have been within management expectations.

#### Liquidity risk

Liquidity risk is the risk the General Fund will not be able to fund its obligations as they come due, including being unable to liquidate assets in a timely manner at a reasonable price. The General Fund monitors forecasts of cash flows from operations and investments and holds investments that can readily be converted into cash. Investment income is not a primary source of revenue for the General Fund, and all long-term securities are listed on the Toronto or New York stock exchanges.

The General Fund has not entered into any derivative transactions. In addition, the General Fund's contractual arrangements do not have any embedded features.

#### *Cash and short-term investments*

Cash (bank balances) and short-term investments (less than one year) are amounts on deposit and invested in short-term investment vehicles according to the General Fund's investment policy. They are subject to insignificant risk of a change in value. Investment income, except

income earned on resources held for endowment, is retained in and reported by the Unrestricted Fund.

#### *Portfolio investments*

Portfolio investments are categorized as held for trading and are recorded at fair value. The General Fund manages financial risk associated with portfolio investments in accordance with its investment policy. The primary objective of the investment policy is to preserve and enhance the real capital base. The secondary objective is to generate investment returns to assist the General Fund in funding its programs. Convocation monitors compliance with the investment policy and regularly reviews the policy. The General Fund does not use derivative financial instruments to manage risk.

The total amount of the unrealized reduction in the fair value of portfolio investments recognized as a reduction of investment income for the year is \$215,000 (2007 - \$414,000).

#### *Capital assets*

Assets are capitalized and subject to amortization when they are determined to have a minimum useful life of three years and an acquisition cost of \$10,000 for equipment, furniture and computers, \$25,000 for computer software and building improvements. Capital assets are presented at cost net of accumulated amortization. For purposes of calculating the first year's amortization, all capital assets are deemed to be acquired, put into service, or completed on July 1. Amortization is charged to expenses on a straight-line basis over the estimated useful lives of the assets as follows:

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

#### *Revenue recognition*

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

Professional development and competence, and other revenues and realized investment income / losses are recognized when receivable if the amount can be reasonably estimated. Unrealized investment gains / losses are recognized with changes in the fair value of financial instruments.

#### *Collections*

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

### *Volunteer services*

Convocation, consisting of the Treasurer and benchers, governs the Society. Benchers may be elected by lawyers, appointed by the provincial government or have ex-officio status by virtue of their office or past service as elected benchers or Treasurers. In addition, the provincial government appointed five paralegals to the Paralegal Standing Committee, two of whom are also benchers. The province remunerates the appointed individuals. Elected and ex-officio benchers are only eligible for remuneration after contributing 26 days of voluntary time. The work of the Society is also dependent on other voluntary services by lawyers and paralegals. No value has been included in these financial statements for volunteer services.

### *Measurement uncertainty*

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

### 3. Portfolio Investments

(\$000's)	2008	2007
Debt securities	9,090	9,174
Canadian equities	925	660
United States equities	770	654
	10,785	10,488

### 4. Capital Assets

(\$000's)

	2008		2007 Net
	Cost	Accumulated Amortization	
Land and buildings	25,395	18,318	7,627
Building improvements	19,434	7,704	12,824
Furniture, equipment and computer hardware and software	6,324	5,641	1,054
	51,153	31,663	21,505

### 5. Unclaimed Trust Funds

Section 59.6 of the *Law Society Act* permits a member who has held money in trust for or on account of a person for a period of at least two years to apply in accordance with the by-laws for permission to pay the money to the Society. Money paid to the Society is held in trust in perpetuity for the purpose of satisfying the claims of the persons who are entitled to the capital amount. Subject to certain provisions in the Act enabling the General Fund to recover its expenses associated with maintaining these funds, net income from the money held in trust

shall be paid to the Law Foundation of Ontario. Unclaimed money held in trust amounted to \$1,796,000 (2007 – \$1,651,000).

#### 6. Other Trust Funds

The Society administers client funds for members under voluntary or court-ordered trusteeships. These funds and matching liabilities are not reflected on the Balance Sheet. Money paid to the Society is held in trust until it is repaid to the clients or transferred to the Unclaimed Trust Funds. At December 31, 2008, total funds held in trust amounted to \$2,492,000 (2007 – \$1,164,000).

#### 7. Other Revenue

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

#### 8. Other Expenses

Included in other expenses are payments to the Federation of Law Societies, County and District Law Presidents' Association, insurance, professional fees, termination payments, catering, other corporate expenses and governance related disbursements. The total remuneration of elected and ex-officio benchers during the year was \$355,000 (2007 – \$357,000). The Treasurer's honorarium for the year was \$101,000 (2007 – \$99,000). The total value of bencher expenses reimbursed was \$669,000 (2007 – \$572,000).

#### 9. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. Each member of the plan, other than designated employees, can elect to contribute matching employee and employer contributions from 1% to 6% of annual earnings up to the maximum deduction allowed by the Canada Revenue Agency. Designated employees, who hold executive positions, have contributions made to the plan by the Society equivalent to 12% of annual earnings. The General Fund pension expense in 2008 amounted to \$1,622,000 (2007 – \$1,443,000).

#### 10. Commitments

The Society is committed to monthly lease payments for property under leases having various terms up to April 2010. Aggregate minimum annual payments to the expiry of the leases are as follows:

2009	\$651,000
<u>2010</u>	<u>220,000</u>
<u>Total</u>	<u>\$871,000</u>

In 2007, the Society made a commitment in the amount of \$100,000 spread equally over 2007, 2008 and 2009 to the Ontario Gardens of Justice to support the sculpture collection. The Society also made a five - year commitment, commencing in 2007, in the annual amount of \$100,000 to the Ontario Law Commission to support its operations.

## 11. Contingent Liabilities

A number of claims or potential claims are pending against the Society. It is not possible for the Society to predict with any certainty the outcomes of such claims or potential claims.

Management is of the opinion, based on the information presently available, that it is unlikely any liability, to the extent not covered by insurance or inclusion in the financial statements, would be material to the Fund's financial position.

## 12. Guarantees

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

The Society has also provided indemnification to all directors and officers of the Society. Under Section 9 of the *Law Society Act*:

“No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.”

Notwithstanding Section 9, the Society has also purchased errors and omissions insurance for past and present officers, employees, committee members, benchers, agents and volunteers acting on behalf of the Society, its subsidiaries and affiliates, to mitigate the cost of any potential suit or action. No estimate of the maximum exposure under these indemnifications can be made but historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore, no amount has been accrued in the financial statements with respect to these agreements.

## 13. Comparative Figures

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

### FOR DECISION

Compensation Fund – Audited Financial Statements for the year ended December 31, 2008

#### Motion

52. That Convocation approve the annual financial statements for the Compensation Fund for the year ended December 31, 2008.

Compensation Fund  
Management Discussion & Analysis  
For the year ended December 31, 2008

53. The Compensation Fund (“the Fund”) is maintained by the Law Society, in accordance with the *Law Society Act*, to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member. With paralegal regulation added to the Society’s mandate in May 2007, the Fund permits members of the public to seek compensation from the Society as a result of dishonesty by licensed lawyers and paralegals.
54. The first licenses for paralegals were issued in March 31, 2008. The revenues and expenses related to paralegals have been segregated from those of lawyers in order to maintain separate funding pools to satisfy claims arising from each group without using the funds provided by each to satisfy claims and expenses of the other. This is accomplished by segregating the Fund Balance between lawyers and paralegals on the Balance Sheet and by segregating revenues and expenses on the Statement of Revenues and Expenses and Change in Fund Balances.
55. The Fund is financed by annual fees, approved on an annual basis by Convocation, and by investment income.

#### Results of Operations

56. The Fund continues to maintain significant fund balances totaling \$19.9 million although a deficit was sustained from operations for the year. The lawyer pool had a deficit of \$1.6 million (2007 – a surplus of \$907,000) and in its first year of operation the paralegal pool had a surplus of \$7,000.
57. The deterioration to a deficit in the lawyer pool is primarily due to the increase in the reserve for unpaid grants of \$1.9 million. The variation in the components of the net grant expense is discussed below. Other non-grant expenses are relatively consistent between 2008 and 2007.
58. Total fund balances at the end of 2008 are \$19.9 million, slightly reduced from \$21.4 million at the same time last year.

#### Balance Sheet

##### Cash and short-term investments

59. The Compensation Fund’s short-term investments, which together with cash total \$7.9 million, are invested in banker’s acceptances. Under the Fund’s Investment Policy, permitted short-term investments include banker’s acceptances and Government of Canada T-bills.

##### Portfolio investments

60. Portfolio, or long-term investments, of \$23.7 million, compared to \$23.5 million in 2007, are made up of Canadian fixed income securities (84%) and North American equities

(16%). The portfolio is managed in compliance with the Fund's Investment Policy. Fixed income investments typically comprise a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments comprise a diversified mix of equities listed on the New York and Toronto stock exchanges. An unrealized loss of \$1.1 million (2007 – \$939,000) for the year limited the increase in the value of the portfolio at year end.

#### Reserve for unpaid grants

61. Based upon the actuarial valuation, the reserve for unpaid grants has increased by \$2 million to \$11.8 million during the year. The majority of the increase is attributable to claims received during the year from the clients of two lawyers.

#### Statement of Revenues and Expenses and Change in Fund Balances

##### Lawyer Pool Revenues

##### Lawyers' fees

62. Lawyers' fees increased from \$6.3 million in 2007 to \$6.5 million in 2008 due to an increase of approximately 650 full fee paying equivalent lawyers.

##### Lawyer pool investment income

63. Investment income has decreased from \$806,000 in 2007 to \$433,000 in 2008 as a result of unrealized losses of \$1.1 million and a reduction in realized gains on portfolio investments. Investment income for the year is analyzed below:

	2008	2007
Interest on fixed income investments and dividends on equities	\$1,285,000	\$1,257,000
Net capital gains realized on the disposition of bonds or equities	\$240,000	\$488,000
Unrealized loss at the end of 2008	(\$1,092,000)	(\$939,000)
Total	<u>\$433,000</u>	<u>\$806,000</u>

##### Lawyer Pool Expenses

##### Lawyer pool net grants expense

64. The net grants expense was \$3.3 million, compared to \$1.3 million in 2007. The components of the expense are analyzed below.
- o Grants paid during the year increased from \$1.1 million in 2007 to \$1.5 million. These payments relate largely to claims previously reserved.
  - o An increase in the reserve for unpaid grants of \$2.0 million (2007 - \$592,000).
  - o Recoveries of grants paid at \$122,000 were well below 2007 levels of \$409,000, but recoveries do not follow any pattern.

#### Lawyer pool other expenses

65. The Compensation Fund's 2008 other expenses were generally stable compared to 2007.

#### Paralegal Pool

66. At this time, the revenue and expenses associated with paralegals are relatively small, given the small number licensed by the end of the year.

#### Compensation Fund

##### Notes to Financial Statements

*Stated in dollars except where indicated*

*For the year ended December 31, 2008*

#### 1. Description of Fund

The Compensation Fund (the "Fund") is maintained by The Law Society of Upper Canada (the "Society") pursuant to section 51 of the *Law Society Act* to relieve or mitigate loss sustained by any person in consequence of dishonesty on the part of a member, in connection with the member's professional business or in connection with any trust of which the member was a trustee. The Fund is financed by members' annual fees and investment income.

The *Law Society Act* was amended by the *Access to Justice Act* in 2007 to legislate the regulation of paralegals by the Society. Beginning in 2008, the revenues and expenses related to paralegals have been segregated from those of lawyers in order to maintain separate funding pools to satisfy claims arising from each group.

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

The Fund reimburses the Society's General Fund for certain administrative expenses, spot audit expenses and a portion of the costs of operating the investigation and discipline functions of the Society. The charges for the year amount to \$4,749,000 (2007 – \$4,282,000).

#### 2. Significant Accounting Policies

##### *Basis of presentation*

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

##### *Financial Instruments*

Under the standards for measuring financial instruments, all financial assets are classified into one of the following four categories of financial instruments: held for trading, held to maturity, loans and receivables or available for sale. All financial liabilities are classified into one of the following two categories: held for trading or other financial liabilities.

The Fund's financial assets and financial liabilities are classified and measured as follows:

Asset / Liability	Category	Measurement
Cash and short-term investments	Held for trading	Fair value
Interest and other receivables	Loans and receivables	Amortized cost
Portfolio investments	Held for trading	Fair value
Accounts payable and accrued liabilities	Other financial liabilities	Amortized cost

The reserve for unpaid grants is not a financial instrument.

The fair values of portfolio investments are determined by reference to published quotations in an active market at year end for fixed income and U.S. equity investments and by reference to transactional net asset value for the Canadian equity pooled fund. Transaction costs are expensed as incurred. The fair value of cash and short-term investments, accounts receivable, accounts payable and accrued liabilities approximate their carrying values due to their nature or capacity for prompt liquidation.

#### Currency risk

The risk of fluctuations in the fair value of financial instruments relative to the Canadian dollar is managed through the Fund's investment policy. At year-end, 7% of portfolio investments were invested in equities denominated in United States dollars (2007 – 6%). Foreign denominated bonds are not permitted, non-North American equities are not permitted and the range for equity holdings is between 5% and 20% of the portfolio. The Fund has no other significant transactions denominated in a foreign currency

#### Interest rate risk

The risk that the fair value of financial instruments will fluctuate due to changes in market interest rates is managed through the Fund's investment policy, as such risk arises from the Fund's interest bearing investments. The Fund has no interest bearing liabilities. An analysis of maturity dates for long-term fixed income securities is set out below.

(\$000's)	2008		2007	
Maturity	Interest Rate Range		Interest Rate Range	
Within 5 years	3.55%-5.94%	8,948	3.55%-4.65%	7,944
Beyond 5 years	2.0%-10.22%	11,034	3.7%-8.0%	12,665
<b>Total</b>		<b>19,982</b>		<b>20,609</b>

Fluctuations in interest rates in cash and short-term investments do not have a significant effect on operations of the Fund.

### Market risk

The risk of fluctuations in the fair value of financial instruments due to changes in market prices is managed through the Fund's investment policy which requires a diversified portfolio of government bonds, corporate bonds, and Canadian and United States equities meeting specified quality requirements as analysed in Note 4.

### Credit risk

Credit risk is the possibility that other parties may default on their financial obligations. At year end, the maximum exposure of the Fund to credit risk in cash and short - and long-term fixed income investments was \$27,909,000 (2007 – \$28,166,000). In compliance with the investment policy, fixed income investments are in the financial obligations of governments, major financial institutions and commercial paper with investment grade ratings.

### Liquidity risk

Liquidity risk is the risk the Fund will not be able to fund its obligations as they come due, including being unable to liquidate assets in a timely manner at a reasonable price. The Fund monitors forecasts of cash flows from operations and investments and holds investments that can readily be converted into cash. Investment income is not a primary source of revenue for the Fund and all long-term securities are listed on the Toronto or New York stock exchanges.

The Fund has not entered into any derivative transactions. In addition, the Fund's contractual arrangements do not have any embedded features.

### *Cash and short-term investments*

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

### *Revenue recognition*

Member fees are set annually by Convocation and are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Realized investment income is recognized when receivable if the amount can be reasonably estimated, while realized losses are recognized when known. Unrealized investment gains/losses are recognized with changes in the fair value of financial instruments.

### *Grants*

Pursuant to section 51(5) of the *Law Society Act*, the payment of grants from the Fund is at the discretion of Convocation, the governing body of the Society. For claims in respect of funds advanced by a claimant to a lawyer on or after April 24, 2008, grants paid from the lawyer pool of the Compensation Fund are subject to a \$150,000 limit per applicant. This was increased from a grant limit of \$100,000 for funds advanced prior to this date. Grants paid from the paralegal pool of the Compensation Fund are subject to a \$10,000 limit per applicant. Reserves for unpaid grants for the lawyer pool and paralegal pool are recorded as liabilities on the

balance sheet. These reserves represent an estimate of the present value of grants to be paid for claims and the associated administrative costs, as determined by an actuary. The related net grants expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries.

### 3. Measurement Uncertainty

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

### 4. Portfolio Investments

(\$000's)	2008	2007
Debt securities	19,982	20,609
Canadian equities	2,016	1,466
United States equities	1,699	1,439
<b>Total</b>	<b>23,697</b>	<b>23,514</b>

The total amount of the unrealized change in the fair value of portfolio investments recognized as a reduction of investment income for the year is \$1,092,000 (2007 - \$939,000).

### 5. Guarantees

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

The Society has also provided indemnification to all directors and officers of the Society. Under Section 9 of the *Law Society Act*:

“No action or other proceedings for damages shall be instituted against the Treasurer or any bencher, official of the Society or person appointed in Convocation for any act done in good faith in the performance or intended performance of any duty or in the exercise or in the intended exercise of any power under this Act, a regulation, a by-law or a rule of practice and procedure, or for any neglect or default in the performance or exercise in good faith of any such duty or power.”

Notwithstanding Section 9, the Society has also purchased errors and omissions insurance for past and present officers, employees, committee members, benchers, agents and volunteers acting on behalf of the Society, its subsidiaries and affiliates, to mitigate the cost of any potential suit or action. No estimate of the maximum exposure under these indemnifications can be made, but historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore, no amount has been accrued in the financial statements with respect to these agreements.

#### FOR DECISION

LibraryCo Inc. – Audited Financial Statements for the year ended December 31, 2008

#### Motion

67. That Convocation approve the audited financial statements for LibraryCo Inc. for the year ended December 31, 2008.
68. LibraryCo's Annual Financial Statements & Management Discussion and Analysis were approved by LibraryCo's board on March 31, 2009. Mr. David Thompson, Chair LibraryCo Inc. will be present to assist Convocation.

LibraryCo Inc.  
Management Discussion and Analysis  
December 31, 2008

#### Background

69. LibraryCo Inc. is mandated to carry on the central management of the Ontario County and District Law Library system on a not-for-profit basis. LibraryCo is financed by lawyers' annual fees remitted by the Law Society of Upper Canada and grants from the Law Foundation of Ontario.

#### Results of Operations

70. Results for the 2008 year identify a surplus of \$57,988 compared to a deficit of \$111,299 in 2007. The surplus is attributable to an increase in grant revenue, lower head office expenses and reductions to the capital and special needs grants.
71. Total revenues increased from \$8.2 million in 2007 to \$8.7 million in 2008 due to an increase in the grant from the Law Society. Total expenses experienced a similar increase from \$8.3 million to \$8.6 million with increases mainly in electronic products and grants to the county libraries.

#### Balance Sheet

##### Cash and Short-Term Investments

72. Cash and near cash balances at \$1.1 million are \$128,000 lower than 2007 primarily because of deferred revenue, as a portion of the Law Foundation of Ontario (LFO) funding for the 2008 year was received in December 2007. The short-term investment is a GIC of \$600,000 maturing in September 2009 but cashable without penalty.

### Deferred Revenue

73. There is no deferred revenue for the 2008 year. Deferred revenue of \$212,500 in 2007 arose as Law Foundation of Ontario funding for 2008 was received in advance.

### General Fund

74. The General Fund ended the year with a balance of \$170,052 (2007 - Nil) after the surplus for the year and a transfer from the Reserve Fund.

### Reserve Fund

75. In accordance with a 2007 Board resolution, the Reserve Fund will be maintained at a minimum of \$500,000, comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000. Any expenses of this Fund that would reduce the Fund Balance below \$500,000 should be replenished in the following year. The Reserve Fund ended the year with a balance of \$885,388 (2007 - \$997,452) after a transfer to the General Fund to finance special grants to county libraries.

### Statement of Revenues and Expenses

#### Revenues

##### Law Society of Upper Canada Grant

76. This is the lawyer-based fee totaling \$7.7 million in 2008 (2007 - \$7.2 million) that is transferred to LibraryCo from the Law Society. The 2008 County Library Levy collected by the Law Society was \$235 per lawyer (2007 - \$224). The increase in the levy was necessary due to the increases in costs, particularly publishing costs.

##### Law Foundation of Ontario ("LFO") Grant

77. The 2008 LFO grant of \$954,000 was \$30,000 less than 2007 because the Virtual Reference Service was discontinued, although this was slightly offset by revenue for computer upgrades. Grants funded electronic resources and computer upgrades.

#### Expenses

##### Salaries & Administration

78. These expenses decreased from \$579,532 in 2007 to \$514,312 in 2008 as a result of lower salaries expenses (2008 - \$93,000, 2007 - \$221,000). Salaries expenses for 2007 included termination costs for certain employees. This decrease was offset by a full year of fees for administrative services as the related agreement commenced in March 2007.

##### Other Expenses - Head Office / Administration

79. Other expenses include printing and stationery, insurance, and board expenses. At \$33,684, they are \$44,000 lower than in 2007 as board expenses are lower and no depreciation costs were incurred in 2008 as LibraryCo had no capital assets.

### Electronic Products and Services

80. Electronic products and services expenditures at \$1.8 million for the year are nearly \$125,000 higher than 2007 due to increases in publishing costs.

### Computers

81. These are grants provided to assist the county libraries with replacing and upgrading aging computers and related accessories.

### Other Expenses – County and District Law Libraries

82. Other library related expenses include staff and travel, Conference for Ontario Law Associations' Libraries (COLAL) and County and District Law Presidents' Association (CDLPA) Library Committee meetings, and bulk purchase publications for the library system. The reduction from \$179,000 in 2007 to \$155,000 in 2008 is mainly attributable to the discontinuation of the virtual reference service.

### County and District Law Libraries – Grants

83. The remittances by LibraryCo to the county libraries totaled \$5.7 million in 2008 compared to \$5.3 million in 2007 based on approved increases in budgets and special payments related to staffing at county law libraries.

### Statement of Changes in Fund Balances

84. An analysis of the Statement of Changes in Fund Balances is provided in the Balance Sheet section above.

### LibraryCo Inc.

#### Notes to Financial Statements

*For the year ended December 31, 2008*

#### 1. General

LibraryCo Inc. ("the organization") was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding from the Law Society of Upper Canada ("the Society"). LibraryCo Inc. was initially incorporated under the Business Corporations Act of Ontario in 2001.

The organization has two classes of shares; Common shares and Special shares. The Society holds all of the 100 Common shares outstanding. Of the 100 Special shares outstanding, 25 are held by the Toronto Lawyers Association ("TLA") and 75 are held by the County and District Law Presidents' Association ("CDLPA"). The Society may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

The organization is not subject to income or capital taxes because it is a not-for-profit corporation.

Under an Administrative Services Agreement, the Society assumed most of the administrative functions of the organization in 2007.

## 2. Significant Accounting Policies

### *Basis of presentation*

The financial statements have been prepared in accordance with the accounting standards for non-profit organizations published by the Canadian Institute of Chartered Accountants ("CICA"), using the restricted fund method of reporting contributions.

The General Fund accounts for the delivery, management and administration of library services. The Reserve Fund is restricted for specific purposes as periodically determined and approved by the Board of Directors.

### *Cash and short-term investments*

Cash and short-term investments are amounts on deposit and invested in short-term (less than one year) investment vehicles according to the organization's investment policy.

### *Reserve fund*

The Reserve fund is maintained to assist the organization's cash flows and act as a contingency fund. In accordance with a Board resolution, the fund will be maintained at a minimum of \$500,000, comprising a general component of \$200,000, a capital and special needs component of \$150,000, and a staffing and severance component of \$150,000. Any expenses of this fund that would reduce the fund balance below \$500,000, should be replenished in the following year. As at December 31, 2008, the balance was \$885,388 (2007 - \$997,452).

### *Revenue recognition*

Restricted contributions related to the general operations are recognized as revenue of the General Fund in the year in which the related expenses are incurred. All other restricted contributions are recognized as revenue of the Reserve fund.

### *Measurement uncertainty*

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

## 3. Financial Instruments

Under the standards for recognizing and measuring financial instruments, all financial assets are classified into one of the following four categories: held for trading, held to maturity, loans and receivables or available for sale. All financial liabilities are classified into one of the following two categories: held for trading or other financial liabilities.

The organization's financial assets and financial liabilities are classified and measured as follows:

Asset / Liability	Category	Measurement
Cash and short-term investments	Held for trading	Fair value
Receivables	Loans and receivables	Amortized cost
Accounts payable and accrued liabilities	Other financial liabilities	Amortized cost

The other amounts noted on the Balance Sheet are not financial instruments.

The organization has not entered into any derivative transactions. In addition, the organization's contractual arrangements do not have any embedded features.

#### 4. Share Capital

Authorized  
 Unlimited number of Common shares  
 Unlimited number of Special shares

Issued	<u>2008</u>	<u>2007</u>
100 Common shares	\$100	\$100
100 Special shares	<u>100</u>	<u>100</u>
	<u>\$200</u>	<u>\$200</u>

#### 5. Related Party Transactions

The Society provides administrative services to the organization (Note 1) as well as certain other services and publications. The total amount billed by the Society for 2008 was \$591,847 (2007 - \$410,297). Included in accounts payable are amounts due to the Society of \$52,932 (2007 - \$42,898).

#### 6. Other Expenses – Head Office/Administration

Included in these expenses are costs associated with administration by the Society, directors and officers insurance, Board of Directors' meetings and other miscellaneous items.

#### 7. Other Expenses – County and District Law Libraries – centralized purchases

Included in these expenses are costs associated with staffing and travel, document delivery, publications, committee meetings, and miscellaneous items.

#### 8. Contingencies and Guarantees

In the normal course of business, the organization enters into agreements that meet the definition of a guarantee. The organization's primary guarantees are as follows:

(a) Indemnity has been provided to all directors and/or officers of the organization for various items including, but not limited to, all costs to settle suits or actions due to their involvement with the organization, subject to certain restrictions. The organization has purchased directors' and officers' liability insurance to mitigate the cost of any potential future suits or actions. The term of the indemnification is not explicitly defined, but is limited to the period over which the indemnified party served as a trustee, director or officer of the organization. The maximum amount of any potential future payment cannot be reasonably estimated.

(b) In the normal course of business, the organization has entered into agreements that include indemnities in favour of third parties, such as purchase and sale agreements, engagement letters with advisors and consultants, information technology agreements and service agreements. These indemnification agreements may require the organization to compensate counterparties for losses incurred by the counterparties as a result of breaches in representation and regulations or as a result of litigation claims or statutory sanctions that may be suffered by the counterparty as a consequence of the transaction. The terms of these indemnities are not explicitly defined and the maximum amount of any potential reimbursement cannot be reasonably estimated.

The nature of these indemnification agreements prevents the organization from making a reasonable estimate of the maximum exposure due to the difficulties in assessing the amount of liability that stems from the unpredictability of future events and the unlimited coverage offered to counterparties. Historically, the organization has not made any significant payments under such or similar indemnification agreements and therefore no amount has been accrued in the financial statements with respect to these agreements.

## 9. County and District Law Library Grants

These grants represent the quarterly distribution of funds to the 48 County and District Law Libraries. Included in the grants are special payments funded from the Reserve Fund to Carleton of \$106,064 and Peterborough of \$6,000. The grants are distributed in accordance with policies and procedures established by the organization's Board of Directors.

The following individual law association grants were distributed by the organization during 2008 and 2007:

	<u>2008</u>	<u>2007</u>
Algoma	\$118,244	\$113,944
Brant	88,831	73,238
Bruce	48,184	45,918
Carleton	649,664	558,836
Cochrane	43,330	34,272
Dufferin	49,489	47,149
Durham	116,061	113,823
Elgin	68,167	64,447
Essex	252,602	235,496
Frontenac	129,120	128,302
Grey	58,144	56,047
Haldimand	26,658	25,219
Halton	115,821	112,418
Hamilton	395,125	368,886
Hastings	75,810	72,490
Huron	65,876	63,477

Kenora	77,841	74,956
Kent	63,284	60,440
Lambton	62,380	53,294
Lanark	35,210	22,623
Leeds & Greenville	64,053	62,713
Lennox & Addington	23,914	23,258
Lincoln	151,097	143,358
Manitoulin	6,556	6,365
Middlesex	315,125	295,187
Muskoka	48,978	42,231
Nipissing	70,466	69,178
Norfolk	62,869	60,409
Northumberland	68,601	60,206
Oxford	66,164	63,492
Parry Sound	30,856	27,486
Peel	255,088	244,806
Perth	47,044	53,668
Peterborough	99,298	94,620
Prescott & Russell	8,104	4,726
Rainy River	24,907	24,182
Renfrew	111,148	99,661
Simcoe	125,492	119,400
Stormont, Dundas & Glengarry	63,402	63,879
Sudbury	165,451	158,865
Temiskaming	38,886	43,379
Thunder Bay	146,226	135,776
Toronto	524,106	507,979
Victoria Haliburton	74,650	71,482
Waterloo	213,538	205,379
Welland	83,806	76,903
Wellington	67,563	61,520
York Region	206,167	175,702
	<u>\$5,703,396</u>	<u>\$5,321,085</u>

## FOR DECISION

Combined Financial Statements of the Errors and Omissions Insurance Fund For The Year  
Ended December 31, 2008

## Motion

85. That Convocation approve the audited combined financial statements for the Law Society of Upper Canada Errors & Omissions Insurance Fund for the year ended December 31, 2008.
86. The audited combined financial statements for the Law Society of Upper Canada Errors & Omissions Insurance Fund for the year ended December 31, 2008 are attached for Convocation's approval (Page 105).
87. The audited financial statements for the Lawyers' Professional Indemnity Company for the year ended December 31, 2008 are attached for Convocation's information (Page 66).
88. The Lawyers' Professional Indemnity Company administers The Law Society of Upper Canada Errors and Omissions Insurance Fund under a management services agreement.

89. Ms. Kathleen Waters (President & CEO) and Mr. Steve Jorgensen (Vice President, Finance and Treasurer) from LAWPRO will be in attendance.

FOR DECISION

LAW SOCIETY AUDITOR

Motion

90. That Deloitte & Touche LLP be appointed auditor of the Law Society's General Fund, Compensation Fund and LibraryCo Inc. for the 2009 financial year.
91. Convocation appoints the Law Society auditor on the advice of the Audit Committee. This has been the seventh year for Deloitte & Touche as the Law Society auditor.

FOR INFORMATION

COMMITTEE REVIEW OF IN CAMERA REPORTS

92. The Committee reviewed the following reports for information:
- o Results of the 2008 Audits for the General Fund and Compensation Fund prepared by Deloitte and Touche LLP, attached at page 139.
  - o Review by Hewitt Associates, investment consultants, on the performance of our investment manager, Foyston Gordon and Payne in 2008 attached at page 156.
  - o Schedule of amounts paid to benchers for remuneration and expense reimbursements during 2008.
  - o Summary of the current status of litigation matters and related external counsel expenses.

FOR INFORMATION

INVESTMENT COMPLIANCE REPORTING  
LONG-TERM AND SHORT-TERM INVESTMENTS

Convocation is requested to receive Compliance Statements for the General Fund and Compensation Fund long-term and short-term investments as at December 31, 2008 for information.

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

- (1) Copies of the General Fund audited financial statements. (pages 14 – 18)
- (2) Copies of the Compensation Fund audited financial statements. (pages 38 – 41)
- (3) Copies of the LibraryCo Inc. audited financial statements. (pages 52 – 56)

- (4) Copies of the combined Errors and Omissions Fund financial statements.  
(pages 61 – 136)
- (5) Copies of the compliance statements for the General Fund, Compensation Fund long-term and short-term investments.  
(pages 204 – 207)
- (6) Copy of replacement page 133 of the Audit Committee Report distributed at Convocation.
- (7) In Camera - Copy of the General Fund, Highlights – Schedule of Unrestricted Fund Revenues and Expenses Budget to Actual Comparison (Unaudited) For the year ended December 31, 2008, Confidential.  
(pages 30 – 33)
- (8) In Camera - Copy of the Deloitte, Law Society of Upper Canada General Fund and Compensation Fund, Report to the Audit Committee, Results of the 2008 Audits, April 7, 2009.  
(pages 139 – 202)
- (9) Distributed in In Camera - Copy of the Law Society of Upper Canada – Status Report on Investments April 27, 2009 for Information.

Re: General Fund – Audited Financial Statements for the Year Ended December 31, 2008  
 Compensation Fund – Audited Financial Statements for the Year Ended December 31, 2008  
 LibraryCo Inc. – Audited Financial Statements for the Year Ended December 31, 2008  
 Combined Financial Statements, Errors & Omissions Insurance Fund for the Year Ended December 31, 2008

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It was moved by Ms. Symes, seconded by Mr. Chahbar, that Convocation approve the audited financial statements of the General Fund, Compensation Fund, LibraryCo Inc. and Errors and Omissions for the year ended December 31, 2008.

Carried

Re: Appointment of Law Society Auditor

It was moved by Ms. Symes, seconded by Mr. Chahbar, that Deloitte & Touche LLP be appointed auditor of the Law Society's General Fund, Compensation Fund and LibraryCo Inc. for the 2009 financial year.

Carried

*Items for Information*

- LAWPRO Financial Statements
- Investment Compliance Report
- Review of *In Camera* Reports
- *In Camera* Matter

MOTION – Amendment to Rule 3.03(1) of the *Rules of Professional Conduct* re: Use of Word ‘Expert’

The Treasurer announced that the motion regarding the amendment to Rule 3.03(1) of the *Rules of Professional Conduct* re: Use of Word ‘Expert’ has been withdrawn by Messrs. Aaron and Gottlieb.

Convocation adjourned and reconvened as a Committee of the Whole in camera.

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IN CAMERA

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IN PUBLIC

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GOVERNMENT AND PUBLIC AFFAIRS COMMITTEE REPORT

Mr. Caskey presented the Report.

Report to Convocation  
April 30th, 2009

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Government Relations & Public Affairs Committee

Committee Members  
James R. Caskey, Co-Chair  
Douglas Lewis, Co-Chair  
Laurie Pawlitzka, Vice-Chair  
Bob Aaron  
Marion Boyd  
Jack Braithwaite  
Chris Bredt  
Dow Marmur

Susan McGrath  
Judith Potter  
Heather Ross  
Alan Silverstein  
William Simpson

Purposes of Report: Decision  
Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

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FOR DECISION

By-law 3 amendment: *Lobbying Act* – Indemnification ..... TAB A

COMMITTEE PROCESS

1. The Committee met on April 7, 2009. Committee members in attendance were: James Caskey (Co-Chair), Douglas Lewis (Co-Chair), Laurie Pawlitza (Vice-Chair), Bob Aaron, Jack Braithwaite, Chris Bredt, Susan McGrath, Judith Potter, Alan Silverstein and William Simpson. Staff members in attendance were Roy Thomas, Elliot Spears, Sheena Weir, Lisa Mallia and Julia Bass.

FOR DECISION

BY-LAW 3 AMENDMENTS RE: FEDERAL LOBBYING ACT

Motion

3. That By-law 3 be amended as shown at Appendix 1, to indicate that benchers who lobby the government of Canada are indemnified only for those communications that conform to the Law Society’s lobbying policy.

Background

4. On July 2, 2008, the new *Lobbying Act* and its regulations came into force. On October 30th 2008, Convocation approved a policy “that benchers communicate with officers and employees of the government of Canada on behalf of the Law Society only when they have the written authorization of the Treasurer or Chief Executive Officer to do so”.
5. The Act imposes stringent reporting requirements on certain people who communicate with “public office holders” (officers or employees of the federal government) about

certain matters. Even something as simple as arranging a meeting between a government official and someone else triggers a reporting requirement. Benchers who communicate with public office holders on behalf of the Law Society are considered “consultant lobbyists” and are subject to the provisions of the Act and its regulations.

6. Benchers who communicate with public office holders on behalf of the Law Society must personally comply with the reporting requirements or be subject to onerous penalties including up to a \$50,000 fine or six months imprisonment on summary conviction and a \$200,000 fine or two years imprisonment if prosecuted by indictment. Offences under the Act are strict liability.
7. At the time the policy was adopted, Convocation decided that due diligence would require the Law Society to amend the bencher indemnification provisions in section 53 of By-law 3 to limit the indemnification of benchers in the event of non-compliance with the policy. The necessary wording has now been prepared and is shown at Appendix 1.

#### The Committee’s Deliberations

8. The Committee considered and approved the proposed amendment.

APPENDIX 1

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

BY-LAW 3  
[BENCHERS, CONVOCATION AND COMMITTEES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 30, 2009

MOVED BY

SECONDED BY

THAT By-Law 3 [Benchers, Convocation and Committees], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, September 20, 2007, November 22, 2007 and June 26, 2008, be further amended as follows:

1. Subsection 53 (4) of the English version of By-Law 3 is amended by striking out “and” at the end of clause (a), by adding “and” at the end of clause (b) and by adding the following clause:

- (c) in the case of a proceeding under the *Lobbying Act* (Canada), including an investigative proceeding, communicated on behalf of the Society with a public office holder, as defined in the *Lobbying Act* (Canada), only with the prior written authorization of the Treasurer or the Chief Executive Officer.

2. Subsection 53 (4) of the French version of the By-Law is amended by striking out “d’une part,” at the beginning of clause a), by striking out “d’autre part,” at the beginning of clause b) and by adding the following clause:

- c) dans le cas d’une instance engagée en vertu de la Loi sur le lobbying (Canada), y compris les procédures d’enquête, elles ont communiqué au nom du Barreau avec le titulaire d’une charge publique, au sens de la Loi sur le lobbying (Canada), seulement avec l’autorisation préalable écrite du Trésorier ou du Directeur général.

Re: Amendments to By-Law 3 [Benchers, Convocation and Committees]

It was moved by Mr. Caskey, seconded by Mr. Lewis, that By-Law 3 be amended as shown at Appendix 1, to indicate that benchers who lobby the government of Canada are indemnified only for those communications that conform to the Law Society’s lobbying policy.

Carried

It was moved by Mr. Crowe, seconded by Mr. Heintzman, that the policy be amended to read “authorization of the Treasurer in consultation with the Chief Executive Officer”.

The Treasurer ruled the motion out of order.

Mr. Heintzman withdrew as seconder.

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IN CAMERA  
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IN PUBLIC

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PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Report.

Report to Convocation  
April 30th, 2009

Paralegal Standing Committee

Committee Members  
Paul Dray, Chair  
Susan McGrath, Vice-Chair  
Marion Boyd  
James R. Caskey  
Seymour Epstein  
Michelle L. Haigh  
Glenn Hainey  
Paul Henderson  
Brian Lawrie  
Douglas Lewis  
Margaret Louter  
Stephen Parker  
Cathy Strosberg

Purpose of Report: Decision  
Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

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Housekeeping Amendment to Form 7A..... TAB A

For Information..... TAB B

Public Release of Two Year Report on Paralegal Regulation

Review of Exemptions in By-law 4

Meeting with Paralegal Organizations

POA Consultation

#### COMMITTEE PROCESS

1. The Committee met on April 8th, 2009. Committee members present were Paul Dray, Chair, Susan McGrath (Vice-chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh (on the telephone), Glenn Hainey, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg (on the telephone). Staff members in attendance were Malcolm Heins, Terry Knott, Elliot Spears, Roy Thomas, Sybila Valdivieso, Arwen Tillman, Sheena Weir, Lisa Mallia, Mark Andrew Wells and Julia Bass.

#### FOR DECISION

#### HOUSEKEEPING AMENDMENT TO FORM 7 A:

##### Motion

2. That Convocation approve the wording of the amendment to Form 7A shown at Appendix 1. (The formal motion amending the Form is at TAB 4).

##### Background

3. In April 2007, Convocation approved amendments to By-law 7 (effective May 1) to bring paralegals within the provisions governing professional corporations. However, Form 7A of By-law 7 (Notice of Intention to Surrender a Certificate of Authorization) makes no reference to the provision of legal services, but only to the practice of law. It is accordingly appropriate to revise the wording of Form 7A to add legal services.
4. Proposed wording has now been prepared by the Legal Affairs department and is attached at Appendix 1.

##### The Committee's Deliberations

5. The Committee approved the draft form.
6. The Committee also approved the change to section 3 of By-law 7 proposed by the Professional Regulation Committee.

## APPENDIX 1

## Form 7A

## Notice of Intention to Surrender a Certificate of Authorization

NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION  
*(Name of professional corporation applying  
 for permission to surrender a certificate of authorization, in capital letters)*

Pursuant to section 10 of By-Law 7 made under paragraph 28.1 of subsection 62 (0.1) of the Law Society Act, the above named hereby gives notice of its intention to surrender its certificate of authorization.

The above named has (carried on the practice of law or provided legal services or carried on the practice of law and provided legal services) at *(identify where the above named has carried on the practice of law or provided legal services or carried on the practice of law and provided legal services)* (or has not carried on the practice of law or has not provided legal services or has not carried on the practice of law or provided legal services since *(date)*) (or has never (carried on the practice of law or provided legal services or carried on the practice of law or provided legal services) in Ontario).

Dated at *(place)*

*(Date)*

*(Name of professional corporation)*

*(Signatures of all directors)*

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 Formulaire 7A

## Avis d'intention de rendre un certificat

## AVIS D'INTENTION DE RENDRE UN CERTIFICAT D'AUTORISATION

(Dénomination sociale de la société professionnelle qui demande la permission de rendre un certificat d'autorisation, en majuscules)

Conformément à l'article 10 du Règlement administratif no 7 adopté en vertu de la disposition 28.1 du paragraphe 62 (0.1) de la Loi sur le Barreau, la société susnommée donne avis de son intention de rendre son certificat d'autorisation.

La société susnommée (se livre à l'exercice du droit ou fournit des services juridiques ou se livre à la pratique du droit et fournit des services juridiques) à *(indiquer où la société susnommée se livre à l'exercice du droit ou fournit des services juridiques ou se livre à la pratique du droit et fournit des services juridiques)* (ou ne se livre pas à l'exercice du droit ou ne

fournit pas de services juridiques ou ne se livre pas à l'exercice du droit et ne fournit pas de services juridiques depuis le (*date*) (ou ne s'est jamais livrée à l'exercice du droit ou n'a jamais fourni de services juridiques ou ne s'est jamais livrée à l'exercice du droit et n'a jamais fourni de services juridiques en Ontario).

Fait à (*endroit*)

(*Date*)

(*Nom de la société professionnelle*)

(*Signatures de tous les administrateurs et administratrices*)

## FOR INFORMATION

### PUBLIC RELEASE OF TWO YEAR REVIEW OF PARALEGAL REGULATION

7. In November, Convocation approved the Report that the Law Society Act required the Law Society to submit to the Attorney General on the implementation of paralegal regulation in Ontario. The Report was formally delivered to the Attorney General on January 16th and was tabled in the legislature by him on March 30th. The Law Society held a celebratory reception the same day. The Report is now a public document.

### REVIEW OF PARALEGAL EXEMPTIONS IN BY-LAW 4

8. In keeping with the provisions of By-law 4, in January the Committee commenced discussion of the exemptions set out in the By-law, and continued work on this topic at the meetings in February and April. It has become apparent that proper consideration of the exemptions will require closer study, including further discussions with government representatives and stakeholders who will potentially be affected by the Committee's decisions. Accordingly, the Committee has established a Working Group to conduct further research on this issue, with the objective of developing recommendations and reporting back to the Committee in the fall.

### MEETING WITH PSO AND LPAO

9. The Committee met with representatives of both the Paralegal Society of Ontario and the Licensed Paralegal Association (Ontario) immediately following the Committee meeting, to discuss issues of current concern. The next meeting with these organizations will be on November 26th, 2009.

### CONSULTATION ON CHANGES TO THE POA

10. The ministry of the attorney general has released a paper proposing changes to the procedures under the Provincial Offences Act (POA). This was distributed to the Law Society, the Ontario Bar Association, the Paralegal Society of Ontario and the Licensed Paralegal Association (Ontario) for comment. The deadline for responses has been extended to April 17th, 2009. Details of the report and the extended deadline were placed on the Law Society website.

Re: Amendment to By-Law 7 [Business Entities] [Form 7A]

It was moved by Mr. Dray, seconded by Ms. McGrath, that Convocation approve the wording of the amendment to Form 7A shown at Appendix 1.

Carried

*Items for Information*

- Two Year Report on Paralegal Regulation
- Review of Exemptions in By-Law 4
- Meeting with Paralegal Organizations
- *Provincial Offences Act* Consultation

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitzka presented the Report.

Report to Convocation  
April 30, 2009

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Professional Development & Competence Committee

Committee Members  
Laurie Pawlitzka (Chair)  
Constance Backhouse (Vice-Chair)  
Mary Louise Dickson (Vice-Chair)  
Alan Silverstein (Vice-Chair)  
Larry Banack  
Jack Braithwaite  
Thomas Conway  
Marshall Crowe  
Aslam Daud  
Jennifer Halajian  
Susan Hare  
Paul Henderson  
Laura Legge  
Dow Marmur  
Daniel Murphy  
Judith Potter  
Nicholas Pustina  
Jack Rabinovitch  
Heather Ross  
Catherine Strosberg  
Gerald Swaye

Purpose of Report: Decision  
Information

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

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Proposed Policy Changes to Certified Specialist Program Definition of “Recent Experience” ..... TAB C

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Quarterly Benchmark Report – 1st Quarter 2009

COMMITTEE PROCESS

1. The Committee met on April 8, 2009. Committee members Laurie Pawlitz (Chair), Constance Backhouse (Vice Chair) Mary Louise Dickson (Vice Chair), Alan Silverstein (Vice Chair), Larry Banack, Jack Braithwaite, Thomas Conway, Marshall Crowe, Aslam Daud, Susan Hare, Paul Henderson, Daniel Murphy, Judith Potter, Nicholas Pustina, Catherine Strosberg and Gerald Swaye attended. James Caskey also attended. Staff members Lisa Mallia, Diana Miles, Elliot Spears, Sophia Sperdakos, Arwen Tillman, Sybila Valdivieso, and Mark Andrew Wells also attended.

DECISION

BY-LAW AMENDMENTS TO FOREIGN LEGAL CONSULTANTS PROVISIONS (reflecting policy changes from February 2009 Convocation)

MOTION

2. That Convocation approve the following amendments to By-Law 14:

THAT By-Law 14 [Foreign Legal Consultants], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be further amended as follows:

1. Section 3 of By-Law 14 is revoked and the following substituted:

**Insurance coverage**

3. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law unless the person has professional liability insurance 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 licensee who holds a Class L1 licence for the licensee's practice of law in Ontario.

**Assurance**

3. Nul ne peut donner un avis juridique en Ontario à l'égard d'une loi d'un ressort étranger en vertu du présent Règlement administratif, sauf la personne qui possède une assurance responsabilité professionnelle dont la protection est au moins équivalente à celle exigée d'un titulaire de permis de catégorie L1 pour exercer le droit en Ontario en ce qui concerne des avis juridiques donnés en Ontario à l'égard d'une loi d'un ressort étranger.

2. Paragraph 1 of subsection 4 (2) of the By-Law is revoked.

3. Paragraph 1 of subsection 4 (3) of the By-Law is revoked.

4. Paragraph 1 of subsection 4 (4) of the By-Law is revoked.

5. Subsection 9 (1) of the By-Law is amended by adding "who hold a Class L1 licence/ de catégorie L1" after "licensees/ titulaires de permis".

6. Subsection 11 (2) of the English version of the By-Law is amended by striking out "issued a permit" after "other than a foreign legal consultant who is a licensee,".

**Background**

3. In February 2009 Convocation approved the Committee's recommendations for changes to the policy on foreign legal consultants to remove the residency requirement and the requirement for foreign legal consultants to carry defalcation coverage.

4. The proposed amendments to By-Law 14 are set out above and a red-lined version of the current By-Law showing the changes is set out at Appendix 1.

[Appendix 1](#)[Prepared by AES \(March 25, 2009\)](#)

## BY-LAW 14

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

## FOREIGN LEGAL CONSULTANTS

## INTERPRETATION

## Definitions

1. (1) In this by-law,

“foreign jurisdiction” means a jurisdiction outside Canada;

“foreign legal consultant” means a person who holds a valid permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction;

“licensee” means a licensee who holds a Class L1 licence.

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) representing a person in a proceeding before an adjudicative body in Ontario;
- (b) selecting, drafting, completing or revising, on behalf of a person, a document for use in a proceeding before an adjudicative body in Ontario; or
- (c) selecting, drafting, completing or revising, on behalf of a person, a document that relates to or deals with the laws of Ontario or the laws of Canada applicable in Ontario.

## PROHIBITION

## 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 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 licensee who holds a Class L1 licence for the licensee'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 licensee with respect to the licensee's practice of law in Ontario.~~

## PERMIT

### Application

4. (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 licensee 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 licensee 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 him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the person is authorized to practise law.

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 for a permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Same

(3) A person other than a licensee 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 him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the person is authorized to practise law.
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 for a permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction, the person was lawfully engaged in the practice of law in the foreign jurisdiction.

Licensees authorized to give foreign legal advice

(4) A licensee may give legal advice in Ontario respecting the law of a foreign jurisdiction if the licensee meets the following conditions:

1. ~~The licensee is resident in Ontario.~~
2. The licensee is authorized to practise law in the foreign jurisdiction.
3. The licensee is not the subject of any order made against him or her by a tribunal of any governing body of the legal profession in the foreign jurisdiction in which the licensee is authorized to practise law.
4. The licensee has no terms, conditions, limitations or restrictions imposed on the licensee's authorization to practise law in the foreign jurisdiction.

Application to Society

5. (1) A person, including a licensee, who wishes to give legal advice in Ontario respecting the law of a foreign jurisdiction shall apply in writing to the Society for a permit authorizing the person to give legal advice in Ontario respecting the law of a foreign jurisdiction.

#### Application fee

(2) Every application under subsection (1) shall be accompanied by an application fee.

#### 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 the Society, 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

(4) Every application under subsection (1), in respect of which the application fee required under subsection (2) has been paid, shall be considered by the Society, and,

- (a) if the Society is satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, the Society shall notify the applicant in writing that, upon payment of the permit fee, he or she will be issued a permit; or
- (b) if the Society is not satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, the Society shall notify the applicant in writing that his or her application for a permit has been rejected.

#### Application to committee of benchers

(5) If the Society rejects the application of a person, the person may apply to a committee of benchers appointed for the purpose by Convocation for a reconsideration of his or her application.

#### Time for application

(6) An application under subsection (5) shall be commenced by the person notifying the Society in writing of the application within thirty days after the day the person receives notice of the Society's rejection of the person's initial application.

#### 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 a licence 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 4 (2), (3) or (4), as the case may be, are met, direct the Society to notify the applicant in writing that, upon payment of the permit fee, he or she will be issued a permit; or
- (b) if the committee is not satisfied that the conditions set out in subsection 4 (2), (3) or (4), as the case may be, are met, direct the Society to notify the applicant in writing that his or her application for a permit has been rejected.

## Decision final

(12) The decision of the committee of benchers on an application under subsection (5) is final.

## Conditions

6. (1) A permit issued to a person who qualified for the permit by meeting the conditions set out in subsection 4 (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 a foreign legal consultant who qualified for his or her permit by meeting the conditions set out in subsection 4 (2) or (4).

## Same

(2) A permit may include such terms and conditions as the Society or the committee of benchers, as the case may be, considers appropriate.

## Validity of permit

7. (1) Subject to its being revoked, a permit is valid for one year after the day on which it comes into effect.

### Renewal of permit

(2) Before the expiry of a permit, the permit holder may apply for its renewal and sections 5 and 6 apply, with necessary modifications, to an application for renewal.

### Revocation of permit

8. A permit is automatically revoked immediately the permit holder fails to comply with any of the conditions set out in subsection 4 (2), (3) or (4), as the case may be, fails to comply with any condition imposed on the permit, fails to comply with section 3 or fails to comply with section 12.

## GENERAL

### Application of Act, *etc.*

9. (1) The Act, the regulations, the by-laws, the rules of practice and procedure and the rules of professional conduct for licensees who hold a Class L1 licence 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.

### Handling of money and other property

10. 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

11. (1) 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 foreign legal consultant, other than a foreign legal consultant who is a licensee, issued a permit 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 licensee.

## Report to Society

12. 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 in the jurisdiction in which the person is authorized to practise law.

### Application for licence deemed application for permit

13. If, immediately before the day before this By-Law comes into force, an application for a licence as a foreign legal consultant has not yet been accepted or refused, the application shall be deemed to become, on the day this By-Law comes into force, an application for a permit as a foreign legal consultant.

## PROPOSED POLICY FOR FOREIGN LEGAL CONSULTANT ("FLC") PARTICIPATION IN ARBITRATIONS

### MOTION

5. That Convocation approve a policy to permit FLCs to participate in arbitrations held in Ontario,
  - a. where the law governing the proceeding and the law at issue is either international law or the law of the FLC's home jurisdiction, or,
  - b. when assisted by counsel licensed to practice law in Canada, where the law at issue is either international law or the law of the FLC's home jurisdiction and the law governing the proceeding is Canadian.

### Background

6. All jurisdictions in Canada except for the Chambre des Notaires have FLC regimes. Although the regimes have been in place in most jurisdictions for a number of years, the number of FLCs in Canada remains very small, with many jurisdictions having no FLCs at all.
7. Despite the limited numbers in Canada FLC regimes continue to be a subject of discussion in Canada's international trade in services negotiations. As part of its ongoing consultation with the Federation on issues relating to trade in legal services, the Department of Foreign Affairs and International Trade ("DFAIT") has advised that Canada has been asked to expand its trade commitments to permit FLCs to appear as counsel in arbitrations governed by international law or the law of the FLC's home jurisdiction.
8. The Federation's International Affairs Committee, on which Ontario is represented, has been considering this issue and recently made recommendations to Federation Council. The Council now seeks the votes of each law society on the recommendations.
9. The International Affairs Committee has considered the following possible scenarios related to this request:

- a. The law at issue is foreign and the law governing the proceeding is foreign (scenario a);
  - b. The law at issue is foreign but the law governing the proceedings is domestic (scenario b); and
  - c. The law at issue and the law governing the proceeding are domestic (scenario c).
10. In considering the three scenarios the Federation's International Affairs Committee considered whether any of these changes would raise significant public interest concerns. Its view was that to the extent the arbitration involves domestic law law societies should be concerned and address the issue, but where there is no domestic law component FLCs should be permitted to appear.

#### Scenario a

11. Where the law at issue in the arbitration and the law governing the proceeding are foreign, law societies should have little reason to be concerned about permitting FLCs to appear on such matters. Typically, in such instances the physical location of the arbitration is Canada, but there is no other connection to Canadian law. In the event one of the clients is Canadian, the public interest would be protected because the foreign lawyer must have a permit to act as an FLC in Ontario and is subject to the Law Society's rules and by-laws.

#### Scenario b

12. When the law at issue is foreign, but the law governing the proceeding is Canadian, it is important that someone licensed to practise law in Canada be associated with the process. This would ensure that the clients are properly protected and receiving appropriate legal advice on matters of which the FLC would have no knowledge and no authority to advise. Accordingly, although the FLC would be entitled to appear on the arbitration, the assistance of an Ontario/Canadian licensed lawyer would be required. Where the FLC is both a licensed lawyer and an Ontario FLC he or she could fulfill both roles on the arbitration.

#### Scenario c

13. In considering the third scenario the International Affairs Committee agreed that FLCs, who are not licensed to practise domestic law in Canada, should not be permitted to participate in an arbitration in which the law in issue and the law governing the proceeding are domestic. The only FLCs who would be entitled to participate in these arbitrations would be those who are both licensed in Ontario and have an FLC permit.
14. The Federation of Law Societies of Canada's recommendation is that Foreign Legal Consultants be permitted to participate in arbitrations held in Canada,
- a. Where the law governing the proceeding and the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction, or,
  - b. When assisted by counsel licensed to practice law in Canada, where the law at issue is either international law or the law of the Foreign Legal Consultant's home jurisdiction and the law governing the proceeding is Canadian.

15. The Committee has considered the proposal and agrees with the International Affairs Committee's assessment of the public interest issue and with the Federation's recommendations.
16. If Convocation approves these proposed changes specific by-law amendments will be made for Convocation's further approval.

## PROPOSED POLICY CHANGES TO CERTIFIED SPECIALIST

### PROGRAM DEFINITION OF "RECENT EXPERIENCE"

#### MOTION

17. That Convocation approve changes to the "recent experience" requirement of the Certified Specialist program as follows:
  - a. Applicants must have engaged in the practice of law for at least seven years before the day they apply for certification.
  - b. Applicants must have practised in the area of law in which they seek to be certified for at least five of the seven years,
    - i. In Ontario for two years immediately before the application;
    - ii. Any other three years in Ontario or any common law jurisdiction.

#### Background

18. The Certified Specialist Board's functions include establishing standards for the certification of lawyers as specialists and developing for the Committee's approval policies relating to the certification of lawyers as specialists.
19. Section 10 of By-law 15 provides that "a licensee may be certified as a specialist in an area of law in respect of which certification is available if the licensee meets the following conditions." There are eight conditions, two of which are,
  - a. The licensee has engaged in the practice of law for at least seven years *immediately* before the day on which the licensee applies for certification. [emphasis added]
  - b. The licensee has practiced in the area of law for at least five of the seven years mentioned in paragraph [a.] as follows:
    - (i) Two years immediately before the day on which the licensee applies for certification.
    - (ii) Any other three years.

20. Mirroring the By-law, the approved policies governing the certified specialist program<sup>1</sup> define “recent experience” as “practising law in a specialty area for at least five of the seven years *immediately* preceding the date of the Application: two years immediately preceding the date of the Application and any other three years.” [emphasis added]
21. The purpose of these provisions is to ensure that lawyers seeking to become specialists,
  - a. have sufficient experience as practitioners generally;
  - b. have experience in the relevant specialty area over the required period; and
  - c. have the required experience in the two years immediately before the application for certification.
22. Upon reflection, and with a view to a number of applications it has had before it, the Certified Specialist Board believes the eligibility requirements to make an application should be somewhat more flexible to recognize the diversity of the bar and the varied life experiences of those seeking to become certified specialists.
23. For these reasons the Board recommended to the Committee that the wording in paragraphs 1 and 2 of section 10 of By-law 15 and the policies should be amended to permit,
  - a. practice experience outside of Ontario and in a common law jurisdiction to count toward the seven year requirement; and
  - b. the seven year requirement to be met over a longer period prior to application for certification to accommodate absences from practice, such as parental leave.

#### Previous Practice outside of Ontario

24. There are an increasing number of lawyers being called to the bar in Ontario who have previously practised law in other jurisdictions, both within and outside Canada. Many of the lawyers from outside of Canada have practised in common law jurisdictions, developing expertise in practice areas that are also recognized as specialties in the Law Society’s program.
25. The Certified Specialist Board continues to be of the view that it is important that an applicant demonstrate practice experience in a specialty area in the two years immediately preceding the application and that such experience must occur in Ontario. This ensures understanding of and experience with practice and procedure in this province. The Board recommends, however, that the remaining three years of the “recent experience requirement” may occur in any common law jurisdiction.
26. The following examples illustrate how an application would be dealt with currently and under the proposed change:

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<sup>1</sup> Approved in July 2008

Lawyer 1

Called to the Bar in British Columbia in 2001. Practising criminal and family law since call. Called to the Ontario Bar in January 2005. Currently meets the two years immediately preceding the date of application requirement, but does not meet the five year requirement. Under the revised recent experience definition would meet the two, five and seven year requirement.

Lawyer 2

Called to the Bar in England in 1981. Practised in England from 1981 - 1997, Turks and Caicos from 1997 - 2001 and Channel Islands from 2001 - 2005. Called to the Ontario Bar in 2006. Practising in estates and trusts law. Currently meets the two years immediately preceding the date of application requirement, but does not meet the five year requirement. Under the revised recent experience definition would meet the two, five and seven year requirement.

## Extended Absence from Practice

27. Under the current wording of the certification by-law and policies, a lawyer applying for certification must have “engaged in the practice of law for at least seven years *immediately* before the day on which he or she applies for certification.”
28. This means that a lawyer who has been in practice for more than seven years, but not all of them immediately before he or she applies for certification is ineligible to apply. The Board is of the view that this creates an artificial barrier, particularly for women who have taken a number of years away from practice to raise families.
29. By removing the word “immediately” from the By-law and policies the Law Society would preserve the goal of ensuring that those applying for certification have sufficient general experience as a practitioner (seven years), but permitting that period to span a greater time frame.
30. The following example illustrates how an application would be dealt with currently and under the proposed change:

Lawyer

Called to the Bar in Ontario in 1989. Parental leave from 2001 to 2006. Returned to full-time practice in January 2006. Has practised in estates and trusts law since her call. Currently meets the two years immediately preceding the date of application but does not meet the five year requirement. Under the revised recent experience definition would meet the two, five and seven year requirement.

31. These proposed changes will have no effect on the assessment of the merits of an application. The approval process for all applicants would apply to lawyers in these categories.
  - a. Law Society counsel review applications before they are submitted to the Board. Counsel have specific practice area experience and may request additional information to support the application.

- b. The onus is on the applicant to prove that his or her experience meets the standards for the specialty area. If the proposed changes were approved it would mean a lawyer in these categories would not be precluded from applying for certification, but would still otherwise have to have comparable experience requirements to other applicants.
32. The Committee has considered the Board's recommendation and the Board's experience in developing appropriate specialist certification standards and in evaluating applications. It recommends the Board's proposal to Convocation.
33. If Convocation approves the proposed changes the necessary By-law amendments will be provided to Convocation at a future date for its approval.

#### FOR INFORMATION

#### QUARTERLY BENCHMARK REPORT – 1ST QUARTER 2009

34. The Professional Development and Competence department's benchmark report for the first quarter of 2009 is provided to Convocation for information at Appendix 2.

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

A copy of the Professional Development and Competence Quarterly Benchmark Report for the first quarter of 2009.

(Appendix 2, pages 20 - 36)

Re: Amendment to By-Law 14 [Foreign Legal Consultants]

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, THAT By-Law 14 [Foreign Legal Consultants], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, be further amended as follows:

1. Section 3 of By-Law 14 is revoked and the following substituted:

Insurance coverage

Assurance

3. No person shall give legal advice in Ontario respecting the law of a foreign jurisdiction under this By-Law unless the person has professional liability insurance 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 licensee who holds a Class L1 licence for

3. Nul ne peut donner un avis juridique en Ontario à l'égard d'une loi d'un ressort étranger en vertu du présent Règlement administratif, sauf la personne qui possède une assurance responsabilité professionnelle dont la protection est au moins équivalente à celle exigée d'un titulaire de permis de catégorie L1 pour exercer le droit en Ontario

the licensee's practice of law in Ontario.

en ce qui concerne des avis juridiques  
donnés en Ontario à l'égard d'une loi d'un  
ressort étranger.

2. Paragraph 1 of subsection 4 (2) of the By-Law is revoked.
3. Paragraph 1 of subsection 4 (3) of the By-Law is revoked.
4. Paragraph 1 of subsection 4 (4) of the By-Law is revoked.
5. Subsection 9 (1) of the By-Law is amended by adding "who hold a Class L1 licence/ de catégorie L1" after "licensees/ titulaires de permis".
6. Subsection 11 (2) of the English version of the By-Law is amended by striking out "issued a permit" after "other than a foreign legal consultant who is a licensee,".

Carried

Re: Proposed Policy on Foreign Legal Consultant Participation in Arbitrations

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve a policy to permit FLCs to participate in arbitrations held in Ontario,

- a. where the law governing the proceeding and the law at issue is either international law or the law of the FLC's home jurisdiction, or,
- b. when assisted by counsel licensed to practise law in Ontario, where the law at issue is either international law or the law of the FLC's home jurisdiction and the law governing the proceeding is Canadian.

Carried

Re: Proposed Changes to Certified Specialist Program Definition of "Recent Experience"

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve changes to the "recent experience" requirement of the Certified Specialist program as follows:

- a. Applicants must have engaged in the practice of law for at least seven years before the day they apply for certification.
- b. Applicants must have practised in the area of law in which they seek to be certified for at least five of the seven years,
  - i. In Ontario for two years immediately before the application;
  - ii. Any other three years in Ontario or any common law jurisdiction.

Carried

*Item for Information*

- Quarterly Benchmark Report – 1st Quarter 2009

PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Rothstein presented the Report.

Report to Convocation  
April 30, 2009

Professional Regulation Committee

Committee Members  
Linda Rothstein (Chair)  
Julian Porter (Vice-Chair)  
Bonnie Tough (Vice-Chair)  
Bob Aaron  
Melanie Aitken  
Christopher Bredt  
John Campion  
Patrick Furlong  
Gary Lloyd Gottlieb  
Glenn Hainey  
Brian Lawrie  
Ross Murray  
Sydney Robins  
Baljit Sikand  
Roger Yachetti

Purpose of Report: Decision and Information

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

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## COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on April 8, 2009. In attendance were Linda Rothstein (Chair), Bonnie Tough and Julian Porter (Vice-Chairs), Bob Aaron, Christopher Bredt, Patrick Furlong, Glenn Hainey, Brian Lawrie, Ross Murray, Sydney Robins and Baljit Sikand. Staff attending were Naomi Bussin, Malcolm Heins, Zeynep Onen, Elliot Spears, Arwen Tillman, Jim Varro and Mark Wells.

### AMENDMENT TO BY-LAW 7 [BUSINESS ENTITIES]

#### Motion

2. That Convocation amend By-Law 7 by revoking section 3 and substituting it with the following:

#### Name requirements

3. The name of a professional corporation, including a descriptive or trade name, shall be,
  - (a) demonstrably true, accurate and verifiable;
  - (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and
  - (c) in the best interests of the public and consistent with a high standard of professionalism.

The formal motion to amend By-Law 7 is at Tab 4.

#### Introduction and Background

3. By-Law 7 includes regulations on certain aspects of a professional corporation as a business entity for the practise of law by lawyers and the provision of legal services by paralegals. One aspect is the name of the professional corporation (see Appendix 1 for the relevant provisions of By-Law 7).
4. Rule 3 of the *Rules of Professional Conduct* and rule 8 of the *Paralegal Rules of Conduct*, which govern marketing and advertising by lawyers and paralegals, were recently amended. The amendments reduced rule 3 and rule 8 to a number of key principles and eliminated much of the prescriptive language around advertising and marketing, including firm names. Rule 3 as amended is at Appendix 2.
5. By-Law 7 for the names of professional corporations includes some of the specific language that was removed from rule 3 and rule 8 through the amendments. The Committee is recommending that the By-Law be amended to reflect the current policy on regulation of firm names in the Rules to ensure consistency in the regulation of names for all business entities.

Statutory and By-Law Provisions on Professional Corporation Names

6. By-Law 7 includes the following requirements for the names of professional corporations. Those highlighted are no longer specified in rule 3 of the *Rules of Professional Conduct*:
- a. The name cannot include language that is not expressly permitted or required in the By-Law or the *Business Corporations Act* and its regulations for professional corporations;
  - b. Names that are used by another professional corporation or so closely resemble the name of another professional corporation that they are likely to mislead or confuse are prohibited;
  - c. *The name can include the name of any shareholder or any licensee who practices law or provides legal services through the professional corporation;*
  - d. *The names of any shareholders or licensees holding office as members of a tribunal or other office incompatible with the practice of law or provision of legal services are prohibited;*
  - e. *The names of deceased shareholders or licensees are permitted;*
  - f. *Use of the honorific "Q.C." is restricted to a professional corporation that has one shareholder who practices law and the name of professional corporation is the name of that shareholder;*
  - g. *Use of phrases "and associates", "and company" etc. are prohibited unless three or more licensees practise law/provide legal services in Ontario through the professional corporation;*
  - h. *The use of descriptive or trade names that are in keeping with the dignity, integrity, independence and role of the legal professions in a free and democratic society and in the administration of justice are permitted. The use of past firm names is permitted;*
  - i. The name of partnership of lawyers that continues as professional corporation for the practice of law can be used for the professional corporation.
7. Paragraph 3.2(2)3. of the *Business Corporations Act* ("the Act") requires the following with respect to the name of a professional corporation:

Conditions for professional corporations

(2) Despite any other provision of this Act but subject to subsection (6)<sup>1</sup>, a professional corporation shall satisfy all of the following conditions:

---

<sup>1</sup> This deals with health profession corporations

1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the same profession.
2. All officers and directors of the corporation shall be shareholders of the corporation.
3. *The name of the corporation shall include the words "Professional Corporation" or "Société professionnelle" and shall comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set out in the regulations or by-laws made under the Act governing the profession.*
4. The corporation shall not have a number name.
5. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practice of the profession but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of the profession, including the investment of surplus funds earned by the corporation.

(emphasis added)

8. The reference in the Act with respect to professional corporation names is to the Law Society's By-Laws, not its *Rules of Professional Conduct*.

#### The Committee's Proposal

9. From the regulatory perspective, the Committee believes that there should be consistent regulation for the names of business entities (corporations, partnerships, etc.) through which lawyers and paralegals provide their professional services.
10. The amended rule 3 of the *Rules of Professional Conduct* includes the following provision related to firms names:

#### 3.02 MARKETING

3.02 (1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

- (2) A lawyer may market professional services if the marketing
  - (a) is demonstrably true, accurate and verifiable,
  - (b) is neither misleading, confusing, or deception, nor likely to mislead, confuse or deceive;
  - (c) is in the best interests of the public and is consistent with a high standard of professionalism

Commentary

Examples of marketing that may contravene this rule include:

- a. stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;
- b. suggesting qualitative superiority to other lawyers;
- c. raising expectations unjustifiably;
- d. suggesting or implying the lawyer is aggressive;
- e. disparaging or demeaning other persons, groups, organizations or institutions;
- f. taking advantage of a vulnerable person or group;
- g. using testimonials or endorsements which contain emotional appeals

- 11. As indicated in the rule, "marketing" includes firm names.
- 12. The Committee is recommending that section 3 of By-Law 7 (see Appendix 1) be revoked and replaced with the following, which mirrors rule 3.02(2):

Name requirements

- 3. The name of a professional corporation, including a descriptive or trade name, shall be,
  - (a) demonstrably true, accurate and verifiable;
  - (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and
  - (c) in the best interests of the public and consistent with a high standard of professionalism.

- 13. This language directly applies the standards in the Rules for marketing to the name of a professional corporation. With this amendment, all business entities for the practice of law or provision of legal services will be subject to the same regulation respecting practice names.
- 14. The Paralegal Standing Committee considered this matter at its April 8, 2009 meeting, and agreed with this approach.

## APPENDIX 1

## BY-LAW 7

Made: May 1, 2007  
June 28, 2007  
September 20, 2007 (editorial changes)  
February 21, 2008

## BUSINESS ENTITIES

...

PART II  
PROFESSIONAL CORPORATIONS

## CORPORATE NAME

Prohibition: general

3. (1) The name of a professional corporation shall not include any language that is not expressly permitted or required under this Part or under the provisions of the *Business Corporations Act*, or any regulations made thereunder, that apply to professional corporations.

Prohibition: identical or similar name

- (2) A professional corporation shall not use a name,
- (a) that is used by another professional corporation; or
  - (b) that so nearly resembles the name used by another professional corporation that it is likely to confuse or mislead the public.

Names of shareholders or licensees

- (3) Subject to subsection (4), the name of a professional corporation may include any of the following:
- 1. The name of any shareholder of the professional corporation.
  - 2. If the professional corporation is one that is described in clause 61.0.1 (1) (a) or (c) of the Act, the name of any licensee who practises law in Ontario through the corporation.
  - 3. If the professional corporation is one that is described in clause 61.0.1 (1) (b) or (c) of the Act, the name of any licensee who provides legal services in Ontario through the corporation.

Prohibition: shareholder or licensee holding office as member of tribunal

(4) The name of a professional corporation shall not include the name of any of the following persons who hold office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law in Ontario or the provision of legal services in Ontario:

1. Any licensee who, prior to taking office as a member of a tribunal or any other office the duties of which are incompatible with the practice of law in Ontario or the provision of legal services in Ontario, practised law in Ontario or provided legal services in Ontario through the professional corporation.

2. Any shareholder of the professional corporation.

Deceased shareholder or person

(5) A professional corporation may retain in its name the name of a deceased licensee who practised law in Ontario or provided legal services in Ontario through the corporation or a deceased shareholder of the professional corporation.

Use of honorific "Q.C."

(6) If a professional corporation that is described in clause 61.0.1 (1) (a) of the Act has one shareholder, the one shareholder practises law in Ontario through the professional corporation and the name of the professional corporation is the name of the one shareholder, the professional corporation may include in its name the honorific "Q.C." properly attributable to the one shareholder of the professional corporation.

Use of phrases "and associates", *etc.*

(7) A professional corporation may include in its name phrases such as "and associates" and "and company" if,

(a) in the case of a professional corporation that is described in clause 61.0.1 (1) (a) of the Act, three or more licensees practise law in Ontario through the professional corporation;

(b) in the case of a professional corporation that is described in clause 61.0.1 (1) (b) of the Act, three or more licensees provide legal services in Ontario through the professional corporation; and

(c) in the case of a professional corporation that is described in clause 61.0.1 (1) (c) of the Act, three or more licensees practise law in Ontario or provide legal services in Ontario through the professional corporation.

Use of trade name, *etc.*

(8) The name of a professional corporation may include a descriptive or trade name that is in keeping with the dignity, integrity, independence and role of the legal professions in a free and democratic society and in the administration of justice.

### Use of past firm name

(9) Despite any other provision in this section, a professional corporation described in clause 61.0.1 (1) (a) of the Act that is established by two or more licensees licensed to practice law in Ontario as barristers and solicitors who, before the day the professional corporation is established, practised law in Ontario as a partnership, may use as its name the name of the partnership.

Interpretation: name of person

(10) For the purposes of this section, the name of a person means the person's surname and, at the person's option, his or her given names or initials.

## APPENDIX 2

### RULE 3: The Practice Of Law

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#### 3.01 MAKING LEGAL SERVICES AVAILABLE

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##### Making Services Available

3.01 (1) A lawyer shall make legal services available to the public in an efficient and convenient way.

##### Commentary

A lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services and by engaging in programmes of public information, education or advice concerning legal matters.

Right to Decline Representation - A lawyer may decline a particular representation (except when assigned as counsel by a tribunal), but that discretion should be exercised prudently, particularly if the probable result would be to make it difficult for a person to obtain legal advice or representation. Generally, a lawyer should not decline representation merely because a person seeking legal services or that person's cause is unpopular or notorious, or because powerful interests or allegations of misconduct or malfeasance are involved, or because of the lawyer's private opinion about the guilt of the accused. A lawyer declining representation should assist in obtaining the services of another licensee qualified in the particular field and able to act.

When a lawyer offers assistance to a client or prospective client in finding another licensee, the assistance should be given willingly and, except where a referral fee is permitted by rule 2.08(7), without charge.

3.01 (2) In offering legal services, a lawyer shall not use means

(a) that are false or misleading,

- (b) that amount to coercion, duress, or harassment,
- (c) that take advantage of a person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover,
- (d) that are intended to influence a person who has retained another lawyer for a particular matter to change his or her lawyer for that matter, unless the change is initiated by the person or the other lawyer, or
- (e) that otherwise bring the profession or the administration of justice into disrepute.

#### Commentary

A person who is vulnerable or who has suffered a traumatic experience and has not yet had a chance to recover may need the professional assistance of a lawyer, and this rule does not prevent a lawyer from offering his or her assistance to such a person. Rather, the rule prohibits the lawyer from using unconscionable or exploitive means that bring the profession or the administration of justice into disrepute.

### 3.02 MARKETING

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#### Marketing Legal Services

3.02 (1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

3.02 (2) A lawyer may market legal services if the marketing

- (a) is demonstrably true, accurate and verifiable,
- (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
- (c) is in the best interests of the public and is consistent with a high standard of professionalism.

### Commentary

Examples of marketing that may contravene this rule include:

- a. stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases;
- b. suggesting qualitative superiority to other lawyers;
- c. raising expectations unjustifiably;
- d. suggesting or implying the lawyer is aggressive;
- e. disparaging or demeaning other persons, groups, organizations or institutions;
- f. taking advantage of a vulnerable person or group;
- g. using testimonials or endorsements which contain emotional appeals.

### Advertising of Fees

3.02 (3) A lawyer may advertise fees charged by the lawyer for legal services if

- (a) the advertising is reasonably precise as to the services offered for each fee quoted,
- (b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee, and
- (c) the lawyer adheres to the advertised fee.

### 3.03 ADVERTISING NATURE OF PRACTICE

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#### Certified Specialist

3.03 (1) A lawyer may advertise that the lawyer is a specialist in a specified field only if the lawyer has been so certified by the Society.

#### Commentary

Lawyer's advertisements may be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

In accordance with s. 20(1) of the Society's By-law 15 on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist.

In a case where a firm practises in more than one jurisdiction, some of which certify or recognize specialization, an advertisement by such a firm which makes reference to the status of a firm member as a specialist, in media circulated concurrently in the other jurisdiction(s) and the certifying jurisdiction, shall not be considered as offending this rule if the certifying authority or organization is identified.

A lawyer may advertise areas of practice, including preferred areas of practice or that his or her practice is restricted to a certain area of law. An advertisement may also include a description of the lawyer's or law firm's proficiency or experience in an area of law. In all cases, the representations made must be accurate (that is, demonstrably true) and must not be misleading.

### 3.04 INTERPROVINCIAL LAW FIRMS

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#### Interprovincial Law Firms

3.04 (1) Lawyers may enter into agreements with lawyers in other Canadian jurisdictions to form an interprovincial law firm, so long as they comply with the requirements of this rule.

#### Requirements

3.04 (2) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall comply with all the requirements of the Society.

3.04 (3) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that the books, records, and accounts pertaining to the practice in Ontario are available in Ontario on demand by the Society's auditors or their designated agents.

3.04 (4) A lawyer who is a member of an interprovincial law firm and qualified to practise in Ontario shall ensure that his or her partners, associates, or employees who are not qualified to practise in Ontario are not held out as and do not represent themselves as qualified to practise in Ontario.

## AMENDMENTS TO BY-LAW 8 [REPORTING AND FILING REQUIREMENTS]

## Motion

15. That Convocation amend By-Law 8 (Reporting and Filing Requirements) as set out in the following motion:

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

BY-LAW 8  
[REPORTING AND FILING REQUIREMENTS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 30, 2009

MOVED BY

SECONDED BY

THAT By-Law 8 [Reporting and Filing Requirements], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, April 24, 2008, June 26, 2008 and October 30, 2008, be further amended as follows:

1. The heading immediately preceding section 1 and section 1 of the By-Law are revoked.
2. Subsection 8 (1) of the By-Law is amended by striking out “section/l’article 4” and substituting “section/l’article 6”.
16. On January 29, 2009, Convocation approved the recommendation of the Committee to end the requirement in section 1 of By-Law 8 (Reporting and Filing Requirements) that a lawyer provide the Law Society notice of the termination of the lawyer’s fiscal year and any change in that information. The section reads:  
  
Notice of fiscal year
  1. Every licensee who holds a Class L1 licence and engages in the private practice of law in Ontario shall inform the Society in writing of the termination date of his or her fiscal year, and shall file with the Society written notice of any change in the fiscal year within one month after the change is made.
17. A by-law amendment has now been prepared to implement this policy decision. The amendment is to revoke section 1 of the By-Law. A clarifying amendment to section 8 is also included, to correct reference to a previous section number.<sup>2</sup>

<sup>2</sup> Failure to submit public accountant’s report: investigation

8. (1) If a licensee fails to submit the report of a public accountant in accordance with section 6 ~~section 4~~, the Society may require an investigation of the licensee’s financial records to be made by a person designated by it,

18. The Committee requests that Convocation make these amendments.

### INFORMATION

#### USE OF THE WORD "EXPERT" IN RELATION TO RULE 3.03(1) OF THE *RULES OF PROFESSIONAL CONDUCT*<sup>3</sup>

##### Introduction

19. At the October 2008 Convocation, during the discussion leading to approval of amendments to Rule 3 (Making Legal Services Available and Marketing), bencher Bob Aaron raised an issue about the word "expert" and how it would be misleading for a lawyer to use that term to advertise services in an area of law unless the lawyer was a certified specialist in that area.
20. The current rule and commentary read as follows:

#### 3.03 ADVERTISING NATURE OF PRACTICE

##### Certified Specialist

- 3.03 (1) A lawyer may advertise that the lawyer is a specialist in a specified field only if the lawyer has been so certified by the Society.

##### Commentary

Lawyer's advertisements may be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter.

In accordance with s. 27(1) of the Society's By-law 15 on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist.

In a case where a firm practises in more than one jurisdiction, some of which certify or recognize specialization, an advertisement by such a firm which makes reference to the status of a firm member as a specialist, in media circulated concurrently in the other jurisdiction(s) and the certifying jurisdiction, shall not be considered as offending this rule if the certifying authority or organization is identified.

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who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

<sup>3</sup> Deferred from February 2009 Convocation

A lawyer may advertise areas of practice, including preferred areas of practice or that his or her practice is restricted to a certain area of law. An advertisement may also include a description of the lawyer's or law firm's proficiency or experience in an area of law. In all cases, the representations made must be accurate (that is, demonstrably true) and must not be misleading.

21. At the October 2008 Convocation, Mr. Aaron and Gary Gottlieb moved a motion to amend rule 3.03(1) to add the word "expert", as follows:

Certified Specialist

3.03 (1) A lawyer may advertise that the lawyer is a specialist or expert in a specified field only if the lawyer has been so certified by the Society.

22. After discussing the merits of the amendment<sup>4</sup> and the issue it would create (i.e. the Society does not certify "experts"), Convocation deferred the motion to January 2009 Convocation<sup>5</sup> and referred this issue back to the Committee. The amendments to Rule 3 (not including the above motion) were then approved by Convocation.

The Committee's Review and Conclusions

23. The Committee reviewed the use of the word "expert" in the context of lawyer advertising and By-Law 15 on certified specialists.
24. The Committee noted that several years ago, in 1992, the Law Society addressed the circumstance where a criminal law lawyer sought permission to use the word "expert". The then Professional Conduct Committee, in its report to the February 28, 1992 Convocation, said:

REQUEST FOR ADVICE - ADVERTISING

A lawyer practising in the criminal law field has asked if he could put under his name in an advertisement the words "expert defence of serious charges". He is not a certified specialist in criminal law. The only possible objection to the advertisement would be if the public would be misled by it and believe that he is a specialist.

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<sup>4</sup> The Chair of the Committee advised Convocation of the Committee's views on the issue, as it had had a discussion about the issue at a previous Committee meeting. The Chair said: "We weren't persuaded that we should include a *per se* prohibition on the use of the word expert...The lawyer who really is every day working as a mail carrier and maintains...that he or she is an expert in securities legislation or securities litigation...would...very much be offside ...these proposed rules...which would be marketing that is not demonstrably true, accurate or verifiable."

<sup>5</sup> The Committee considered this issue at its December 2008 meeting and was scheduled to continue the discussion at its January 2009 meeting. Mr. Aaron requested that the discussion continue at the February meeting, given his inability to attend the January meeting. The Treasurer agreed that the matter be dealt with in February. As the matter was not reached in February, it was put over to the April 2009 Convocation.

The Committee believes that the descriptive language proposed would be misleading and should not be used.

The Committee asks Convocation to adopt its opinion.

[Convocation agreed]

25. In Canada, only the Law Society offers a specialist certification program for lawyers. The Law Society advertises its specialist program as a way for lawyers to be recognized in a particular field.<sup>6</sup> The Society's website includes the following statement:

Becoming a Certified Specialist gives you recognition as a leader in your field. The right combination of experience and education provides you with an opportunity to distinguish yourself. The Certified Specialist program will help lawyers acquire the requisite skills and knowledge to qualify for certification as a specialist in a given practice area.

26. The Committee noted that some jurisdictions in the United States have specialist programs and provide guidance to lawyers on use of the word "expert". Rules in some jurisdictions prohibit use of the word "expert" except in relation to the lawyer's qualification as a specialist.
27. The Committee noted that the information published by some Ontario law firms about their lawyers uses the word "expert" and describes the availability of expert legal advice in a *narrow* area within a larger specialty area of practice. Three examples are as follows:
- a. The website of a large Toronto law firm states that one of its senior partners, who is not a certified specialist, practicing corporate and securities law is "an internationally recognized expert in corporate governance";

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<sup>6</sup> The following are the areas in which lawyers may currently qualify for a specialist designation:

- Bankruptcy and Insolvency Law
- Citizenship and Immigration Law (Immigration /Refugee Protection )
- Civil Litigation
- Construction Law
- Corporate and Commercial Law
- Criminal Law
- Environmental Law
- Estates and Trusts Law
- Family Law
- Health Law
- Intellectual Property Law (Patent/ Trademark /Copyright)
- Labour Law
- Municipal Law
- Real Estate Law
- Workplace Safety and Insurance Law

- b. A large Toronto firm offers an online newsletter on employment law issues and states “Read our labour and employment law experts’ case commentary”, which is written by two lawyers who are not certified specialists;
  - c. Information on the website of a large Toronto firm about a senior business law lawyer (not a certified specialist) includes “Named by Law Business Research’s International Who’s Who of Banking Lawyers and Who’s Who Legal Series as a leading expert in Canadian banking law, corporate governance and mergers and acquisitions”.
28. The Committee considered a number of options to address the “expert” issue, including the option in Mr. Aaron’s motion. That option, however, in the Committee’s view, would have implications for the specialist certification program, because of the wording of the amendment, and would require consultation with those responsible for it.
29. The other options included:
- a. making no amendments to the rule or commentary, relying on the provisions of the current rules to deal with any advertising using the word “expert” that can be shown to be untrue or misleading;<sup>7</sup>
  - b. prohibiting use of the word “expert” in any area of law that is named as a certified specialty;
  - c. requiring lawyers who are not certified specialists who wish to advertise their “expert” qualifications in an area to include a disclaimer that they are not certified specialists.
30. The Committee also considered a report from Clare Lewis, the Complaints Resolution Commissioner, who requested that the Committee review as a policy issue the use of the word “expert” by lawyers who are not certified in the area of law that is the subject of the advertising.
31. Mr. Lewis explained that this issue arose out of a complaint he reviewed about a lawyer who used the word in advertising and was not a certified specialist in the area of law advertised. Mr. Lewis agreed with the disposition of the Law Society’s investigator to close the complaint file. In referring to the disposition of the complaint, he said that the Law Society’s investigator “reasonably concluded that the advertisement was not

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<sup>7</sup> The general marketing rule reads:

3.02 (1) In this Rule, “marketing” includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

(2) A lawyer may market legal services if the marketing

(a) is demonstrably true, accurate and verifiable,

(b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and

(c) is in the best interests of the public and is consistent with a high standard of professionalism.

misleading by its use of the word “expert(s)” because [the lawyer] had demonstrated his experience, qualifications and proficiency in the area of [law],” and that the investigator “reasonably concluded that each complaint would have to be assessed on its own individual merits to determine whether the advertisement in question was false and/or misleading”.

32. However, Mr. Lewis requested that consideration be given to an amendment to rule 3.03(1) which is identical to that proposed by Mr. Aaron in his motion. Mr. Lewis’s view was that while use of the term “expert” may not reasonably cause a person to conclude that a lawyer is a certified specialist, it may be false, deceptive or likely to mislead or deceive. He noted that public protection exists through the designation “certified specialist” because of the Law Society’s authority to grant the designation only to those who meet the requirements of the program. He said: “Self-designation in advertising as an expert by a lawyer who has not been designated as a certified specialist grants the public no such protection and is capable of much public harm.”

33. In summarizing his views, Mr. Lewis said:

...While I do not accept that the use of the term “expert” in marketing and advertising by lawyers is a designation from which a person might reasonably conclude that the lawyer is a certified specialist, nonetheless, I do have concern that absent timely specific restriction such as is recommended herein, the use and abuse of the term “expert” will occur and increase in lawyer marketing and advertising with the potential to undermine the Society’s Certified Specialist program in the regard of the profession with the potential to mislead the public.

34. The Committee considered all the above information. It appreciated receiving and respects the views of Mr. Lewis. However, the Committee concluded that the current rules and commentary, which prohibit false or misleading advertising, are sufficient to address any issues that might arise from use of the word “expert” in lawyer advertising. Subrule 3.02(2) reads:

- (2) A lawyer may market legal services if the marketing
  - (a) is demonstrably true, accurate and verifiable,
  - (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and
  - (c) is in the best interests of the public and is consistent with a high standard of professionalism.

35. The Committee agrees with the option described in paragraph 29a. and is not recommending further amendments to the marketing rules.

## REPORT ON INTERLOCUTORY SUSPENSIONS

36. The Committee is providing this information report on the Law Society's recent experience with interlocutory suspensions, based on a report from the Director of Professional Regulation, Zeynep Onen,

### Background

37. In December 2004, the Committee began a review of a report prepared by the Director which identified a number of regulatory processes that could be improved to enhance the effectiveness of the Law Society's regulatory mandate. One was the process to obtain an interlocutory suspension order, which created some difficulty because of the legislative test and the procedures involved in obtaining these suspensions.

### The Test

38. On February 24, 2005, Convocation approved amendments to section 49.27 of the *Law Society Act*, which sets out the legislative test for interlocutory suspensions. This change was adopted by the government when the Act was amended in 2007.
39. Prior to the 2007 amendments, section 49.27 read:

The Hearing Panel may make an interlocutory order authorized by the rules of practice and procedure, but no interlocutory order may be made suspending the rights and privileges of a member or student member or restricting the manner in which a member may practise law unless the Panel is satisfied that the order is necessary for the protection of the public.

40. Section 49.27 currently reads:

- (1) The Hearing Panel may make an interlocutory order authorized by the rules of practice and procedure, subject to subsection (2).
- (2) The Hearing Panel shall not make an interlocutory order suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services, unless there are reasonable grounds for believing that there is a significant risk of harm to members of the public, or to the public interest in the administration of justice, if the order is not made and that making the order is likely to reduce the risk.

### The Procedures

41. The Committee also considered the procedures relating to obtaining interlocutory suspension orders. On June 22, 2005, Convocation approved changes to the *Rules of Practice and Procedure* to permit motions without notice to the lawyer for these orders and more relaxed rules around evidence. The changes included:
- a. An amendment to provide for a motion for an interlocutory suspension and restriction order to be heard without notice to the lawyer;
  - b. An amendment to permit the Hearing Panel to adjourn a motion without notice for the purpose of service if it concludes that the motion ought to have been served;

- c. An amendment to provide the Hearing Panel with authority to vary or cancel the order; and
- d. An amendment to permit the introduction of a broad range of evidence on such motions by incorporating s. 15 of the *Statutory Powers Procedure Act*.

#### Experience in 2008 and 2009

- 42. The former lengthy and complex process affected the Law Society's ability to address in a timely way urgent, public problems before a conduct investigation is complete. The changes described above increased the accessibility of interlocutory remedies. With these changes, the Professional Regulation Division was able to implement operational changes to support the legislative provisions, and to streamline and expedite the process.
- 43. Operationally, there is an increasing focus on interlocutory proceedings as an appropriate remedy in high-risk cases where other less formal remedies such as undertakings are not available. Investigations staff review risks and flag cases for the interlocutory suspension process early in the investigative process. Discipline is notified immediately, and direction is sought from the Director. On approval of the Director, the matter is referred to the Proceedings Authorization Committee (PAC) which meets on an urgent basis with short notice and if authorized, the Notice of Motion is issued immediately. The investigator then continues the investigation into the merits. This process has been completed in as little as ten days, however it is an extremely intensive use of resources.
- 44. In some cases, a voluntary undertaking not to practise is suitable as an alternative to seeking an interlocutory suspension. In such cases, if the lawyer or paralegal does not agree to the undertaking, the Law Society will proceed with the interlocutory suspension process, and the PAC is advised of the lawyer's refusal to sign the undertaking. In cases where a voluntary undertaking is not suitable, the PAC is provided with an explanation supporting that decision. This may occur, for example, where a lawyer or paralegal has breached such an undertaking in the past.
- 45. In 2008, there was an increase in cases that were considered for interlocutory suspension proceedings. During 2008,
  - a. five interlocutory suspensions have been ordered and conduct applications subsequently issued, and
  - b. in two cases, voluntary interim restrictions were agreed upon prior to the authorization of the interlocutory suspension motion.
- 46. In comparison, in 2007, one interlocutory suspension and one interlocutory practice restriction were ordered and in 2006, two interlocutory suspensions were ordered.

PROFESSIONAL REGULATION DIVISION  
QUARTERLY REPORT

47. The Professional Regulation Division's Quarterly Report (first quarter 2009), provided to the Committee by Zeynep Onen, the Director of Professional Regulation, appears on the following pages. The report includes information on the Division's activities and responsibilities, including file management and monitoring, for the period January to March 2009.

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

Copy of the Professional Regulation Division's Quarterly Report (first quarter 2009) for the period January to March 2009.

(pages 27 – 60)

Re: Amendment to By-Law 8 [Reporting and Filing Requirements]

It was moved by Ms. Rothstein, seconded by Mr. Hainey,

THAT By-Law 8 [Reporting and Filing Requirements], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, April 24, 2008, June 26, 2008 and October 30, 2008, be further amended as follows:

1. The heading immediately preceding section 1 and section 1 of the By-Law are revoked.
2. Subsection 8 (1) of the By-Law is amended by striking out "section/l'article 4" and substituting "section/l'article 6".

Carried

Re: Amendment to By-Law 7 [Business Entities]

It was moved by Ms. Rothstein, seconded by Mr. Hainey, that Convocation amend By-Law 7 by revoking section 3 and substituting it with the following:

Name requirements

3. The name of a professional corporation, including a descriptive or trade name, shall be,
  - (a) demonstrably true, accurate and verifiable;
  - (b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and
  - (c) in the best interests of the public and consistent with a high standard of professionalism.

Carried

*Items for Information*

- Use of the Word “Expert” in Relation to Rule 3.03(1) of the *Rules of Professional Conduct*
- Report on Interlocutory Suspensions
- Professional Regulation Division Quarterly Report

MOTION – AMENDMENT TO BY-LAW 7

It was moved by Ms. Rothstein, seconded by Mr. Dray,

THAT By-Law 7 [Business Entities], made by Convocation on May 1, 2007 and amended by Convocation on June 28, 2007, February 21, 2008, October 30, 2008 and November 27, 2008, be further amended as follows:

1. Section 3 of By-Law 7 is revoked and the following substituted:

## Name requirements

## Conditions de la dénomination sociale

3. The name of a professional corporation, including a descriptive or trade name, shall be,

3. La dénomination sociale d’une société professionnelle, y compris un nom descriptif ou commercial

(a) demonstrably true, accurate and verifiable;

a) est manifestement vraie, précise et vérifiable;

(b) neither misleading, confusing or deceptive, nor likely to mislead, confuse or deceive; and

b) n’est ni trompeuse, ni déroutante, et ne risque pas de tromper ou de dérouter;

(c) in the best interests of the public and consistent with a high standard of professionalism.

c) est conforme à l’intérêt public et à une norme élevée de professionnalisme.

2. Form 7A of the By-Law is revoked and the following substituted:

## Form 7A

## Notice of Intention to Surrender a Certificate of Authorization

## NOTICE OF INTENTION TO SURRENDER A CERTIFICATE OF AUTHORIZATION

*(Name of professional corporation applying  
for permission to surrender a certificate of authorization, in capital letters)*

Pursuant to section 10 of By-Law 7 made under paragraph 28.1 of subsection 62 (0.1) of the *Law Society Act*, the above named hereby gives notice of its intention to surrender its certificate of authorization.

The above named has (carried on the practice of law or provided legal services or carried on the practice of law and provided legal services) at (*identify where the above named has carried on the practice of law or provided legal services or carried on the practice of law and provided legal services*) (or has not carried on the practice of law or has not provided legal services or has not carried on the practice of law or provided legal services since (*date*)) (or has never (carried on the practice of law or provided legal services or carried on the practice of law or provided legal services) in Ontario).

Dated at (*place*)

(*Date*)

(*Name of professional corporation*)

(*Signatures of all directors*)

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Formulaire 7A

Avis d'intention de rendre un certificat

AVIS D'INTENTION DE RENDRE UN CERTIFICAT D'AUTORISATION

(*Dénomination sociale de la société professionnelle qui demande la permission de rendre un certificat d'autorisation, en majuscules*)

Conformément à l'article 10 du Règlement administratif n° 7 adopté en vertu de la disposition 28.1 du paragraphe 62 (0.1) de la Loi sur le Barreau, la société susnommée donne avis de son intention de rendre son certificat d'autorisation.

La société susnommée (se livre à l'exercice du droit ou fournit des services juridiques ou se livre à la pratique du droit et fournit des services juridiques) à (*indiquer où la société susnommée se livre à l'exercice du droit ou fournit des services juridiques ou se livre à la pratique du droit et fournit des services juridiques*) (ou ne se livre pas à l'exercice du droit ou ne fournit pas de services juridiques ou ne se livre pas à l'exercice du droit et ne fournit pas de services juridiques depuis le (*date*)) (ou ne s'est jamais livrée à l'exercice du droit ou n'a jamais fourni de services juridiques ou ne s'est jamais livrée à l'exercice du droit et n'a jamais fourni de services juridiques en Ontario).

Fait à (*endroit*)

(*Date*)

(*Nom de la société professionnelle*)

(*Signatures de tous les administrateurs et administratrices*)

Carried

.....

IN CAMERA

.....

**IN CAMERA Content Has Been Removed**

IN CAMERA Content Has Been Removed

.....  
IN PUBLIC

.....

TREASURER'S REPORT TO CONVOCATION

Mr. Caskey presented the Report.

Treasurer's Report to Convocation  
April 30, 2009

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LAWPRO's Annual Meeting

Purpose of Report: Decision

Prepared by: Katherine Corrick

FOR DECISION

Motion

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

## Background

2. The Annual and General Meeting of Shareholders of the Lawyers' Professional Indemnity Company will be held on May 5, 2009.
3. At the meeting, the shareholder will be asked to vote on the proposed shareholder resolutions set out at Appendix 1.
4. Traditionally, the Treasurer has signed the proxy to vote the Law Society's shares in favour of the resolutions.
5. The Treasurer seeks Convocation's guidance on the exercise of the proxy.

Appendix 1

LAWYERS' PROFESSIONAL INDEMNITY COMPANY  
ANNUAL AND GENERAL MEETING OF SHAREHOLDERS  
TUESDAY, MAY 5, 2009

PROPOSED SHAREHOLDER RESOLUTIONS

1. APPROVAL OF MINUTES OF PREVIOUS MEETING\*  
RESOLVED that the minutes of the April 23, 2008 Shareholders Meeting are accepted.
2. APPROVAL OF FINANCIAL STATEMENTS  
RESOLVED that the financial statements of the Company for the year ended December 31, 2008 are approved.
3. ELECTION OF DIRECTORS  
RESOLVED that [*George D. Anderson, Constance B. Backhouse, James R. Caskey, Q.C., Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, Lawrence A. Eustace, Frederick W. Gorbet, Malcolm L. Heins, Paul J. Henderson, Rita Hoff, Andrew S.C. Smith, Bonnie A. Tough, Kathleen A. Waters and Bradley H. Wright*], are elected directors of the Company to hold office until the next annual meeting of shareholders or until their successors are elected or appointed.
4. BY-LAW NO. 15\*\*  
RESOLVED that By-Law No. 15, regarding the number of directors of the Company and quorum of directors for the transaction of business at any meeting of the Board of directors, is reaffirmed as passed by the Board of Directors on November 19, 2008 and effective that date.

## 5. BY-LAW NO. 17\*\*

RESOLVED that By-Law No. 17, regarding the remuneration and payment of directors and officers of the Company, is reaffirmed as passed by the Board of Directors on February 25, 2009 and effective as of July 1, 2009.

## 6. APPOINTMENT OF AUDITORS

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

## 7. CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS

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

\* Please find attached draft minutes of the April 23, 2008 Shareholders Meeting.

\*\* Attached are copies of By-Laws 15, 16 and 17 passed by the Board during the current term. Special shareholder resolution is required reaffirming By-Laws 15 and 17 given their subject matter.

- DRAFT -

MINUTES OF THE ANNUAL AND  
GENERAL MEETING OF THE  
SHAREHOLDERS of Lawyers'  
Professional Indemnity Company held at  
250 Yonge Street, Suite 3101, Toronto,  
Ontario on Wednesday, April 23, 2008 at  
the hour of 2:00 p.m.

Present in Person:

George D. Anderson, Constance B. Backhouse, James R. Caskey, Q.C., Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, E. Susan Elliott, Lawrence A. Eustace, Frederick W. Gorbet, Malcolm L. Heins, Rita Hoff, William G. Holbrook, Laurie H. Pawlitza and Kathleen A. Waters.

Present by Proxy:

Duncan Gosnell advised the Chair that a proxy had been received from the Law Society appointing Malcolm Heins as its nominee, being a quorum of the shareholders of the Company.

Present by Invitation was:

Duncan D. Gosnell. Ian Croft acted as Chair for the meeting and Duncan Gosnell acted as Secretary for the meeting.

The Chair stated that a quorum was present, and notice of the meeting had been sent to all of the directors and shareholders and to the auditor of the Company, and he therefore declared the meeting to be duly constituted for the transaction of business.

#### ACCEPTANCE OF MINUTES

The Chair presented to the meeting the minutes of the April 25, 2007 Shareholders Meeting.

ON MOTION DULY MADE by Malcolm Heins, SECONDED by George Anderson AND UNANIMOUSLY CARRIED, the following resolution was passed:

RESOLVED that the minutes of the April 25, 2007 Shareholders Meeting are accepted.

#### PRESENTATION OF FINANCIAL STATEMENTS

The Chair presented to the meeting financial statements of the Company for the year ending December 31, 2007, which were approved by the Board of Directors on February 20, 2008. The report of the auditor to the shareholders was read by Bill Holbrook.

ON MOTION DULY MADE by Bill Holbrook, SECONDED by Frederick Gorbet AND UNANIMOUSLY CARRIED, the following resolution was passed:

RESOLVED that the Company's financial statements for the year ended December 31, 2007, are approved.

#### ELECTION OF DIRECTORS

The Chair then stated that it was in order to proceed with the election of directors and declared the meeting open for nominations.

Malcolm Heins nominated the following:

George D. Anderson  
Constance B. Backhouse  
James R. Caskey, Q.C.  
Abdul A. Chahbar  
Ian D. Croft  
Douglas F. Cutbush  
E. Susan Elliott  
Lawrence A. Eustace  
Abraham Feinstein, Q.C.  
Frederick W. Gorbet  
Malcolm L. Heins  
Rita Hoff

William G. Holbrook  
Laurie H. Pawlitzka  
Kathleen A. Waters

ON MOTION DULY MADE by Malcolm Heins, SECONDED by Larry Eustace AND UNANIMOUSLY CARRIED, the following resolution was passed:

RESOLVED that George D. Anderson, Constance B. Backhouse, James R. Caskey, Q.C., Abdul A. Chahbar, Ian D. Croft, Douglas F. Cutbush, Lawrence A. Eustace, E. Susan Elliott, Abraham Feinstein, Q.C., Frederick W. Gorbet, Malcolm L. Heins, Rita Hoff, William G. Holbrook, Laurie H. Pawlitzka and Kathleen A. Waters, are elected directors of the Company to hold office until the next annual meeting of shareholders or until their successors are elected or appointed.

#### APPOINTMENT OF AUDITORS

ON MOTION DULY MADE by Bill Holbrook, SECONDED by E. Susan Elliott AND UNANIMOUSLY CARRIED, the following resolution was passed:

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

#### CONFIRMATION OF ACTS OF DIRECTORS AND OFFICERS

ON MOTION DULY MADE by Malcolm Heins, SECONDED by Douglas Cutbush AND UNANIMOUSLY CARRIED, the following resolution was passed:

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

There being no further business, the meeting was then adjourned.

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Chair

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Secretary

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

- (1) Copies of the Lawyer's Professional Indemnity Company's By-Laws 15, 16 and 17.  
(pages 8 – 11)

Re: LAWPRO Proxy

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

Carried

The LAWPRO Report on Proposed Increase in LAWPRO Director Compensation effective July 1, 2009, which was distributed in camera was made public.

#### REPORT OF THE LAW SOCIETY FOUNDATION

Ms. Boyd presented the Report.

Report to Convocation  
April 30, 2009

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Law Society Foundation

Board of Trustees:  
Marion Boyd, Chair  
Bob Aaron, Vice-Chair  
Malcolm Heins  
Ian Hull  
Brad Wright

Purpose of Report: Decision

Prepared by Wendy Tysall  
Secretary-Treasurer – 416-947-3322

#### FOR DECISION

#### Lawyers Feed the Hungry Program

#### Motion

That Convocation approve the use of the Law Society's facilities and staff resources to support the addition of a Friday meal to the existing meals served on Wednesday, Thursday and Sunday as part of the Toronto Lawyers Feed the Hungry Program.

#### Background

1. The Law Society Foundation (the "Foundation") is a registered charity with its current Board of Trustees comprising Marion Boyd (Chair), Bob Aaron (Vice-Chair), Malcolm

Heins, Ian Hull and Brad Wright. The Foundation's Secretary-Treasurer is Wendy Tysall.

2. The Foundation is administered by the Law Society of Upper Canada's Finance Department with other support services provided primarily by Catering, Facilities, the Office of the CEO, Security and Communications.
3. The general objects of the Foundation are to grant bursaries to Ontario law students in need of financial assistance, to promote legal education in Ontario and to provide meal programs to persons in need, known as Lawyers Feed the Hungry. The programs of the Foundation are funded by donations, endowments and investment income.
4. The Toronto Lawyers Feed the Hungry Program (the "Program") was established in 1998 by Martin Teplitsky and, then Bencher, Nancy Backhouse. The Law Society, under the leadership of then Treasurer Harvey Strosberg, provided support to the Program by allowing it to operate out of the cafeteria at Osgoode Hall.
5. Program volunteers prepare and serve a dinner on Wednesday evening, breakfast on Thursday and brunch on Sunday. Guests at the Thursday and Sunday meals also get a bagged lunch to take away. In total, approximately 56,000 meals are provided a year.

#### Proposal

6. At the Foundation's April 7, 2009 Board meeting, the Trustees recommended expanding the Program to include the serving of a Friday meal. Funding for the Friday meal would be primarily from a recent donation of \$1 million. The donation was announced by the Treasurer at Convocation in January 2009 and relates to a cy près award ordered by the Courts pertaining to a class proceeding against the Bank of Nova Scotia.
7. It was through the philanthropic efforts of a few key program founders that the Foundation – with monies directed to the Toronto Lawyers Feed the Hungry Program - was presented as a potential charity to receive proceeds from the class action. The hope, in obtaining the significant contribution, was that this would allow the Toronto Lawyers Feed the Hungry Program to expand its community service by also providing a meal on Friday evenings.
8. As the Program has many volunteers, with a number of them interested in doing more for the community, there is a roster of volunteers ready to serve the Friday meal, with a coordinator already volunteering to oversee meal preparation and serving.
9. To minimize the volunteer effort needed in providing the meal (from cooking to clean up), the vision is to serve each guest a soup, sandwich and beverage with a bagged meal for the next day also provided. This will provide at least one nutritious meal for patrons over five consecutive days.
10. The estimated cost of providing the Friday evening meal, based on approximately 250 guests attending each Friday, would range from \$60,000 to \$70,000 a year. Of this total, approximately \$55,000 would be related to direct costs such as food, supplies and

security, which traditionally have been funded by the Program. The balance of the estimated cost would be funded by the Law Society and relates to support services such as soup preparation by the Sous Chef, staff time in purchasing and receiving the food and supplies, facilities costs, etc.

11. As the Foundation is dependent on the Law Society for facilities and staff resources to administer different aspects of the Program, the Foundation is seeking Convocation's approval to use the Law Society's facilities on Friday evenings to serve the meal as well as the needed support services (primarily catering, purchasing, facility and security services) to administer it.
12. The estimated cost to the Law Society of operating the current Program is approximately \$125,000 per annum based on 2008 financial records. The Law Society's contribution comprises about \$100,000 per year of in-kind staff resource time, \$18,000 annually in direct costs absorbed by the Law Society for expenses such as the fund raising campaign included with the Annual Lawyer Membership Fee billing and approximately \$7,000 each year in facilities related costs.
13. Expanding the Program to also provide a Friday evening meal is expected to increase the Law Society's in-kind contribution of staff resources by an estimated \$5,000 to \$15,000 per year.
14. An excerpt of a report to the Foundation's Board on the evolution of the Program over the last eleven years including the estimated costs of operating the Program was considered at the April 7, 2009 meeting of the Board and is included as Appendix A.

#### Recommendation

15. The Law Society Foundation recommends that Convocation approve the use of the Law Society of Upper Canada's facilities and staff resources in support of the expansion of the Toronto Lawyers Feed the Hungry Program to include a Friday meal.

Excerpt from the Law Society Foundation Agenda/Material of a Board of Trustees' Meeting held on April 7, 2009

APPENDIX A

### TORONTO LAWYERS FEED THE HUNGRY PROGRAM PROGRAM REVIEW

#### Background

1. The Toronto Lawyers Feed the Hungry Program (the "Program") began providing meals to persons in need in 1998. The Program was founded by Martin Teplitsky and Nancy Backhouse and with the assistance of donors who provided funding and the Law Society who allowed the use of facilities at Osgoode Hall to operate the Program.

2. In order to be able to issue charitable donation tax receipts for income tax purposes to those individuals or organizations that donate to the Program, funding for the Program is managed through the Law Society Foundation (the "Foundation"). In 1999, Supplementary Letters Patent were obtained to expand the objects of the Foundation to add the provision of meals to persons in need, thus, facilitating the issuance of tax receipts to Program donors.
3. Since inception, the Program has operated out of the Law Society's cafeteria, at no cost to the Foundation, with the exception of the period of March to December 2006, when the Program operated out of the Metropolitan United Church and Metro Hall due to a flood, which caused extensive damage to the Law Society's cafeteria and surrounding basement area.
4. In 1998, the Program initially served Wednesday dinner and Thursday breakfast for a total of approximately 21,000 meals a year. In 2000, the Program expanded to also provide Sunday brunch along with a bagged lunch to attendees on both Thursdays and Sundays. The number of meals now served a year in the Law Society's cafeteria, based on 2008 statistics, is approximately 35,000 with an additional 21,000 bagged lunches provided to attendees for a total of about 56,000 meals a year.
5. Law Society staff have provided administrative services, with no cost to the Program, since 1998. The Law Society's Chief Financial Officer (CFO) is the Foundation's Secretary/Treasurer responsible for oversight of all aspects of the Foundation, including the Program. In addition to the CFO, Finance staff have been responsible for providing administrative services ranging from liaising with volunteers to financial administration (e.g. the depositing of donations, issuing of tax receipts, payment of invoices and financial reporting) for the Program.
6. Originally, the purchase and receiving of food and supplies along with the preparation and serving of meals was handled by a Program volunteer. In 2003, responsibility for the ordering and receiving of food and supplies for the program transferred from the long-time volunteer to the Law Society's Finance department.
7. In order to raise needed funds to sustain the Program, Martin Teplitsky, with support from the Law Society, organized the Program's first major fund raising event held in November 2003 - a gala at the Carlu.
8. The Project Manager for the CEO's Office played a significant role in the organizing and coordination of the event. In addition, the food was prepared by the Law Society's Executive Chef and his staff.
9. Since the first event in 2003, the Project Manager for the CEO's Office has organized three additional major fund raising events to sustain the Program for each year from 2005 to 2007. With the success of these events and generous donors in late 2007, an event was not required in 2008. Similarly, the Program does not need to hold a major fund raising event, such as a Bowling Challenge, as the Program received \$1,000,000 in January 2009 in a cy près award ordered by the Courts pertaining to a class proceeding against the Bank of Nova Scotia.

10. In summary, direct costs associated with the operation of the Program have been funded from the Toronto Lawyers Feed the Hungry Program within the Foundation with administrative support and facilities being provided by the Law Society at no cost to the Program.

#### Current Cost of Operations

11. The estimated annual cost of operating the Program, based on 2008 expenses, is over \$412,000 with costs of approximately \$283,000 paid directly by the Program and about \$129,000 in costs absorbed by the Law Society.
12. Costs associated with operating the Program may be segregated into three main categories: program operation, administration and fund raising.
13. Program operation includes costs associated with the food and supplies, security services, volunteer coordination and use of the facilities. Program operation costs are estimated at \$348,000 with \$283,000 funded directly by the Foundation.
14. Administration costs comprise support services provided mostly in the financial administration of the Program, including oversight by the CFO - Secretary/Treasurer. These costs are estimated at \$50,000 and are completely funded by the Law Society.
15. Costs associated with fund raising include the support provided by the CEO's Office as well as Communication services and the expense associated with the targeted mailing (orange envelope campaign inserted with the Annual Lawyer Membership Fee billing). Similar to administration costs, approximately \$15,000 is funded by the Law Society.

#### Program Expansion

16. The Law Society has been approached by Martin Teplitsky with respect to expanding the Program to add a meal on Friday evenings. The meal is expected to include soup, sandwiches, fruit and a beverage. It is estimated that the additional cost of a Friday meal with approximately 250 guests would result in an additional cost of approximately \$60,000 to \$70,000 a year. Of this amount, approximately \$55,000 would be direct costs associated with food, supplies and security with the balance an estimate of support services (soup preparation, purchasing of food and supplies, facilities costs, etc.).

Re: Toronto Lawyers' Feed the Hungry Program

It was moved by Ms. Boyd, seconded by Mr. Wright, that Convocation approve the use of the Law Society's facilities and staff resources to support the addition of a Friday meal to the existing meals served on Wednesday, Thursday and Sunday as part of the Toronto Lawyers Feed the Hungry Program.

Carried

#### FEDERATION OF LAW SOCIETIES OF CANADA'S SEMI-ANNUAL MEETING

Mr. Conway presented the Federation's Report for information.

Report on the Federation of Law Societies of Canada's  
Semi-Annual Meeting and Conference

Purpose of Report: Information

Prepared by Katherine Corrick

Semi-Annual Meeting and Conference of the Federation of Law Societies

1. The Federation held its Semi-Annual Meeting and Conference in Quebec City from March 19 to 21, 2009. All fourteen Canadian law societies were represented.
2. John Campion (Vice President of the Federation), Tom Conway (Council member), Derry Millar, Malcolm Heins, and Katherine Corrick attended from the Law Society of Upper Canada.

Council Meeting

3. The Federation Council met on March 19. The agenda included the following matters.

*Federation CEO's Report*

4. Jonathan Herman, CEO of the Federation, reported that the Federation has acquired new office space in Ottawa and will be moving at the end of April 2009.

*Client Identification and Verification Rules – Implementation*

5. All law societies have approved rules based on the Model Rule on Client Identification and Verification, and, with the exception of Quebec and Saskatchewan, have implemented the rules. Quebec is awaiting the approval of the Office des Professions, and Saskatchewan expects to bring its rules into force later this spring.

*Compensation Fund Coverage for Mobile Lawyers*

6. Federation members previously agreed on the need for a uniform approach to compensating claimants for misappropriation of funds by mobile lawyers. To date, there have been no claims. The Federation obtained an actuarial analysis of claims information in order to consider appropriate claim limits. The actuarial report concluded that a limit of \$250,000 per claimant was a reasonable minimum standard to apply to mobile lawyers as it would indemnify over 90% of loss amounts and over 99% of claimants. The report also contemplated a \$2,000,000 per lawyer limit.

7. Council resolved that law societies that are bound by the National Mobility Agreement use best efforts to give effect to the levels of compensation recommended in the actuarial report.

*Task Force on the Canadian Common Law Degree*

8. John Hunter, Chair of the Task Force, presented an interim report to Council summarizing input that had been received during the consultation process.
9. The Task Force plans to,
  - a. invite further discussions with the legal academy to address differing perceptions and concerns;
  - b. invite further discussions on a stand-alone course in professional responsibility, including implications for law school resources;
  - c. devote a portion of its final report to the application of its recommendations to the accreditation of internationally trained candidates; and
  - d. determine whether any issues raised in the consultation should be referred for consideration beyond the Task Force's final report.
10. The Task Force plans to submit its final report to Council at its October 15, 2009 meeting in Winnipeg.

*Ad Hoc Committee on Approval of New Common Law Degree Programs*

11. The Federation has received requests from Lakehead University and Thompson Rivers University for approval of their proposed law degree programs.
12. Council approved the establishment of an ad hoc committee to review the applications and make recommendations to Council.
13. It is anticipated that the Report of the Task Force on the Canadian Common Law Degree will include recommendations relating to the approval of new Canadian law degree programs. Until that time, the ad hoc committee will review these applications.

*National Committee on Accreditation*

14. The National Committee on Accreditation Futures Committee provided an update on its work. A Managing Director, Deborah Wolfe, has been hired. She has started, and is currently working with Professor Krishna to ensure a smooth transition. Ms. Wolfe is working in the Federation Office.

*Model Code of Conduct*

15. The Committee reported on its progress, and the outstanding issues. The Federation has established an Advisory Committee on Conflicts of Interest to consider the model rule on conflicts of interest having regard to, among other things, the Canadian Bar Association Task Force on Conflicts of Interest. Bencher, Bonnie Tough, is the chair of that Advisory Committee.

*Mobility with the Barreau du Québec*

16. The Barreau du Québec has enacted a regulation permitting a restricted form of membership for Canadian lawyers practising in Quebec. The Barreau can issue a Canadian Legal Advisor permit allowing a Canadian lawyer from outside of Quebec to,
  - a. advise clients in Quebec on legal matters involving the law of the lawyer's home jurisdiction;
  - b. advise clients in Quebec on legal matters involving public international law;
  - c. prepare documents to be used in a court case that involves matters under federal jurisdiction; and
  - d. appear before any court or tribunal on matters under federal jurisdiction.
17. Council is preparing recommendations for law societies on amendments to the National Mobility Agreement that will facilitate reciprocity with Quebec.

*Agreement on Internal Trade*

18. Recent amendments to the Agreement on Internal Trade requiring mandatory mutual recognition of the credentials of licensed workers may affect the inter-provincial mobility of lawyers. To encourage a consistent approach across the country, the Federation has drafted a letter all law societies can send to provincial and territorial authorities requesting that an exception pursuant to the Agreement on Internal Trade be permitted for lawyers transferring between Quebec and any common law province or territory.

*Foreign Legal Consultants*

19. Foreign legal consultants continue to be a key subject of discussions in Canada's trade negotiations. Council discussed a proposal that foreign legal consultants be permitted to participate in arbitrations held in Canada, as follows:
  - a. where the law governing the proceeding and the law at issue is either international law or the law of the foreign legal consultant's home jurisdiction, or
  - b. when assisted by counsel licensed to practise law in Canada, where the law at issue is either international law or the law of the foreign legal consultant's home jurisdiction and the law governing the proceeding is Canadian.
20. Council members will be asked to vote electronically on this proposal by May 1, 2009.

*CanLII Futures Committee*

21. The mandate of the CanLII Futures Committee is to study and make recommendations to the Council with respect to the governance, management and funding of CanLII. Tom Conway is a member of that Committee.
22. Council authorized the Committee to continue its work, and to serve as a steering committee to oversee governance reform.

## Conference Program

23. The Conference portion of the meeting took place on March 20 and 21. The conference included the following topics:
  - The System of Professional Regulation in Quebec
  - Law Society Governance – follow-up to law societies' commitments at the September 2008 meeting in Halifax
  - The Self-Administration of the Courts – a presentation by representatives of the Canadian Judicial Council
  - Law Society Tribunals – Do They Strengthen or Weaken the Case for Self-Regulation?
  - Access to Legal Services – the Role for Law Societies
24. The System of Professional Regulation in Quebec program was a presentation by representatives of the Barreau du Québec and Chambre des Notaires, which provided an overview of how Quebec's system of professional regulation is structured differently than in other provinces and territories.
25. The Law Society Governance follow-up to law societies' commitments at the September 2008 meeting in Halifax focused on how law society governance could be improved. The Law Society of Upper Canada reported on the work of the Governance Task Force.
26. The program entitled "Law Society Tribunals - Do They Strengthen or Weaken the Case for Self-Regulation?" focused on the merits of law society tribunals consisting exclusively of benchers. The program consisted of a panel discussion and a debate. Panelists were from organizations with different tribunal systems. Treasurer, Derry Millar, spoke of the Law Society of Upper Canada's system, Joel Pink outlined Nova Scotia's system where benchers do not sit as adjudicators, Paul Farley explained the system of the Institute of Chartered Accountants of Ontario, where no elected council members sit as adjudicators, and Michel Légaré outlined the system in Quebec where tribunals are composed of a government appointed chair and two members of the profession selected by the chair from a list provided by the profession.
27. Following the panel discussion a debate was held of the following resolution: *It is in the public interest that law society tribunals be composed of lawyer and lay adjudicators who are not benchers.* Professor David Mullan moderated the panel and debate.
28. The Access to Legal Services – the Role for Law Societies program dealt with potential law society initiatives for alleviating the access to legal services problem. Following a presentation by Allan Fineblit, Chief Executive Officer of the Law Society of Manitoba, participants met in small groups to discuss hypothetical problems, and brainstorm initiatives law societies could undertake to increase access to legal services.

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RETENTION OF WOMEN WORKING GROUP

Ms. Minor updated Convocation on the recent initiatives of the Retention of Women Working Group to assist lawyers returning to practice.

FINANCE COMMITTEE REPORT

Ms. Hartman presented the 2010 budget timetable for information.

Report to Convocation  
April 30, 2009

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## Finance Committee

Committee Members:  
Carol Hartman, Chair  
Chris Bredt, Vice-Chair  
Raj Anand  
Jack Braithwaite  
Mary Louise Dickson  
Jack Ground  
Susan Hare  
Janet Minor  
Ross Murray  
Judith Potter  
Jack Rabinovitch  
Paul Schabas  
Gerald Swaye  
Brad Wright

Purpose of Report: Information

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

## COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on April 8, 2009. Committee members in attendance were: Chris Bredt Vice Chair, Raj Anand, Jack Braithwaite, Mary Louise Dickson, Jack Ground, Janet Minor, Ross Murray, Judith Potter, Gerald Swaye and Brad Wright (conference).
2. Staff attending were: Wendy Tysall, Brenda Albuquerque-Boutilier and Fred Grady.

## FOR INFORMATION

## 2010 BUDGET PROCESS

Convocation is requested to review the suggested structure and timetable for the 2010 budget process. The paralegal budget will be approved at the same time as the lawyer budget.

3. Typically, Convocation adopts the annual budget at its October meeting (under the By-Laws the budget must be approved by Convocation prior to the end of November).
4. A comprehensive system of program reviews linked to the budget has been in place since 2002. The operations to be reviewed for the 2010 budget are still to be finalized.
5. The rotational review of activities has the benefits of:
  - Allowing a more meaningful and focused analysis of revenues and expenditures relating to program activities under review
  - Increasing discipline in budget development
  - Limiting resistance as the onerous and exhaustive examination of costs is not imposed every year in the absence of changing circumstances
  - Reducing the length of the budget process
  - Increasing bencher understanding of a number of specific activities each year.
  - Increasing the accountability of management for the programs underlying the financial information contained in the annual budget.

#### Operational Reviews for the 2010 Budget

6. A history of operational reviews since Convocation approved the process in 2002 is set out below.
 

2002	Client Service Centre, Lawyers Fund for Client Compensation and Great Library
2003	Professional Development & Competence and Communications
2004	Professional Regulation and Policy & Legal Affairs
2005	Compensation Fund and the Customer Service Centre
2006	Professional Development & Competence and Information Systems
2007	Professional Regulation and Communications
2008	Policy and Government Relations Departments and the Client Service Centre
7. All significant Law Society programs have had previous reviews as the process works its way through a second cycle.
8. It is intended that the operational reviews for the 2010 budget be completed and presented to the Finance Committee in June and September 2009 as set out in the timetable below. Presentations on the LibraryCo budget would also be conducted in September.

#### Priorities

9. At a Priority Planning session in 2007, benchers identified nine priorities for the 2007-2011 bencher term. Convocation has approved the priorities and also approved a process for moving forward with the priorities.
10. Listed in no particular order, the nine priorities are:

- Discipline
- Access to justice
- Regulation of paralegals
- Small firms and sole practitioners
- Governance structure
- Strategic communications
- Maintenance of high standards and ensuring effective competence
- Diversity within the profession
- Licensing and accreditation

#### Current Economic Environment

11. The economic environment continues to deteriorate, affecting both the Law Society's investment income and the ability of Law Society members to carry out their livelihood, either as practitioners or employees. The draft 2010 budget will be drawn up in this context.

#### 2010 Budget Timetable

DATE (2009)	PROCESS
April / May	<p>The Senior Management Team (SMT) commences the budget process by considering individual and collective budget assumptions, variables and objectives. This review also includes how the proposed 2010 budget fits into longer-term plans for the organization and departments.</p> <p>Finance Committee and Convocation approve a process for preparing the 2010 budget that includes Standing Committee endorsement of operational reviews. Bencher's comments on the program reviews and budget process are invited.</p>
June	<p>SMT Budget Planning session – how each division will address the priorities of Convocation.</p> <p>Operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend.</p>
July August	<p>The components reviewed and approved above are compiled into an operating budget for the Law Society.</p> <p>Facilities and Information Systems compile a capital budget with the assistance of user departments.</p> <p>Further assessments of LibraryCo operations.</p>
September	<p>If not completed in June, operational reviews for selected departments are presented to the Finance Committee and any other benchers who wish to attend. The Finance Committee reports results of the program reviews to Convocation and program review material is available to all benchers. Bencher's comments on the program reviews and budget process are invited. Opportunity for the Priority Planning Committee / Convocation to convey policy objectives and budget priorities to the Finance Committee.</p> <p>A budget information session is held for all benchers to ensure a full exchange of information on the 2010 budget.</p>

	LibraryCo submits preliminary submissions on 2009 activities and 2010 projections to the Finance Committee at this time.  2010 budget requests from external organizations such as CDLPA received by this time.
October	Draft operating budgets for lawyers and paralegals and a capital budget for 2010 are presented to the Finance Committee, Paralegal Standing Committee, Compensation Fund Committee and Convocation for approval.

### *REPORTS FOR INFORMATION ONLY*

#### Access to Justice Committee Report

- Legal Expenses Insurance
- Harmonized Sales Tax

Report to Convocation  
April 30, 2009

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#### Access to Justice Committee

Access to Justice Committee  
Marion Boyd, Co-Chair  
Paul Schabas, Co-Chair  
Avvy Go, Vice-Chair  
Paul Dray  
Susan Elliott  
Glenn Hainey  
Susan McGrath  
Julian Porter  
Jack Rabinovitch  
William Simpson  
Catherine Strosberg  
Bonnie Tough

Purpose of Report: Information

Prepared by the Equity Initiatives Department  
(Marisha Roman, Aboriginal Initiatives Counsel - 416-947-3989)

### COMMITTEE PROCESS

1. The Access to Justice Committee (“the Committee”) met on April 7, 2009. Committee members Marion Boyd, Co-Chair, Paul Schabas, Co-Chair, Avvy Go, Vice-Chair, Paul Dray, Susan McGrath, William Simpson, Catherine Strosberg and Bonnie Tough participated. James Caskey, Chair of the Government Relations Committee, and Bradley

Wright also participated. Staff members Julia Bass, Marisha Roman and Sheena Weir attended. Guests Pierre Gagnon and France Bonneau of the Barreau du Québec, Diane Belanger of FBA Consulting Group and John Chippindale and Mert Guler of HKMB HUB International also attended.

## FOR INFORMATION

### RESEARCH INTO LEGAL EXPENSE INSURANCE

2. Following the release of the Legal Aid Review 2008 by Professor Michael Trebilcock on July 25, 2008, the Committee agreed at its September 10, 2008 meeting to include the issue of Legal Expense Insurance as a priority item for 2008 and 2009. The Committee is considering this issue as part of its mandate to explore options for enhancing the public's access to legal services and barriers to access to justice.
3. At its January 14, 2009 meeting, the Committee reviewed a summary of the research into legal expense insurance previously conducted for the Committee in 2004 and 2005 as well an update on the legal expense insurance program currently available in Quebec.
4. At the Committee's April 7, 2009 meeting, representatives from the Barreau du Québec, FBA Consulting Group and HKMB HUB International attended. Pierre Gagnon and France Bonneau of the Barreau as well Diane Belanger of FBA Consulting Group in Québec presented information on the historical development and current structure of legal expense insurance in Quebec. John Chippindale and Mert Guler of HKMB HUB International, an insurance brokerage company, presented information on existing legal expense insurance products in Ontario.
5. The Committee decided to continue researching the feasibility of a legal expense insurance program in Ontario. As part of this research, the Committee will gather information on current legal expense insurance programs in the province. If appropriate, the Committee will present recommendations to Convocation.

### HARMONIZATION OF ONTARIO SALES TAX

6. The Ontario Budget of March 26th 2009 announced that, effective 2010, the Ontario provincial sales tax (PST) will be harmonized with the federal goods and services tax (GST).
7. At its April 7 meeting, the Committee discussed the issue of the tax harmonization and the potential impact on the cost of legal services in Ontario.
8. The members of the Committee agreed to monitor the issue.

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

- Addressing Harassment and Discrimination - Model Policy
- Equity Advisor's Report 2008
- Status Report on the Retention of Women in Private Practice
- Public Education Equality Series Calendar 2009

Report to Convocation  
April 30, 2009

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

Committee Members  
Janet Minor, Chair  
Raj Anand, Vice-Chair  
Paul Copeland  
Mary Louise Dickson  
Avvy Go  
Susan Hare  
Doug Lewis  
Rabbi Dow Marmur  
Judith Potter  
Linda Rothstein  
Beth Symes

Purposes of Report: Information

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

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on April 8, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Susan Hare, Judith Potter and Beth Symes participated. Milé Komlen, Chair of the Equity Advisory Group ("EAG"), attended. Staff members Jewel Amoah and Josée Bouchard attended.

## FOR INFORMATION

### RETENTION OF WOMEN IN PRIVATE PRACTICE – IMPLEMENTATION UPDATE

2. In May 2008, Convocation approved nine recommendations to enhance the retention of women in private practice. The implementation responsibilities for the recommendations were divided between the Equity Initiatives Department and the Professional Development and Competence Department, based on their roles and areas of expertise. The implementation of the recommendations is well underway and an implementation update is presented at Appendix 1.

ADDRESSING HARASSMENT AND DISCRIMINATION –  
GUIDE TO DEVELOPING A POLICY FOR LAW FIRMS OR LEGAL ORGANIZATIONS

3. The Law Society has, over the years, adopted a number of model policies and guidelines, in part as a result of the adoption of the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*<sup>1</sup>, to promote equality within the legal profession. The Law Society of Upper Canada has adopted model policies and guidelines dealing with workplace equity,<sup>2</sup> flexible work arrangements,<sup>3</sup> the duty to accommodate,<sup>4</sup> recruiting and hiring tips to ensure equality of students and lawyers with disabilities,<sup>5</sup> creating an inclusive work environment for lawyers who are gay, lesbians, bisexuals or trans-identified<sup>6</sup> and advising clients of their linguistic rights.<sup>7</sup>
4. *Addressing Harassment and Discrimination: Guide to Developing a Policy for Law Firms or Legal Organizations*, presented at Appendix 2, is another model policy that law firms and legal organizations may use to develop their own policy in this area. The model policy replaces the previous model policy on this topic, which has been redrafted to reflect changes in legal obligations and to be more user friendly.

EQUITY ADVISOR'S REPORT - 2008

5. The annual Equity Advisor's Report outlining the activities of the Equity Initiatives Department and the Equity and Aboriginal issues Committee/Comité sur l'équité et les affaires autochtones for 2008 is presented at Appendix 3.

PUBLIC EDUCATION EQUALITY SERIES CALENDAR  
2009

6. The Public Education Equality Series calendar for 2009 is presented at Appendix 4.

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<sup>1</sup> See *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

<sup>2</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated in 2003).

<sup>3</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated in 2003).

<sup>4</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, 2005). Also see <sup>4</sup>*Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

<sup>5</sup> Available on line at <http://rc.lsuc.on.ca/pdf/equity/recruitingHiringTips.pdf>.

<sup>6</sup> *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment. A Model Policy for Law Firms and Other Organizations* (Toronto: Law Society of Upper Canada, 2004).

<sup>7</sup> Available on-line at <http://rc.lsuc.on.ca/pdf/equity/advisingClientJudicialContext.pdf>.

## Retention of Women in Private Practice

## Project Status Report

April 30, 2009

## Project Status Report

1. This report outlines the progress made in implementing the Retention of Women in Private Practice policy decisions, more particularly as they relate to the following:
  - a. Justicia Project;
  - b. Change of Status Survey;
  - c. Women's Leadership and Professional Development Institute;
  - d. Practice Locums;
  - e. Parental Leave Assistance Program;
  - f. Online Women's Resource Centre;
  - g. Outreach to Law Associations and Law Firms;
  - h. Outreach to Law Schools;
  - i. Women's Equality Advisory Group.
  
2. In May 2008, Convocation approved nine recommendations to enhance the retention of women in private practice. The implementation responsibilities for the recommendations were divided between the Equity Initiatives Department and the Professional Development and Competence Department, based on their roles and areas of expertise. The following outlines progress made to implement the following policy decisions:
  - a. That the Law Society implement a three-year pilot project (the "Justicia Project") for firms of more than 25 lawyers and the two largest firms in each region, in which firms commit to adopting programs for the retention and advancement of women [Recommendation 1].
  - b. That the Law Society, in collaboration with legal associations where appropriate, provide direct support to women through programs such as a leadership and professional development institute and on-line resources. This recommendation includes the implementation of a change of status survey and the establishment of a Women's Leadership and Professional Development Institute [Recommendation 2].

- c. That the Law Society develop a five-year pilot project to promote and support practice locums to address the challenges women face in finding available and competent lawyers to maintain their practice during leaves of absence. Such concerns were also raised in the report of the Law Society of Upper Canada's Sole Practitioner and Small Firm Task Force [Recommendation 3].
- d. That the Law Society implement a three-year Parental Leave Benefit Pilot Program, effective in 2009, as follows:
  - i. benefits are available to lawyers in firms of five lawyers or less, including sole practitioners, who have no access to other maternity/parental/adoption financial benefit programs under public or private plans;
  - ii. provide a fixed sum of \$3,000 a month for three months (maximum \$9,000 per leave per family unit) to cover among other things expenses associated with maintaining their practice during a maternity, parental or adoption leave [Recommendation 4].
- e. That the Law Society provide access, in collaboration with legal associations where appropriate, to resources for women in sole practices and small firms through programs such as on-line resources and practice management and career development advice [Recommendation 5].
- f. That the Law Society work with law schools to provide access to information and education opportunities about the practice of law, the business of law, types of practices, practising in diverse work settings and available resources [Recommendation 6].
- g. That the Law Society create an advisory group of women lawyers from Aboriginal, Francophone and/or equality-seeking communities to assist with the implementation of the recommendations outlined in this report [Recommendation 7].

#### Justicia Project

- 3. On July 17, 2008, the Treasurer sent letters to firms across the province inviting them to participate in the Justicia Project. Fifty-three firms have committed to the project, including one large out of province firm from the Eastern provinces.
- 4. The Co-Chairs and the Equity Advisor divided the firms into three groups, based on their size and location. The following individuals have agreed to lead the groups:
  - a. Medium out of Toronto: Thomas Conway and Heather Williams;
  - b. Firms of between 25 and 100: Linda Rothstein and Megan Shortreed;
  - c. Firms of 100 and over: Laurie Pawlitzka and Kirby Chown.
- 5. The list of participating law firms is posted on the website and committed firms are added to the list on the day of commitment. Therefore, the list is live and links to firm websites have been created. Roy Thomas, Director of Communication, and his staff have developed a communication plan.

6. The project was launched on November 17, 2008 and most Managing Partners and firm representatives attended the meeting and launch reception. The meeting was webcast and a power point presentation was prepared. Benchers Laurie Pawlitzka and Thomas Conway chaired the meeting. Roy Thomas, Director of Communications, also participated in the presentations. Treasurer Millar brought welcoming remarks at the reception, followed by keynote presentations by Kirby Chown and Heather Williams.
7. The purpose of the meeting was to,
  - a. outline the project and expectations;
  - b. discuss a communication strategy for the firms to encourage their lawyers to be engaged in the project;
  - c. discuss process and next steps.
8. Firm representatives have been meeting regularly since the launch of the project. A proposed work plan was distributed to the representatives. A survey of law firms was also conducted to identify law firms' policies and practices.
9. The firm representatives were also asked to set up a process, within their firms, to compile and maintain gender data. The results of the gender data collection by firms will not be reported to the Law Society but will be used by the firms to track their own progress and develop their own programming. Firm representatives indicated that they were pleased to share their policies on maternity and parental leave and flexible work arrangements to assist the Law Society in developing models and precedents.
10. The survey findings analysis of firm policies were compiled in the following reports, available to participating firms:
  - i. *Report on the Survey of Firms of Over 100 Lawyers Participating in the Justicia Project;*
  - ii. *Report on the Survey of Firms of Under 100 Lawyers Participating in the Justicia Project;*
  - iii. *Report on the Survey of Regional Firms Participating in the Justicia Project;*
  - iv. *Summary of Firm Pregnancy and Parental Leave Policies.*
11. Model policies on pregnancy and parental leaves and on flexible work arrangements are being developed by participating firms and the Law Society.
12. On April 15, 2009, the Co-Chairs of the group of regional firms met with firms in the Sudbury region, on April 16, 2009, with firms in the Orillia region and on April 17, 2009 with firms in the Hamilton region. A report on the findings of the Justicia survey of regional firms was provided to participants.
13. At least ten firms have returned their signed agreement to use the icon for promotional purposes. A bilingual promotional brochure has been developed for the Justicia project and 5000 copies have been printed. The brochures have been sent to firm representatives for distribution.
14. The Law Society is working on developing a Justicia participants' website where all resources developed through the Justicia project will be made available to Justicia participants.

### Change of Status Survey

15. The Strategic Counsel has been retained to conduct the change of status survey for the legal profession. It is estimated that there are between 8000 and 10000 changes of status per year and the survey is likely to gather a tremendous wealth of information.
16. The survey has been designed and translated into French. The survey has been piloted and will be conducted with those who have changed their status or primary business in January, February and March in April. New “change of status members” will be surveyed every month thereafter.

### Women's Leadership and Professional Development Institute

17. This recommendation contemplates that the Institute incorporate,
  - a. professional development opportunities specifically designed to develop women as leaders and rainmakers;
  - b. networking opportunities, identified as particularly important for the career advancement of women from Aboriginal, Francophone and equality seeking communities;
  - c. an annual Women's Symposium focused on networking, becoming a rainmaker, remaining on the partnership track, ramping up and down a practice before and after leaves;
  - d. partnerships with legal associations, where appropriate;
  - e. recognition of the contributions of women lawyers and law firms.
18. The first annual Women's Symposium will take place in Ottawa at the end of October 2009. The planning committee has been formed with lawyers Fay Brunning and Lise Parent as Co-Chairs.
19. The Symposium is designed to include networking opportunities and will specifically address the unique challenges faced by women from Aboriginal, Francophone and equality-seeking communities. The Women's Symposium is a joint initiative of the Law Society of Upper Canada and the County of Carleton Law Association.

### Practice Locums

20. The Locum Registry and website, including sample clauses for nine contract terms, is now complete. It will be available on the Law Society website on May 1, 2009.

### Parental Leave Assistance Program (PLAP)

21. The Law Society has launched the three-year pilot parental leave program to enable more lawyers to stay in practice after the birth or adoption of a child. The program was developed in recognition of the fact that many lawyers in small or sole firms have little or no access to parental leave benefits, making it difficult to start a family while providing clients with legal services.

22. Effective March 12, 2009, the Parental Leave Assistance Program provides financial benefits to practising lawyers who are partners in firms of five lawyers or fewer who do not have access to other maternity, parental, or adoption financial benefits under public or private plans and who meet the eligibility criteria. Anyone who is eligible for Employment Insurance (EI) is not eligible for the Law Society's parental leave benefit.
23. The effective date of this program has been established as of March 12, 2009. This date coincides with the date of a tax ruling requested by the Law Society so as to ensure that its tax exempt status is preserved and to confirm the tax implications for members receiving the Parental Leave Assistance Program benefit. The Law Society received a positive tax ruling, which also confirmed that the benefits received under the Parental Leave Assistance Program are intended to be business income replacement and are taxable as such. Applications for benefits will only be considered for births and other eligible circumstances occurring on or after March 12th, 2009.
24. Under the Program, the Law Society provides a fixed sum of \$750 a week to eligible applicants for up to twelve weeks (maximum \$9,000 per leave, per family unit) to cover, among other things, expenses associated with maintaining their practice during a maternity, parental or adoption leave.
25. To be eligible for benefits under the Parental Leave Assistance Program, the applicant must satisfy all of the following requirements:
  - a. be a birth parent (mother or father) or an adoptive parent (mother or father);
  - b. be a member in good standing;
  - c. be a sole practitioner or a partner in a firm of five lawyers or less;
  - d. have no access to other maternity, parental, or adoption financial benefits under public or private plans (anyone who is eligible for Employment Insurance is not eligible for the PLAP);
  - e. cease to engage in remunerative work or to practise law during the leave for which he or she is receiving payments under PLAP.

#### On-line Women's Resource Centre

26. The Women's Resource Centre will build on existing Law Society resources and will offer tools and information focused on issues related to women's advancement, including tips on building a professional profile, balancing work and family life, networking and mentoring opportunities, ramping up and ramping down one's practice before and after a maternity or other leave, and more.
27. The focus will be on the needs of sole practitioners and women lawyers in small firms. The Lawyer Liaison Counsel is developing modules specifically targeted at this demographic. The on-line resource centre will be available in the fall, 2009. Eventually, the best practices, model policies and precedents arising from the 3-year Justicia Project will be posted also, but this will not occur until the project is completed.

### Outreach to Law Associations and Law Firms

28. In conjunction with the Justicia consultations with Group 1 (Out of Toronto Firms) in April, 2009, the Lawyer Liaison Counsel and others met with law firms and CDLPA executive members in Sudbury, Orillia and Hamilton on April 15, 16 and 17 respectively to promote the retention of women in private practice initiatives .
29. The Lawyer Liaison Counsel has attended with the Treasurer at various Law Association annual meetings to 'meet and greet' members and introduce retention of women initiatives. These sessions have provided valuable feedback on member's interest in and response to the locum project, Justicia, and the other initiatives. Meetings attended include the following:
  - a. February 19 – Middlesex Law Association (London)
  - b. February 25 – Peterborough Law Association
  - c. March 3 – Kent and Lambton Law Associations (Chatham)
  - d. April 2 – Brant Law Association (Brantford)

### Outreach to Law Schools

30. The Lawyer Liaison Counsel attended the articling and summer student job fairs at all Ontario law schools throughout the month of March. These fairs attract primarily 1st and 2nd year students. The purpose of attending the fairs was to promote alternative articling placements. However, Retention of Women in Private Practice initiatives were also promoted. Law school fairs attended include the following:
  - a. University of Ottawa – March 5, 2009
  - b. Queen's University – March 13, 2009
  - c. University of Toronto & Osgoode – March 20, 2009
  - d. University of Western – March 23, 2009
  - e. University of Windsor – March 24, 2009
31. Visits to the law schools will commence in the fall, 2009, either in conjunction with Orientation Week or in September/October. The proposed format for the law school presentations is a dynamic panel discussion followed by a cocktail reception.
32. Panellists will be recruited from the local legal community and will include at least two women lawyers in private practice (sole practice and small-mid size firm practice) and a representative from the Law Society's Equity Department. The presentations will be directed at 3rd year law students.
33. Subject to the cooperation of local alumni and the law schools, the reception will provide an opportunity for women locally to consider becoming mentors or networking resources for the women law students.

### Women's Equality Advisory Group (WEAG)

34. The Equity and Aboriginal Issues Committee approved Terms of Reference for WEAG in January 2009. In April 2009, the Committee adopted the shortlist of names for appointment. Candidates are being invited to participate.

THE LAW SOCIETY OF UPPER CANADA  
 ADDRESSING HARASSMENT AND DISCRIMINATION:  
 GUIDE TO DEVELOPING A POLICY FOR LAW FIRMS OR LEGAL ORGANIZATIONS

April, 2009

ADDRESSING HARASSMENT AND DISCRIMINATION:  
 GUIDE TO DEVELOPING A POLICY FOR LAW FIRMS AND LEGAL ORGANIZATIONS

## INTRODUCTION

The Law Society of Upper Canada has, for several years, developed model policies and guidelines for law firms to assist in the development of their own policies. This guide includes a model policy for addressing harassment and discrimination within law firms and legal organizations<sup>8</sup> and sets out procedures to address these matters in a prompt, effective and confidential manner.

The Ontario *Human Rights Code*<sup>9</sup> (the Code), Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct*<sup>10</sup> and Rule 2.03 of the *Paralegal Rules of Professional Conduct*<sup>11</sup> prohibit harassment and discrimination in the legal workplace, in professional dealings and in the delivery of services. This Guide, which provides a precedent for law firms and legal organizations, is divided as follows:

- a. Part 1 – Model Policy for Addressing Harassment and Discrimination;
- b. Part 2 – Explanations about Drafting the Policy;
- c. Part 3 – How to Draft a Policy for Small Law Firms;
- d. Part 4 – Overview of Legal Principles.

## WHY LAW FIRMS NEED WRITTEN POLICIES

The Ontario Human Rights Commission has stated “[t]he best defence against human rights complaints is to be fully informed and aware of the responsibilities and protections included in the Code.”<sup>12</sup> It is now well established that the adoption of effective harassment and

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<sup>8</sup> The term law firm and legal organizations in this document will be used to include providers of legal services, legal clinics, legal departments and legal non-profit organizations.

<sup>9</sup> R.S.O. 1990, c. H.19.

<sup>10</sup> Adopted by Convocation of the Law Society of Upper Canada on June 22, 2000, effective November 1, 2000.

<sup>11</sup> Adopted by Convocation of the Law Society of Upper Canada on March 29, 2007 effective May 1, 2007.

<sup>12</sup> *Policy and Guidelines on Disability and the Duty to Accommodate* (Toronto: Ontario Human Rights Commission, November 23, 2000) at 41.

discrimination policies and procedures and the design and delivery of education programs assist in creating a respectful work environment and in reducing the risk of liability for employers.<sup>13</sup>

The advantages of written policies include the following:

- a. they encourage respect for the dignity of all individuals in the firm;
- b. they demonstrate that the firm's management takes seriously its legal and professional obligations;
- c. they enhance a respectful workplace environment;
- d. they provide procedures for handling complaints;
- e. they encourage prompt resolution of workplace harassment and discrimination;
- f. they outline preventative, remedial and disciplinary actions that may be taken; and
- g. they minimize the risk of harm to staff and lawyers, as well as the risk that a firm will be held liable.

#### HOW LAW FIRMS SHOULD APPROACH THIS POLICY

The model policy included in this document is a precedent and is intended to provide guidance, rather than to represent the ultimate or ideal policy. This precedent applies to a legal environment composed of partners, associates and other staff, not subject to a collective agreement. Firms should adapt and tailor the model policy to their own structure and culture. For example, where a workplace is governed by a collective agreement, the firm may have to design its policies to take that into account, and the firm may have to consider its harassment policy when negotiating its collective agreement.

#### PART 1 - ADDRESSING HARASSMENT AND DISCRIMINATION – MODEL POLICY

POLICY FOR \_\_\_\_\_ (HEREINAFTER "THE FIRM")

Note: Square brackets "[ ]" are used throughout the model policy to indicate that firms should include terminology or information relevant to their organization.

#### STATEMENT OF PRINCIPLES

1. The Firm recognizes that harassment and discrimination are offensive, degrading and prohibited under the *Ontario Human Rights Code*, the *Rules of Professional Conduct* and the *Paralegal Rules of Professional Conduct* of the Law Society of Upper Canada.
2. The Firm is committed to providing a work environment that promotes equality and ensures that all individuals are treated with respect and dignity.
3. Harassment and discrimination will not be tolerated. Regardless of seniority, individuals found to have engaged in behaviour constituting harassment or discrimination may be severely disciplined. Such discipline may include dismissal for cause or expulsion from the partnership.

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<sup>13</sup> For example, see *Ferguson v. Meunch Works Ltd.* (1997), 33 C.H.R.R. D/87 (B. C. H. R. T.).

4. The Firm recognizes that proper education of staff and lawyers of the firm is important in understanding what constitutes harassment and discrimination and its harmful effects and in developing a workplace free from harassment or discrimination.

#### OBJECTIVES

5. The objectives of this policy are to,
  - a. foster and maintain a respectful working environment in which staff and lawyers treat each other with mutual respect;
  - b. alert all staff and lawyers to the fact that harassment and discrimination will not be tolerated within the Firm and are illegal;
  - c. set out the types of behaviour that may be considered offensive and will not be tolerated;
  - d. provide a procedure to deal with harassment and discrimination complaints; and
  - e. outline the preventative, remedial and disciplinary actions that may be taken when a complaint of harassment or discrimination has been brought forward and/or substantiated.
6. This policy is *not* intended to constrain acceptable social interactions between people in the Firm.

#### APPLICATION OF POLICY

7. This policy applies to all staff and lawyers of the Firm, whether part-time, full-time or casual. The policy also applies to others in the work context, such as volunteers, articling students, co-op students, dependant and independent contractors.
8. The policy applies to employment relationships and professional dealings within the context of the legal work environment and includes dealings by partners, along with dealings related to the partnership.
9. This policy covers any legal work-related environment and professional dealings including,
  - a. any place where the business of the firm is conducted or where social and/or other functions related to the business of the firm occur;
  - b. activities that are incidental or connected to the business of the firm, including activities that are incidental or connected to the business of partners or the partnership;
  - c. incidents that occur after the official business of a meeting; or
  - d. conduct outside the workplace which is likely to be prejudicial to the business of the firm.

#### CONFIDENTIALITY

10. To protect the interests of the persons involved, confidentiality will be maintained throughout the process to the extent practicable and appropriate under the circumstances except where disclosure is required by law or is necessary for a proper investigation and resolution of the matter.

## DEFINITIONS

11. “Directing Mind” means, for the purposes of this policy, a staff or lawyer of the Firm who performs management duties.
12. “Discrimination” means a distinction, whether intentional or not, but based on a protected ground, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society (See Addendum 1 for examples).
13. “Harassment” means one or a course of vexatious comment or conduct based on a protected ground that is known or ought reasonably to be known to be unwelcome (See Addendum 1 for examples).
14. “Malicious or bad faith complaint” means that a person has made a complaint under this policy that she or he knew was untrue. Submitting a complaint in good faith, even where the complaint cannot be proven, is not a violation of the policy.
15. “Poisoned work environment” refers to the creation of a negative, hostile or unpleasant workplace because of comments or conduct that tends to demean a group covered by a protected ground, even if not directed at a specific individual.
16. “Protected grounds” means any of the following: race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences, marital status, family status or disability (See Addendum 2 for the definition of the grounds).
17. “Threats, reprisals or retaliation” can be characterized by mean or harsh comment or conduct, discipline, criticism, ostracism, impeding of a person’s career, damage to a person’s reputation or similar treatment directed toward an individual for having invoked the policy, participated in a procedure related to the policy or have been associated with a person involved in matter under the policy.

## THREATS, REPRISALS OR RETALIATIONS AND BAD FAITH COMPLAINTS

18. Any staff or lawyer of the Firm has the right to make a complaint or enforce his or her rights under this policy without threats, reprisals or retaliations. The Firm prohibits threats, reprisals or retaliations in relation to the policy and such actions will be treated in the same manner as harassment or discrimination.
19. Any staff or lawyers of the Firm who makes a malicious or bad faith complaint is in violation of the policy.

## PROCEDURES FOR HANDLING COMPLAINTS FOR LAW FIRMS

### Advisors

20. The Firm appoints [number of Advisors] staff or lawyers as Advisors under this policy. Advisors are advocates for a workplace free of harassment and discrimination and act as internal resources. They are not investigators or decision-makers under the policy.

21. The Advisors' role is to assist staff and lawyers of the Firm by,
  - a. clarifying options available, answering questions and explaining the policy;
  - b. identifying appropriate counseling or support services provided by the Firm;
  - c. helping document a complaint for investigation;
  - d. providing assistance in resolving issues of harassment and discrimination;
  - e. helping with the implementation of a remedy.
22. The Firm ensures that Advisors have the knowledge and skills to fulfill their roles and provides the necessary support to assist them in carrying out their responsibilities.
23. Under this policy, Advisors report directly to the Equality Committee.

#### Directing Minds

24. Directing Minds have the obligation to ensure that a workplace is free from harassment and discrimination. As a result, someone in this position, on being made aware of inappropriate comments or conduct that may be prohibited under this policy, must take action as soon as practical and even without the consent of the complainant.

#### The Equality Committee

25. An Equality Committee is created for a term of [numbers of years] years, renewable by the [name of management board]. The Equality Committee has no less than [number of] staff or lawyers of the Firm.

#### Complaints Process

##### *General*

26. While the Firm is committed to resolving incidents of harassment or discrimination internally, nothing in this policy precludes staff or lawyers from pursuing other avenues, such as filing a complaint with the Human Rights Tribunal.

##### *Initial Action by Complainant*

27. A person who considers that she or he, or someone else, has been subjected to harassment or discrimination (hereinafter "the complainant") is encouraged to bring the matter to the attention of the person responsible for the conduct (hereinafter "the respondent").
28. Where the complainant does not wish to bring the matter directly to the attention of the respondent, or where such an approach is attempted and does not produce a satisfactory result, the complainant may seek the advice of an Advisor or a Directing Mind of the Firm.

##### *Initial Action by Complainant*

29. Once a complainant has sought the advice of an Advisor or a Directing Mind, the Advisor or Directing Mind, where appropriate, provides the complainant with a copy of this policy and advises the complainant of:

- a. the right to lay a formal written complaint under this policy;
  - b. the availability of counseling and other support services provided by the Firm;
  - c. the right to be accompanied or represented by [legal counsel or other person of choice] at any stage of the process where the complainant is required or entitled to be present;
  - d. the right to withdraw from any further action in connection with the complaint at any stage; and
  - e. other avenues of recourse available to the complainant, such as contacting the Discrimination & Harassment Counsel and/or filing a complaint with the Ontario Human Rights Tribunal. Where appropriate, the Advisor or Directing Mind will inform the complainant of any time limits applicable in filing an external complaint.
30. When a complainant approaches a Directing Mind, the Directing Mind, on being made aware of comments or conduct that may be prohibited under the policy, is required to take immediate action, even without the consent of the complainant. That obligation should be made clear to the complainant as promptly as possible.

#### *Outcome of Meeting*

##### No further action

31. Where the complainant does not wish the Advisor to take any further action, the Advisor will take no further action. However, a Directing Mind has a responsibility to take action commensurate with his or her duties where such action is warranted.
32. The Advisor or the Directing Mind will keep a written record of the discussion in a locked filing cabinet.
33. The Advisor or the Directing Mind completes the Harassment and Intake Form (Addendum 3). The Intake Form should not reveal the identity of the complainant or the respondent. A copy of the Intake Form is provided to the Equality Committee to assist it in developing strategies to address Harassment and Discrimination.

##### Discussion with respondent

34. The complainant may discuss the issue directly with the respondent, with or without an Advisor or Directing Mind, or the Advisor or the Directing Mind may meet with the respondent with a view to arriving at a solution. The Advisor or Directing Mind keeps a written record of what was said at that meeting. If the complainant and the respondent reach a resolution without the assistance of an Advisor or a Directing Mind, both parties will inform an Advisor or Directing Mind.
35. Where the complainant and the respondent are satisfied that they have achieved an appropriate resolution, the Advisor or Directing Mind makes a confidential written record of the resolution and keeps it in a locked filing cabinet. The written record may be signed by both parties and both parties may also be given a copy of the resolution.
36. The Advisor or Directing Mind, in consultation with the Equality Committee, may follow up to ensure that the solution is working.

Respondent may seek the advice from an Advisor or Directing Mind

37. A respondent may seek the advice of an Advisor or a Directing Mind. In this case the Advisor or a Directing Mind, where appropriate,
- a. informs the respondent of the complainant's right to lay a formal written complaint under the policy; and
  - b. informs the respondent of the right to be accompanied by a [legal counsel or other by a person of choice] at any stage of the process.

## Formal Complaint Procedure

38. Where the complainant decides to lay a formal written complaint, whether or not the Advisor or the Directing Mind is of the opinion that the conduct in question constitutes harassment or discrimination, the Advisor or Directing Mind may assist the complainant to draft a formal written complaint, based on the form provided in Addendum 4, which should be signed by the complainant.
39. A formal written complaint is filed with the Equality Committee. Upon the receipt of the formal written complaint, the Equality Committee should,
- a. provide a copy of the complaint and of the policy to the complainant and to the respondent; and
  - b. advise the complainant and the respondent that he or she has the right to be represented by [legal counsel or other person of choice] at any stage of the process when he or she is required or entitled to be present.
40. The Equality Committee appoints one of its own members ("the Appointed Member") to interview the complainant, document the details of the complaint, identify the remedy that is sought and whether the complainant wishes to proceed through mediation.
41. The Appointed Member also interviews the respondent, documents his or her perspective of the events and ascertains, with the agreement of the complainant, if the respondent is willing to proceed through mediation.
42. This procedure will be completed within [insert number of days] days of receipt of the formal complaint, unless a longer period is appropriate in the circumstances.
43. Where the complaint involves a member of the Equality Committee, the member withdraws from the Equality Committee until such time as the matter is resolved or closed.

## Mediation

44. If both parties agree to mediation, they decide whether they prefer an internal or an external mediation. If they do not agree, the mediation will be external.
45. If the mediation is internal, the Equality Committee appoints a staff or lawyer to act as mediator. If the mediation is external, the Equality Committee appoints a neutral, trained mediator and the Firm bears the cost of mediation.

46. Where a resolution is reached through mediation, a written statement of agreement may be prepared and signed by the parties.
47. The outcome of the mediation is reported to the Equality Committee. If a satisfactory resolution cannot be reached or the resolution has not addressed the Firm's obligations under the policy, the Equality Committee will consider whether an investigation is warranted.
48. The mediation will be completed within [insert number of days] days of the appointment of a mediator, unless a longer period is appropriate in the circumstances.

#### Investigation

49. The Equality Committee, at any stage of the process, may decide that there are reasonable grounds to proceed with an internal or external investigation. If the Equality Committee decides to proceed with an internal investigation, the Equality Committee appoints an investigator from the partnership. If the Equality Committee decides to proceed with an external investigation, it appoints a neutral third party to act as the external investigator.
50. The complainant may, at any time after a formal complaint has been filed, make a request to the Equality Committee or to the appointed member for temporary accommodation until the complaint resolution process comes to an end and every effort will be made to reasonably accommodate the complainant.
51. The investigation process follows accepted principles of fairness, including the following:
  - a. impartiality;
  - b. the right to know the allegation and the defence;
  - c. the right to offer evidence and witnesses; and
  - d. the right to rebut relevant evidence.
52. The investigation is completed within [insert length of time] of the appointment of an investigator, unless a longer period is appropriate in the circumstances.
53. The investigator provides a written summary of findings which includes the allegations of harassment and discrimination, the facts and the findings.
54. The written summary of findings is provided to the complainant and to the respondent and each will reply in writing within one week of receipt of the summary of findings unless a longer period is appropriate in the circumstances.
55. The investigator files a formal report with the Equality Committee based on the summary of findings and on the replies from the complainant and the respondent. The formal report may also include recommendations on appropriate resolutions.

### Action Taken Following Outcome of Investigation

56. Based on the outcome of the investigation, the Equality Committee, in conjunction with the appropriate level of management, makes a decision about whether the policy has been violated and what action will be taken as a result of the findings. The complainant and the respondent are informed of the outcome of the investigation and any decisions as to whether the policy has been violated.

### Types of remedial action

57. Based on the nature and severity of the violation, the remedial action may include an apology, education, counseling, verbal or written reprimand, transfer, a financial penalty, a suspension with or without pay or dismissal up to and including dismissal without notice. The remedial action may also include suspension or removal from the partnership.
58. Disciplinary actions that involve a financial penalty, suspension or removal from the Firm will be approved by the [Executive Committee]. Suspension or removal of a partner must proceed in accordance with the provisions of the partnership agreement.
59. Where the complaint is substantiated, the confidential record of the proceedings and the results will be placed in the respondent's personnel file. Where the complaint is not substantiated, no documentation under this policy will be placed in any respondent's personnel file. All other documentation under this policy will be kept in a locked filing cabinet by the [Managing Partner].

### Harassment or Discrimination in the Provision of Services

60. The Firm recognizes that its staff and lawyers may be subjected to harassment or discrimination by individuals who are not staff or lawyers of the Firm, such as clients or opposing counsel. The Firm acknowledges its responsibility to support and assist staff and lawyers subjected to such harassment or discrimination and to do all it can to ensure that the behaviour stops.

### Addendum 1: Examples of Harassment and Discrimination

The following are examples of workplace discrimination and harassment based on ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, age, record of offences, marital status, record of offences, family status or disability,

- a. unwelcome remarks, jokes, slurs, innuendos or taunting based on a person's place of origin;
- b. vandalism of a person's property because of their sexual orientation;
- c. interference with a person's ability to perform his or her work responsibilities because of a person's disability;
- d. refusing to work or interact with a staff or lawyer based on a person's race;
- e. sexist jokes causing offence;
- f. sexually suggestive or offensive comments, remarks or gestures;
- g. unwelcome physical contact, such as unwanted touching;

- h. propositions of physical intimacy;
- i. demands for dates or sexual favours, when a person knows or ought to know that they are unwelcome;
- j. sexual and/or offensive e-mail messages;
- k. comments, signs, caricatures, or cartoons displayed in the workplace that depict minority racial or religious groups in a demeaning manner;
- l. demeaning racial remarks, jokes or innuendoes about a staff or lawyer told to other employees, and racist, derogatory or offensive pictures, graffiti or materials related to race or other grounds such as ethnic origin;
- m. delivery of racist and/or offensive e-mail message or exchange of racist and/or offensive message through any form of communication;
- n. repeated slurs directed at the language and accent of a particular group.

#### Addendum 2: Definitions of Protected or Prohibited Grounds

“Age” means an age that is eighteen years or more.

“Creed or religion” means a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a requisite. The existence of religious beliefs and practices are both necessary and sufficient to the meaning of creed, if the beliefs and practices are sincerely held and/or observed.

“Family status” means the status of being in a parent and child relationship.

“Marital status” means the status of being married, single, widowed, divorced or separated and includes the status of living with a person in a conjugal relationship outside marriage.

“Disability” refers to a person who has or has had, or is believed to have or have had,

- i. any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness;
- ii. a condition of mental impairment or a developmental disability;
- iii. a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- iv. a mental disorder; or
- v. an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

Disability may be the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all these factors. The focus is on the effects of the distinction, preference or exclusion experienced by the person and not on proof of physical limitations or the presence of an ailment.

“Race” is now recognized as primarily centred on social processes that seek to construct differences among groups with the effect of marginalizing some in society.

“Ancestry” is a type of identity by which individuals are sorted according to cultural and/or racial backgrounds or their parents and/or grandparents’ racial background. Ancestry may refer to cultural, ethnic, national, linguistic, racial, religious, and/or place of origin.

“Place of origin” identifies individuals according to the part of the world from which they come.

“Colour” is a type of identity based on references to skin colour. It may refer to a particular combination of skin hue and depth of colour gradation. Colour intersects with race as a basis for identification.

“Ethnic origin” is defined by beliefs, values, knowledge, traditions, symbol systems and way of life shared by a group of people. It is reinforced through social interaction, transmitted from generation to generation and changes over time.

“Citizenship” refers to an identity based on common allegiances and responsibility to a particular country. Although citizenship is most often associated with a specific country, it can sometimes be associated with a region, province, municipality or locality.

“Sex” encompasses pregnancy (including breast feeding) and gender identity. Gender Identity refers to characteristics that are linked to an individual’s intrinsic sense of self. Gender identity often refers to the intrinsic sense of being male or female and includes transgendered, transsexual and intersexed individuals.

“Sexual orientation” is defined by the Ontario Human Rights Commission as a person’s choice in sexual partners. It is distinct from gender identity.

“Record of offences” means a conviction for an offence in respect of which a pardon has been granted under the Criminal Records Act (Canada) and has not been revoked or an offence in respect of any provincial enactment.

#### Addendum 3 Workplace Harassment and Discrimination Intake Form

Date Open: \_\_\_\_\_ Staff or lawyer of the firm: \_\_\_\_\_

Enquirer: \_\_\_\_\_

Department/Location: \_\_\_\_\_

Enquiry Information (i.e. referral, direct call):

Summary:

<p>Ground: (choose one)</p> <input type="checkbox"/> Age <input type="checkbox"/> Creed/Religion <input type="checkbox"/> Disability <input type="checkbox"/> Family Status <input type="checkbox"/> Gender or Sex <input type="checkbox"/> Race/Colour/Origins <input type="checkbox"/> Record of Offences <input type="checkbox"/> Sexual Orientation/Trans-identified <input type="checkbox"/> Not specified <input type="checkbox"/> Other (specify)_____	<p>Issue: (choose one)</p> <input type="checkbox"/> Accommodation <input type="checkbox"/> Harassment <input type="checkbox"/> Discrimination <input type="checkbox"/> Policy information <input type="checkbox"/> Information request <input type="checkbox"/> Reprisal  Other_____
	<p>Action: (choose one):</p> <input type="checkbox"/> Consultation <input type="checkbox"/> Referral <input type="checkbox"/> Informal Process <input type="checkbox"/> Formal Complaint <input type="checkbox"/> Investigation <input type="checkbox"/> Information <input type="checkbox"/> Monitoring

Date Closed:

## ACTIVITY HISTORY

Date/Time

Activity

## Addendum 4 Complaint Form

Complaint Form under Workplace Harassment and Discrimination Policy	
I _____ (Name of complainant)	working as a _____ (Title) in the
_____ have reasonable grounds to believe that _____ (Practice Group)	(Name of respondent)
working as a _____ (Title)	in the _____ (Practice Group)
has discriminated/harassed against me in employment on or about _____.	
(Date)	
The grounds of discrimination or harassment are:	

## Addendum 5 Response Form

Response Form under Workplace Harassment and Discrimination Policy	
I _____ (Name of respondent)	working as a _____ (Title) in the
_____ have received a complaint signed by _____ (Practice Group)	(Name of complainant)
working as a _____ (Title)	in the _____ (Practice Group)
alleging that I have discriminated/harassed against him/her in employment on or about _____.	
(Date)	
The grounds of the alleged discrimination or harassment are:	

## PART 2 - EXPLANATIONS ABOUT DRAFTING THE POLICY

This part explains particulars about drafting a policy.

### Establishing a Drafting Committee

In general, firms should adopt policies based on their own firm structure and culture. The starting point in drafting a policy is to establish a drafting committee. The composition of the drafting committee is critical to the credibility of the process and the policies that are produced.

To the extent possible, the committee should be composed of partners, associates, paralegals and staff of both sexes and be diverse. If there are individuals in the law firm with expertise in the relevant employment and discrimination law, one or more should be included.

It is important that the drafting committee include respected staff and lawyers who appreciate the importance of the issues to be addressed and who will be able to communicate these matters to others within the law firm.

### Developing the Policy

Drafting committee members should know the applicable law and become familiar with existing firm practices and policies that may be relevant.

A consultative process, which includes diverse staff and lawyers of the firm, should be followed. Where possible, the firm should involve articling students in the consultative process.

### Communicating the Policy

Once adopted, it is important for firms to communicate the policy to all staff and lawyers at the firm and develop an education strategy. The initial presentation of the policy and a clear statement of management support are important.

Education programs should be organized to inform all staff and lawyers of the firm about the provisions of the policy and the objectives that it is intended to meet.

Individuals charged with implementing and applying the policy, for example members of an equality committee, appointed advisors under the policy or directing minds should receive professional development to ensure that they are well informed of the specifics of the policy, the law, interviewing techniques and information gathering.

The Firm might consider asking those covered by the policy to sign a commitment pledge acknowledging receipt and an understanding of the policy. This increases the acceptance and understanding of the policy and allows the firm to ensure that its staff and lawyers are fully aware of the policy.

The policy should be made available to all prospective staff or lawyers of the firm by informing the public and legal professionals of the availability of the policy. Such a practice will make a strong statement about the firm's support for the policy and its objectives. The Code applies to the provision of terms and conditions of employment, recruiting, application forms, interviews and promotions.

## Confidentiality

If the policy is to be effective, confidentiality at every stage of the process is important. The absence of assurances of confidentiality may discourage individuals from using the policy. A statement of confidentiality is meant to protect the complainant, respondent and the firm. However, the nature of an investigation will necessitate some exceptions to the rule of confidentiality and a firm should include a statement to that effect in the policy.

## Appointed Advisors under a Policy

Appointed advisors under a policy are advocates for a workplace free of harassment and discrimination and act as internal resources. They are not investigators or decision-makers under the policy. Among other things, advisors offer support, help to clarify options available, answer questions and explain the policy.

The role of advisors is important to the successful implementation the harassment and discrimination policy, but the success of the policy depends on the choice of persons to fulfill this responsibility. An advisor should be well respected within the firm and be able to discuss a complaint with the complainant or respondent, regardless of that person's seniority. He or she should be sensitive to the nature and effects of harassment and discrimination, and be trusted as a person who will observe the principles of confidentiality.

The number of appointed advisors should depend on the number of staff and lawyers at the firm, in addition to the culture and structure of the firm. The appointment of more than one advisor ensures that staff and lawyers have choices when requiring the assistance of an advisor. It also recognizes that advisors themselves are not immune from complaints of harassment.

To the extent possible, a law firm should appoint advisors that reflect the diversity and the hierarchical structure of the firm.

A law firm may also appoint the Discrimination and Harassment Counsel to be an advisor of the firm.

## Directing Mind

For the purposes of this guide and as noted by the Human Rights Commission, a directing mind is a staff or lawyer of the firm who performs management duties. For example, partners or directors of departments would likely be directing minds of the firm.

When a directing mind becomes aware of inappropriate comments or conduct, that person has a responsibility to take prompt and effective action to address the situation. Whereas an advisor who is not a directing mind can reassure a complainant that they will not proceed further without their consent. As such, a firm should be aware of this when appointing an advisor who is also a directing mind.

In cases where a directing mind is also an advisor, that person should inform a complainant of his or her obligation to take prompt action on being made aware of inappropriate comments or conduct.

An advisor who is also a directing mind cannot abdicate his or her responsibility and may have to pursue a complaint without the complainant's consent.

### Equality Committee

The model policy suggests that an equality committee be created to deal with complaints of harassment or discrimination. The creation of such a committee provides an avenue for complainants to proceed to a committee of appointees knowledgeable on human rights issues, who represent different sectors of the organization and who have decision-making authority.

In lieu of an equality committee, it may be appropriate for a firm to appoint one member to handle complaints under the policy. Another option could be to appoint an existing committee to handle complaints. Firms should take into account their culture and context to determine what process would be the least intimidating and to ensure that complaints are brought forward.

### Complaints Process and Procedure

Directly approaching the person whose conduct has caused offence is usually the first step in a policy. Frequently, people are unaware that their conduct is offensive and all that is required to prevent its repetition is a simple statement that the conduct is unwelcome. However, power and status disparities between the respondent and the complainant may make it impossible or unreasonable for the complainant to approach the respondent. Therefore, such a first step should not be a mandatory step to the process.

A policy could stipulate a time limit for reporting a complaint. Ideally, people who have been subjected to harassment and discrimination will report the matter promptly. It should be drawn to the attention of staff and lawyers as part of the educative process that the longer they wait to report an incident, the more likely it is that witnesses will be unavailable or will not remember the events.

It is important to note, however, that a complaint should not be dismissed simply because it has not been reported in a timely fashion. Frequently, fear of retaliation or embarrassment may cause a person to wait until the harassment or discrimination becomes unbearable before reporting the incident. The very act of having to report harassment or discrimination may also add to the individual's distress.

It has been shown, in the context of sexual harassment, that many women feel uncomfortable, embarrassed, or ashamed when they talk about personal incidents of harassment. Some may also feel that they will be ignored, discredited, or accused of misunderstanding their superior's intentions. Many women attribute their silence to practical considerations. Common reasons given for not reporting the incidents are that the complainant believes nothing would be done, that the complaint will be treated lightly or ridiculed or that the complainant would be blamed or suffer repercussions<sup>14</sup> including the belief that she will face a loss of position and otherwise worsening of the situation.

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<sup>14</sup> See Arjun P. Aggarwal and Madhu M. Gupta, *Sexual Harassment in the Workplace*, 3d.ed. (Toronto: Butterworths, 2000).

## Mediation

Mediation is a process where an independent and neutral third party facilitates the resolution of a dispute or difference. This can be juxtaposed to an investigation, which is primarily focused on fact-finding.

An effective mediation requires all parties to have absolute faith and confidence in the mediator's ability, objectivity and impartiality. Therefore, when selecting a mediator care must be made to ensure that the mediator has the skills and knowledge in human rights, discrimination and harassment law and the mediation process.

While mediation does not result in a legal determination of fault or liability, it should still be regarded as a viable option; it encourages the parties to reach a mutually acceptable solution, while avoiding a costly litigation and protecting the privacy and confidentiality of the parties.

However, mediation is not always appropriate. Mediation by its very nature requires bargaining over the terms of a proposed settlement and a prerequisite is the equilibrium in bargaining strength. There is always a risk that the stronger party may take undue advantage of the bargaining power over the weaker party. Therefore, care must be given when determining whether mediation is an equitable alternative to resolving the dispute.<sup>15</sup>

## Confidential Records and Witness Statements

Since staff and lawyers of the firm will usually have the right to inspect the contents of their own personnel file, it is important, for purposes of protecting the confidentiality of witnesses and others, that details of the investigation and the evidence not be kept in the personnel file. Only the outcome of the investigation should be recorded in the personnel file.

Generally, the only person who has access to witness statements is the investigator. When the investigator provides his or her final report, he or she does not refer to witnesses by name.

## Temporary Accommodation

Temporary accommodation can include limiting contacts between the complainant and respondent by relocating the respondent to another area of the workplace or allowing the complainant to report to work with someone other than the respondent. Care should be taken to ensure that the complainant does not bear the brunt of the inconvenience of job relocation due to perceptions that his or her role or work is more disposable than that of the respondent who in this context may often be senior. Care must be taken not to stymie the career development of the complainant as the process unfolds.

## Review of the Policy

The policy should be revised on a periodic basis. It is proposed that the first review take place approximately one year after the adoption of the policy so that the firm can assess early the effectiveness of the policy and whether it addresses all anticipated issues.

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<sup>15</sup> See Arjun P. Aggarwal and Madhu M. Gupta, *Sexual Harassment Investigations: How to Limit Your Liability and More* (Ottawa: Harassment Publications, 2004).

## Appeal Process and Other Avenues of Recourse

The model policy does not provide an appeal process. An appeal process will depend upon how disciplinary measures are normally appealed in the firm. If there are no internal appeal procedures, a respondent who has been disciplined can take the matter to court.

A complainant should be informed of the right to file a complaint with the Human Rights Tribunal of Ontario if he or she is dissatisfied with the disposition of the complaint.<sup>16</sup> The Tribunal attempts to deal with the matter either via mediation or through a hearing. If a hearing is held and the Tribunal finds that the complainant experienced harassment or discrimination, the Tribunal can make an order to address the issue.

A complainant may also be informed that the Discrimination and Harassment Counsel (DHC) for the Law Society of Upper Canada offers confidential advice to those who may have been subjected to harassment or discrimination by a lawyer or paralegal.<sup>17</sup> Although the DHC program is funded by the Law Society, the Counsel works independently from the Law Society. The Services offered by the DHC are available to anyone who has experienced discrimination or harassment by a paralegal or lawyer. The DHC can outline options for recourse and if both parties agree, attempt to resolve the complaint through mediation.

While the DHC does not have investigative powers, nor does it operate a formal complaints process that involves fact-finding, the DHC may be able to assist a complainant by intervening informally as a neutral facilitator or by conducting formal mediation, where appropriate.

## Remedial Actions

Once the allegations of the complainant have been substantiated, there are a number of remedies that are available. A remedy should be based on the nature and severity of the violation; the more serious the violation, the harsher the remedy. It should be noted that harassment and discrimination policies are usually remedial in nature and aim at establishing a workplace that is respectful.

The resolution may include a reinstatement of the complainant if he or she was forced to terminate his or her employment due to harassment or discrimination, back pay for wages lost, restoration of benefits that may have been denied or an apology to the complainant.

Other remedial options include education and counseling for all parties, a verbal or written reprimand, a financial or monetary penalty as compensation for the humiliation, transfer of the harasser and in the most severe cases of a violation of the policy, a suspension with or without pay or dismissal up to and including dismissal without notice.

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<sup>16</sup> In June 2008, the *Code* was amended. Among other things, the amendments now allow for human rights complaints to be filed directly to the Human Rights Tribunal of Ontario, as opposed to the Human Rights Commission and the limitation period was extended from six months to a year from the date of the alleged incident of discrimination. See <http://www.hrto.ca/>

<sup>17</sup> <http://www.dhcounsel.on.ca/>

### PART 3- HOW TO DRAFT A POLICY FOR SMALL LAW FIRMS<sup>18</sup>

The legal and professional responsibility to prevent and respond to workplace harassment and discrimination and the principles applicable in the effective implementation and review of the policy also apply to small law firms. Management of the firm should support the policy and ensure that it is clear, fair, known and applicable to everyone in the law firm.

Even in the small law firm context, prospective new staff and lawyers should be informed of the existence of the policy. Ongoing education and periodic review of the policy are also important.

The biggest difference between small law firms and larger organizations is that smaller organizations will frequently have limited financial resources or personnel to adopt the same kind of processes as a larger law firm. This resource issue will impact what a policy for a smaller firm will look like.

In lieu of an equality committee, smaller firms may wish to appoint one person, usually a senior member of the law firm, to administer the policy. He or she should be well positioned to be aware of situations of harassment or discrimination, be able to take action when necessary and set an example of appropriate firm behaviour.

The senior member's role should include interviewing the complainant, documenting the details of the complaint, identifying the remedy that is sought and whether the complainant wishes to proceed through mediation.

A small law firm should provide staff and lawyers of the law firm with accessible information about what specific behaviour is unacceptable, the procedure if they want to make a complaint and the types of remedial or disciplinary actions that may be taken by the law firm.

However, it is important that small law firms provide alternate avenues of complaint resolution, such as appointing an advisor or the DHC to act as resources to staff and lawyers of the law firm concerned about possible or actual harassment or discrimination.

### PART 4 - OVERVIEW OF LEGAL PRINCIPLES

#### EQUALITY IN THE LEGAL PROFESSION

Over the years, the Law Society of Upper Canada has undertaken and reviewed studies to identify and address challenges faced by lawyers from Aboriginal, Francophone and equality-seeking communities. Using the available data as an impetus for action, the Law Society has for at least two decades, undertaken initiatives to promote equality within the legal profession, in accordance with its mandate.<sup>19</sup>

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<sup>18</sup> Based on *Anti-Harassment Policies for the Workplace: An Employer's Guide* (Ottawa: Canadian Human Rights Commission, December 2001).

<sup>19</sup> See *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, 1997).

In 2004, the Law Society commissioned Michael Ornstein, Director of the Institute of Social Research of York University, to prepare a demographic analysis of the legal profession in Ontario.<sup>20</sup> Using the 2001 Canadian Census, the report shows that 0.6 percent of Ontario lawyers are Aboriginal and 9.2 percent are racialized, compared to 1.6 percent of the Ontario population and 19 percent of the Ontario population respectively. In 2001, 35.1 percent of lawyers in Ontario were women, while only 12.8 percent of lawyers between 55 and 64 and 25.9 percent of lawyers between 45 and 55 were women. The report also notes that the mean annual earnings of racialized lawyers and of women is generally much lower than the mean annual earnings of white male lawyers.

The Discrimination and Harassment Counsel program, established by Convocation in 1999 to provide services to individuals who allege harassment or discrimination by a lawyer or a paralegal, has reported receiving 880 contacts in its most recent five-year review ending in December 2007. The program averaged 14 to 15 new contacts per month during that period. Of the 880 new contacts, the DHC dealt with a total of 295 discrimination and harassment complaints against lawyers.<sup>21</sup>

In light of the above-noted studies and statistics, and of further studies available on the Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca), the Law Society has undertaken initiatives to promote equality within the legal profession. The position of the Law Society has been summarized in its *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*.<sup>22</sup>

#### MODEL POLICIES DEVELOPED BY THE LAW SOCIETY

For more than ten years, the Law Society has adopted a number of model policies and guidelines to promote equality within the legal profession. During that time, the Law Society of Upper Canada adopted model policies and guidelines dealing with workplace equity,<sup>23</sup> flexible work arrangements,<sup>24</sup> the duty to accommodate,<sup>25</sup> recruiting and hiring tips to ensure equality of students and lawyers with disabilities,<sup>26</sup> creating an inclusive work environment for gays, lesbians, bisexuals and trans-identified<sup>27</sup> and advising clients of their linguistic rights.<sup>28</sup>

<sup>20</sup> Michael Ornstein, Director of the Institute for Social Research of York University, *The Changing Face of the Legal Profession – 1971 to 2001, A Report for the Law Society of Upper Canada* (Toronto: Law Society of Upper Canada, October 2004).

<sup>21</sup> Cynthia Petersen, *Report of the Activities of the Discrimination & Harassment Counsel Program for The Law Society of Upper Canada: Summary of Data for Five Year Period January 1, 2003 to December 31, 2007* (Toronto: Law Society of Upper Canada, December 2007).

<sup>22</sup> *Bicentennial Report*, *supra* note 19.

<sup>23</sup> *Guide to Developing a Policy Regarding Workplace Equity in Law Firms* (Toronto: Law Society of Upper Canada, updated in 2003).

<sup>24</sup> *Guide to Developing a Policy Regarding Flexible Work Arrangements* (Toronto: Law Society of Upper Canada, updated in 2003).

<sup>25</sup> *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, 2005). Also see *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities; Legal Developments and Best Practices* (Toronto: Law Society of Upper Canada, March 2001).

<sup>26</sup> Available on line at <http://rc.lsuc.on.ca/pdf/equity/recruitingHiringTips.pdf>.

<sup>27</sup> *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment. A Model Policy for Law Firms and Other Organizations* (Toronto: Law Society of Upper Canada, 2004).

<sup>28</sup> Available on-line at <http://rc.lsuc.on.ca/pdf/equity/advisingClientJudicialContext.pdf>.

*Addressing Harassment and Discrimination: Guide to Developing a Policy for Law Firms or Legal Organizations* is another model policy that law firms and legal organizations may use to develop their own policy in this area.

## LEGAL PRINCIPLES AND PROFESSIONAL RESPONSIBILITIES

The Code<sup>29</sup> (the Code), Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct*<sup>30</sup> and 2.03 of the *Paralegal Rules of Professional Conduct*<sup>31</sup> prohibit harassment and discrimination in the workplace and in the delivery of services. This part discusses a law firm's legal and professional responsibility to prevent and respond to harassment and discrimination.

### Definition of Harassment

"Harassment" is a form of discrimination and is defined in subsection 10(1) of the Code to mean "[...] engaging in a course of vexatious comment or conduct that is known or ought reasonably be known to be unwelcome."

Although the definition implies that harassment will occur only when there is more than one or a series of vexatious comment or conduct, case law has indicated that "one" comment or conduct may constitute harassment if it is of a serious nature.<sup>32</sup>

The Supreme Court of Canada has also defined sexual harassment as unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job-related consequences for the victims of the harassment. Not only is it an abuse of both economic and sexual power, it is also a demeaning practice that constitutes a profound affront to the dignity of the employees forced to endure it. By requiring an employee to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self-respect of the victim both as an employee and as a human being.<sup>33</sup>

Harassment in employment on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or disability is explicitly prohibited by the following subsection of the Code:

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<sup>29</sup> R.S.O. 1990, c. H.19.

<sup>30</sup> Adopted by Convocation of the Law Society of Upper Canada on June 22, 2000 effective November 1, 2000.

<sup>31</sup> Adopted by Convocation of the Law Society of Upper Canada on March 29, 2007 effective May 1, 2007.

<sup>32</sup> While in *Parsonage v. Canadian Tire Corp.* (1995), 28 C.H.R.R. D/42 (Ont. Bd. of Inquiry) and *Prestressed Systems Inc. v. L.I.U.N.A.* [2005] O.L.A.A. No. 551 (Ont. Arb. Bd.) both boards concluded that a single improper and insulting joke, told by employees or supervisors on break does not constitute a violation of the *Code*, egregious racial or other threats or comments, even if made only once, could constitute an infringement of the *Code*. See *Dhillon v. F.W. Woolworth Ltd* (1982), 3 C.H.R.R. D/743. Moreover, serious forms of harassment, such as physical sexual assault, need not occur more than once to be considered harassment. See Arjun P. Aggarwal, *Sexual Harassment in the Workplace*, 3<sup>rd</sup> edition (Toronto: Butterworths, 2000) at 140.

<sup>33</sup> *Janzen v. Platy Enterprises Ltd.*, [1989] 1 S.C.R. 1252 at 1284.

s. 5(2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.<sup>34</sup>

The *Code* also explicitly prohibits harassment based on sex in the workplace:

s. 7(2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

s. 7(3) Every person has a right to be free from,

- a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or
- b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

Rules 5.03 (Sexual Harassment) and 5.04 (Discrimination) of the *Rules of Professional Conduct* and 2.03 of the *Paralegal Rules of Professional Conduct* also prohibit sexual harassment by a lawyer or paralegal. Rule 5.03 states “A lawyer shall not sexually harass a colleague, a staff member, a client, or any other person.”

Rule 5.03 defines sexual harassment as:

One incident or a series of incidents involving unwelcome sexual advances, requests for sexual favours, or other verbal or physical conduct of a sexual nature,

- a. when such conduct might reasonably be expected to cause insecurity, discomfort, offence, or humiliation to the recipient(s) of the conduct;
- b. when submission to such conduct is made implicitly or explicitly a condition for the provision of professional services;
- c. when submission to such conduct is made implicitly or explicitly a condition of employment;
- d. when submission to or rejection of such conduct is used as a basis for any employment decision (including, but not limited to, allocation of files,

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<sup>34</sup> It should be noted that s. (5)(2) of the *Code* does not expressly protect against harassment on the basis of sexual orientation, but s. 5.(1) does protect against discrimination on that basis. However, the *Supreme Court of Canada* has held that harassment is a form of discrimination and given that subsection 5(1) of the *Code* prohibits discrimination on the basis of sexual orientation, harassment can be interpreted as being encompassed by s. 5(1). Further, the *Supreme Court of Canada* has concluded that human rights legislation that denies equal benefit and protection of the law on the basis of sexual orientation is a violation of section 15 of the *Canadian Charter of Rights and Freedom* (see *Janzen, ibid* at 1284).

matters of promotion, raise in salary, job security, and benefits affecting the employee); or

- e. when such conduct has the purpose or the effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

Rule 5.04 of the *Rules of Professional Conduct* not only prohibits discrimination but also harassment based on grounds other than sex. The commentary to Rule 5.04 indicates that:

In addition to prohibiting discrimination, Rule 5.04 prohibits harassment on the ground of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Human Rights Code), marital status, family status, or disability.

Rule 2.03 of the *Paralegal Rules of Professional Conduct* also prohibits harassment and discrimination on grounds other than sex.

Disrespectful behaviour, offensive comments or actions, not based on one of the protected grounds, which demeans an individual or causes personal humiliation is often referred to as *personal harassment*.<sup>35</sup> While personal harassment is not prohibited under the *Code*, law firms may prohibit such behaviour under their policy on addressing workplace harassment and discrimination.

Law firms may also prohibit abuse of authority in its policy that addresses harassment and discrimination. *Abuse of authority* occurs when a person uses authority unreasonably to interfere with staff and lawyers of the firm. If the abuse of authority is unrelated to one of the protected grounds, it is not prohibited under the *Code*, *Rules of Professional Conduct* or the *Paralegal Rules of Professional Conduct*.

It should be noted that harassment could also be a criminal act and result in charges under the *Criminal Code*, for example if the behaviour is an assault, constitutes hate propaganda or amounts to criminal harassment.<sup>36</sup>

#### Elements of the Definition of Harassment

The following are elements of the definition of harassment:

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<sup>35</sup> Personal harassment has been defined by the Treasury Board as "any improper conduct by an individual, that is directed at and offensive to another person or persons in the workplace, and that the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles, or causes personal humiliation or embarrassment, and any act of intimidation or threat." See Treasury Board of Canada Secretariat, "Policy on Prevention and Resolution of Harassment in the Workplace" online: Treasury Board of Canada Secretariat <[http://www.tbs-sct.gc.ca/Pubs\\_pol/hrpubs/hw-hmt/hara\\_e.html](http://www.tbs-sct.gc.ca/Pubs_pol/hrpubs/hw-hmt/hara_e.html)>.

<sup>36</sup> See for example Part VIII, Offences against the Person, *Criminal Code*, R.S.C. 1985, c. C-46.

- a. harassment may be verbal,<sup>37</sup> physical<sup>38</sup> or visual;<sup>39</sup>
- b. the criteria of the reasonable person in the shoes of the victim are both objective and subjective;<sup>40</sup>
- c. the comment or conduct does not have to be intentional;
- d. it may be a series of conduct or comment that happens for a period of time,<sup>41</sup> or it may be one incident, if the incident is serious;<sup>42</sup>
- e. the victim does not have to object to the behaviour to establish that there is harassment.<sup>43</sup>

<sup>37</sup> Such as derogatory comments about a person's sexual attractiveness, demeaning jokes, sexual suggestions and innuendo, sexual solicitations. Unwelcome remarks, jokes, innuendos or taunting about a person's racial or ethnic background, colour, place of birth, citizenship or ancestry. Refusing to speak or work with an employee because of his or her racial or ethnic background or because of his or her disability.

<sup>38</sup> Physical harassment includes such things as unwanted touching, such as stroking, tickling or grabbing someone, impeding or blocking movement in an attempt to get physically close. Physical harassment also include such behaviours as insulting gestures or practical jokes based on ethnic or racial grounds which cause embarrassment or awkwardness.

<sup>39</sup> Derogatory or degrading posters, explicit sexual images, cartoons, graffiti or the displaying of racist, derogatory, or offensive pictures or materials or the delivery of offensive e-mail.

<sup>40</sup> Central to the definition of harassment is the concept of the reasonable person in the position of the victim. Therefore, the criterion is objective, the reasonable person, but also subjective, as it takes account all the circumstances surrounding the complaint or allegations including the nature of the relationship. The question is whether the alleged harasser ought to have known that the conduct was unwelcome.

<sup>41</sup> For example, one homophobic joke might not be harassment, but persistent homophobic comments may become harassment with time.

<sup>42</sup> In *Murchie v. JB's Mongolian Grill*, 2006 HRTO 33, it was established that a single act of physical harassment can constitute a violation of the Code. In *Hinds v. Canada (Employment & Immigration Comm.)* (1988), 10 C.H.R.R. D/5683 the Canadian Human Rights Commission determined that Leon Hinds was subjected to racial harassment. Mr. Hinds, a Black man who had been employed with Employment and Immigration for 18 years had received a photocopy of a questionnaire with a racially derogatory heading through the internal mail. Moreover, given that the oppressive nature of the text that followed and racially derogatory innuendos that were contained in the document, the Commission determined that the incident amounted to racial harassment.

<sup>43</sup> A person does not have to object to the behaviour in order for that behaviour to be considered harassment. What is relevant is whether the respondent "knew or ought reasonably to have known" that the behaviour was unwelcome. Tribunals have generally adopted the objective standard of the reasonable person. If a reasonable person were to find the behaviour unacceptable, the alleged harasser ought to have known that the behaviour would be unwelcome.

However, in the context of sexual harassment, authors have criticized the reasonable person standard because it legitimizes the dominant social norm of the workplace, the male standard. See Kathleen Gallivan, "Sexual Harassment After Janzen v. Platy: the Transformative Possibilities" (1991) 49 University of Toronto Faculty of Law Rev. 27; Josée Bouchard, "La personne raisonnable en matière de harcèlement sexuel: une appréciation féministe" (1995) 8 C.J.W.L. 89; Maurice Drapeau, *Le harcèlement sexuel au travail* (Cowansville: Les éditions Yvon Blais Inc., 1991).

In some sexual harassment cases, tribunals have adopted the reasonable victim standard and have considered whether the reasonable victim would find the behaviour unwelcome. See *Harris v. Omni Data Supply Ltd.* (1987), 8 C.H.R.R. D/4385 (B.C. Bd. of Inq.); *Stadnyk v. Canada (Employment and Immigration Commn.)* (Can. 1993) 22 C.H.R.R. D/173 (Can. H.R.T.); affd (1995) 22 C.H.R.R. D/196 (H.R. Rev. T.); affd, unreported, November 15, 1996, Doc. T-698-95 (F.C.T.D.).

Tribunals have been more willing to adopt a contextualized approach in racial harassment cases, by recognizing that social norms in the workplace are often defined by dominant groups and may, in fact, create poisoned work environments for the non-dominant racialized groups. In *Dillon v. F.W. Woolworth Co. Ltd* (1982), 3

- f. job security or benefits that are conditional on an exchange of a favour may constitute harassment;<sup>44</sup>
- g. the unwelcome comment or conduct does not have to be directed at a specific person for harassment to occur;<sup>45</sup>
- h. comments or conduct that tends to ridicule or disparage a group causing humiliation, insult, apprehension or disruption may *poison the work environment*.<sup>46</sup>

## Definition of Discrimination

Subsection 5(1) of the *Code* prohibits discrimination in employment:

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C.H.R.R. D/743 (Ont. Bd. of Inq.) the Board recognized the effect of a racially hostile environment and accepted that the East Indian workers' retaliations were a reflection of how angered and injured they were. In *Francois v. Canadian Pacific Ltd.*, (1988), 9 C.H.R.R. D/4724 (C.H.R.C.) a Board held that a workplace poisoned with racist commentary by all workers, irrespective of race, does not allow an employer to ignore the racism and concluded that name calling was unacceptable.

<sup>44</sup> For example, an associate in a law firm asking an assistant to have sex with him and promising a salary raise in return. The threats to withhold rights or benefits may not be overt and law firms should be alert to the more subtle ways in which this may occur.

<sup>45</sup> Comments or conduct that tends to demean a group covered by a protected ground, even if not directed at a specific individual, can create a poisoned work environment resulting in unequal terms and conditions of employment. For example, employees routinely making derogatory jokes and comments about a person who is a member of a racialized community could qualify as harassment.

<sup>46</sup> A poisoned work environment refers to the creation of a negative, hostile or unpleasant workplace which causes significant and unreasonable interference to a person's work environment.

When considering whether there is a *poisoned work environment*, it is important to consider the context. In *Moffatt v. Kinark Child & Family Services*, a Board of Inquiry had to decide whether nasty speculation or rumours, prying and casual gossip about the sexual orientation, health and family life of an employee constituted harassment or discrimination. The Board observed that:

[D]iscriminatory conditions can be created by derogatory comments which target a person on the basis of their identification with a prohibited ground of discrimination. Comments which are, for example, racist, sexist, homophobic or mocking of a person's disabilities, whether written or oral, whether said directly to an employee or behind their back, can be the basis for a finding of employment discrimination. An isolated remark may not, on its own, create a poisoned work environment; each case requires consideration based on all the circumstances including the nature and frequency of the remarks and the impact on the complainant [...]

The appropriateness of any particular conversation referencing, in a neutral way, directly or indirectly, the sexual orientation of a colleague, will depend on a number of factors, the most significant of which will be the openness of the employee who is the subject of the conversation. Context is also very important. Even a casual friendly inquiry about a partner may be unwelcome if it has the potential to reveal a person's sexual orientation to an unknown and possibly hostile third party.

For members of the Lesbian, Gay, Bisexual and Trans-identified (LGBT) community, a careless reference to their orientation, even by a friend, can have the effect of forcing them "out of the closet" in a situation where they do not feel safe. When a member of the LGBT community has clearly indicated that they do not expect their sexuality to be a topic of conversation, on-going careless references by colleagues to their sexual orientation, even if not individually offensive, may have the cumulative effect of creating an environment in which they feel vulnerable to hostility from others (see *Moffatt v. Kinark Child & Family Services* [1998] O.H.R.B.I.D. No. 19, Decision No. 98-019 at par. 211 and par. 215.).

Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences,<sup>47</sup> marital status, family status or disability.

Rule 5.04 of the *Rules of Professional Conduct* provides that lawyers have a legal and professional duty not to discriminate (on any of the prohibited grounds enumerated in the Code and in Rule 5.04):

A lawyer has a special responsibility to respect the requirements of human rights laws in force in Ontario and, specifically, to honour the obligation not to discriminate on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, record of offences (as defined in the Code), marital status, family status, or disability with respect to professional employment of other lawyers, articulated students, or any other person or in professional dealings with other members of the profession or any other person.

Rule 2.03 of the *Paralegal Rules of Professional Conduct* is similar:

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

The fact that there is no intention to discriminate is of no relevance. When deciding whether discrimination has occurred, tribunals and courts will look at the impact that practices, policies and behaviour have on individuals.<sup>48</sup>

#### Discrimination Resulting from a Rule or Policy and the Duty to Accommodate

The Code prohibits adverse effect discrimination resulting from a rule or policy. However, under section 11 of the Code, an employer may justify a workplace rule that has the effect of discriminating by showing that the rule is a *bona fide* occupational requirement and that the needs of the person or group cannot be accommodated without undue hardship.<sup>49</sup>

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<sup>47</sup> "Record of offences" is defined in the Code as a conviction for a criminal offence for which a pardon has been granted or a conviction under any provincial enactment.

<sup>48</sup> For years, courts and tribunals have defined discrimination in terms of "direct", "adverse effect" or "systemic".

"Direct discrimination" exists where an employer adopts a practice or rule which on its face discriminates on a prohibited ground.

"Adverse effect discrimination" (which has also been termed "indirect" or "constructive" discrimination) means that an employer, for genuine business reasons, adopts a rule or standard which is on its face neutral, and which will apply equally to all employees, but which has a discriminatory effect upon a prohibited ground on one employee or group of employees in that it imposes, because of some special characteristic of the employee or group, obligations, penalties or restrictive conditions not imposed on other members of the work force.

"Systemic discrimination" means practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics.

<sup>49</sup>Section 11 of the Code imposes a duty to accommodate:

Section 17 of the *Code* also creates an obligation to accommodate persons with disabilities. Section 17 states that there is no violation of the *Code* if a person is incapable of performing or fulfilling the essential duties or requirements of a position. However, this defence is not available unless it can be shown that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating the needs of the person with the disability.<sup>50</sup>

When one alleges that a rule or policy is discriminatory, the Supreme Court suggests the following three-step analysis:

Once a plaintiff establishes that the standard is *prima facie* discriminatory, the defendant must prove on a balance of probabilities that the discriminatory standard is a *bona fide* occupational requirement. In order to establish this, the defendant must prove that,

- a. the standard was adopted for a purpose or goal rationally connected to the function being performed;
- b. the standard was adopted in good faith, in the belief that it is necessary for the fulfilment of the purpose or goal; and
- c. the standard is reasonably necessary to accomplish its purpose or goal, in the sense that the defendant cannot accommodate the person without incurring undue hardship.<sup>51</sup>

The commentary to Rule 5.04 of the *Rules of Professional Conduct* also imposes a duty to accommodate by stating the following:

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(1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

(a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or

(b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right.

(2) The Commission, the board of inquiry or a court shall not find that a requirement, qualification or factor is reasonable and *bona fide* in the circumstances unless it is satisfied that the needs of the group of which the person is a member cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

<sup>50</sup> Section 17 of the *Code* imposes a duty to accommodate persons with disabilities:

(1) A right of a person under this Act is not infringed for the reason only that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of disability.

(2) The Commission, the board of inquiry or a court shall not find a person incapable unless it is satisfied that the needs of the person cannot be accommodated without undue hardship on the person responsible for accommodating those needs, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

<sup>51</sup> *British Columbia (Public Service Employees Relations Commission) v. B.C.G.S.E.U.*, [1999] 3 S.C.R. 3 (the *Meiorin* case) at par. 54.

The Supreme Court of Canada has confirmed that what is required is equality of result, not just of form. Differentiation can result in inequality, but so too can the application of the same rule to everyone, without regard for personal characteristics and circumstances. Equality of result requires the accommodation of differences that arise from the personal characteristics cited in Rule 5.04.

The nature of accommodation as well as the extent to which the duty to accommodate might apply in any individual case are developing areas of human rights law.<sup>52</sup>

### Retaliation, Threats or Reprisals

Human rights law not only prohibits harassment and discrimination but also retaliations, threats or reprisals in relation to harassment or discrimination.<sup>53</sup> Section 8 of the Code grants every person the right to claim and enforce her or his rights under the Code without a threat or reprisal for doing so. This includes the institution and participation in proceedings under the Code and also the refusal to infringe a right of another person. Therefore, complainants and potential complainants are protected against retaliation, threats or reprisals for filing a complaint, assisting in a complaint, or testifying in human rights cases. Further, retaliation, threats or reprisals against a person who exercises her or his right to complain is illegal even if the complaint is unsuccessful.<sup>54</sup>

### False and Frivolous Accusations

Although false and frivolous accusations of harassment or discrimination occur in rare instances, such false accusations are serious offenses because they may have very serious adverse ramifications for the accused. Workplace harassment and discrimination policies should encourage victims to come forward, but at the same time, should discourage false and fabricated charges against innocent persons.

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<sup>52</sup> The *Code* and the *Rules of Professional Conduct* impose a duty to accommodate differences arising from the personal characteristics up to the point of undue hardship. The duty to accommodate is a legal requirement imposed on employers in Ontario, including law firms. Consequently, law firms are encouraged to adopt a policy to prevent and respond to workplace harassment and discrimination and a policy regarding accommodation requirements.

The Law Society has published the following documents to assist law firms in developing a policy regarding accommodation requirements: *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements* (Toronto: Law Society of Upper Canada, May 2005) (<http://rc.lsuc.on.ca/pdf/equity/accommodationRequirements.pdf>) and *Accommodation of Creed and Religious Beliefs, Gender Related Accommodation and Accommodation for Persons with Disabilities* (Toronto: Law Society of Upper Canada, December 2004) (<http://rc.lsuc.on.ca/pdf/equity/accommodation.pdf>).

<sup>53</sup> Reprisals may include social ostracism, the stymieing of careers or damage to the reputation. The vulnerability of complainants and the impact on the relation of complainants with colleagues and peers increases when complaints of harassment and discrimination are not dealt with appropriately by law firms.

<sup>54</sup> Reprisal is a ground for alleging discrimination which is distinct from any particular alleged act of discrimination. It stands by itself and is designed to encourage complainants to pursue their rights without the fear of recrimination for doing so. See *Abouchar v. Toronto (Metro) School Board (No. 3)* (1998), 31 C.H.R.R. D/411 (Ont. Bd. Of Inquiry).

Notwithstanding this position, the insufficiency of evidence to prove a complaint does not mean that the complaint was submitted in bad faith. Therefore a distinction should be noted with respect to complaints that are not able to meet the evidentiary burden to substantiate the allegations and those that are malicious or made in bad faith. A malicious or bad faith complaint means that a person has made a complaint that she or he knew was untrue.

#### Definition of Employment and Employees

Both the *Rules of Professional Conduct* and the *Paralegal Rules of Professional Conduct* prohibit harassment and discrimination in employment and professional dealings with members of the respective professions.<sup>55</sup>

The terms “employer” and “employment” are defined broadly; pursuant to both human rights legislation and the *Rules of Professional Conduct*, employment extends to professional employment of other lawyers, articled students, or any other person, from administrative staff to partners. In the *Paralegal Rules of Professional Conduct*, employment extends to others, particularly other licensees or any other person.

The *Code* does not define “employee.” However, because the *Code* is to be interpreted broadly, the Commission takes the position that the *Code*’s protection extends to employees, temporary, casual and contract staff, and other persons in a work context, such as people who work to gain experience or for benefits. This broad interpretation is consistent with a number of Tribunal decisions from across Canada.<sup>56</sup> We are of the view that the term employee in the human rights context would include partners in a law firm. The term would also include volunteers, co-op students and dependent and independent contractors.

The term “employment” also covers recruitment, interviewing, hiring, promotion, evaluation, compensation, professional development, admission to partnership and activities related to the partnership.

Members of a firm are also prohibited from engaging in harassment or discrimination when dealing with clients, or other parties with whom they interact in a professional capacity

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<sup>55</sup> The language in section Rule 5.04 of the *Rules of Professional Conduct* uses the term “professional employment” and the phrase “professional dealings with other members of the profession”, while section 2.03 of the *Paralegal Rules of Professional Conduct* uses the phrase “employment of others or in dealings with other licensees or any other person”. While the language in both sections is not identical, it is assumed that they are intended to communicate the same sentiment.

<sup>56</sup> *Human Rights at Work 2008* (Toronto: Ontario Human Rights Commission, 2008). It should be noted that all employment relations, including those governed by a collective agreement and probationary employees are subject to the *Code* (see *Parry Sound (District) Welfare Administration Board v. O.P.S.E.U., Local 324*, 2003 230 D.L.R. (4<sup>th</sup>) 257).

### Definition of “In the Workplace” or “In the Course of Employment”

To constitute a prohibited conduct in the context of employment under the *Code*, the conduct must take place “in the workplace”,<sup>57</sup> or “in the course of employment”.<sup>58</sup> The scope of those terms is broad. The term “in the course of employment” has been interpreted in *Cluff v. Canada (Department of Agriculture)*<sup>59</sup> in which an employee alleged that she was sexually harassed in the late evening at a conference. The issue was whether the harassment occurred “in the course of employment” or in “matters related to employment”. The Tribunal held, and the Federal Court concurred, that an employee is in the course of employment when, within the period covered by the employment, he or she is carrying out,

- a. activities which he or she might normally or reasonably do or be specifically authorised to do while so employed;
- b. activities which fairly and reasonably may be said to be incidental to the employment or logically and naturally connected with it;
- c. activities in furtherance of duties he or she owed to his or her employer; or
- d. activities in furtherance of duties owed to the employer where the latter is exercising or could exercise control over what the employee does.

In *Simpson v. Consumers’ Assn. of Canada*,<sup>60</sup> the Ontario Court of Appeal defined the term “workplace” in the context of harassment. The workplace may include non-work environments, depending on the facts. Social interactions between supervisors and employees which are job-related and/or take place at work functions paid for the employer to which employees are invited may constitute the “workplace”. Justice Feldman, for the Court, states as follows:

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<sup>57</sup> The term “in the workplace” is used in sections 5 and 7 of the *Code*.

<sup>58</sup> The term “in the course of employment” is used in the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6.

<sup>59</sup> [1994] 2 F.C. 176 (F.C.). The complainant was a term employee with the Communications Branch at the Department of Agriculture and had become active in the Eastern Canada Farm Writers’ Association. She was authorized by her supervisor to organize its annual conference during working hours, provided the work did not interfere with her normal duties. The employer paid her registration fee at the conference. As part of her organizational duties, she was required to host the hospitality suite and, for practical reasons, she was to sleep in the bedroom portion of the suite. She alleges that she was sexually harassed by a senior employee of the Communications Branch of Agriculture Canada between 2:00 a.m. and 3:00 a.m. in the suite.

The Federal Court concluded that the complainant’s activities in relation to the conference were normal or reasonable adjunct activities from which the Department and the complainant could benefit. The fact that the Department did not control or influence the association was of no consequence. The work undertaken by the complainant was fairly and reasonably incidental to her employment in the Department. However, the Court held that what happened after the hospitality suite closed could not be related to her employment. At some time before 2:00 a.m. and at or shortly after the time the hospitality suite effectively closed, the complainant ceased to be in the course of employment or engaged in matters related to employment

<sup>60</sup> *Simpson v. Consumers’ Assn. of Canada* (2001), 209 D.L.R. (4<sup>th</sup>) 214. The respondent, an executive director of the appellant association had propositioned a female member of staff during a three-day meeting of the board of directors in Saskatchewan. The incident took place late one evening at the hotel where they were both staying. On another occasion the respondent squeezed another female employee’s buttocks while she was bending over. That incident happened at around 11:00 p.m. in the hospitality suite of a hotel in Banff where the CAC was holding its annual general meeting. Finally, while attending a business conference in Quebec, and in the presence of other staff members, the respondent went into the conference hotel’s hot tub naked with a secretary who was topless. The Court of Appeal concluded that, although the incidents took place during CAC meetings or retreats held at hotels, they were clearly business meetings, even if they included a social component.

That the incidents occurred after the official business of the meetings, and, for example, in a hospitality suite, does not mean that they are outside the workplace and therefore outside the employment context. In *Smith v. Kamloops and District Elizabeth Fry Society* (1996), 136 D.L.R. (4th) 644 at 654, the British Columbia Court of Appeal held that “[a]n employee’s conduct outside the workplace which is likely to be prejudicial to the business of the employer can constitute grounds for summary dismissal.” In *Tellier v. Bank of Montreal* (1987), 17 C.C.E.L. 1 (Ont. Dist. Ct.), one of the key events constituting sexual harassment occurred at a cocktail party held by a company that was doing business with the bank [...] These CAC meetings, including the social aspects, were perceived by the staff as job related. The people invited were either employees or volunteers of the association, attending a function paid for by the association. In the cases of Sandy Reiter and Julie Glascott, the women were strictly employees of the association and not friends of the respondent. Although these incidents did not take place within the physical confines of the office, they occurred in the context of the work environment.

In the federal context and in Ontario, it is recognized that harassment can take place in the workplace itself, or outside of the workplace in situations that are in some way connected to work. For example, during off-site meetings, business trips, social gatherings taking place off-site, recruitment lunches or dinners with potential articling students or other hiring candidates, end of the year parties and any other event or place related to employment when the employee is present in the course of employment. Therefore, it is the responsibility of law firms to not tolerate harassment in any work-related place or at any work-related event.<sup>61</sup>

#### Liability of Employer

Employers have the ultimate responsibility for ensuring that their workplace is free of harassment and discrimination. In *Robichaud*,<sup>62</sup> the *Supreme Court of Canada* rendered its decision pursuant to the *Canadian Human Rights Act* which established employers’ liability for acts of their employees in the course of employment. The decision confirmed that human rights legislation imposes a statutory obligation, which requires employers to provide a safe and healthy working environment.

The Court placed the responsibility on those who control the organization and are in a position to take effective remedial action to remove undesirable conditions. The response of an employer will have important practical implications. For example, an employer who responds quickly and effectively to a complaint by instituting a scheme to remedy and prevent recurrence will not be liable to the same extent, if at all, as an employer who fails to adopt such steps.<sup>63</sup>

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<sup>61</sup> See *Anti-Harassment Policies for the Workplace, An Employer’s Guide* (Ottawa: Canadian Human Rights Commission, 2006). Also online <[http://www.chrc-ccdp.ca/pdf/ahpoliciesworkplace\\_en.pdf](http://www.chrc-ccdp.ca/pdf/ahpoliciesworkplace_en.pdf)>.

<sup>62</sup> *Robichaud v. Canada (Treasury Board)*, [1987] 2 S.C.R. 84.

<sup>63</sup> An employer must respond to internal complaints of discrimination lodged by its employees. Failure to do so will itself result in liability under section 5 of the *Code*. The employer must also take the matter seriously and act promptly (see *Murchie*, *supra* note 42).

The *Robichaud* decision recognizes that the employer alone is in a position to enforce human rights in the workplace by implementing policies, creating a healthy work environment, reinstating an employee who has been dismissed, providing benefits to the victims of human rights violations and punishing those who violate human rights laws. *Robichaud* confirmed that,

- a. employers are responsible for the due care and protection of their employees' human rights in the workplace;
- b. unless otherwise provided by legislation, employers are liable for the discriminatory conduct of, and harassment by, their agents and supervisory personnel;
- c. harassment by a supervisor may be automatically imputed to the employer when such harassment results in a tangible job-related disadvantage to the employee;
- d. explicit company policy forbidding harassment and the presence of procedures for reporting misconduct may not be sufficient to offset liability;
- e. employers will be pressured to take a more active role in maintaining a harassment/discrimination-free work environment; and
- f. employers' intentions to have effective harassment policies are insufficient. In order to avoid liability, the policies should be functional and work as well in practice as they do in theory.<sup>64</sup>

The *Code* makes an employer responsible for any acts or omission to act carried out in the course of employment by an officer, agent, or employee for certain discriminatory conducts. However, it exempts the employer from liability in relation to harassment caused by its agents or employees.<sup>65</sup>

The Human Rights Commission nevertheless recognizes that employers have violated the *Code* where the employer,

- a. directly or indirectly, intentionally or unintentionally infringes the *Code*;
- b. constructively discriminates;
- c. does not directly infringe the *Code* but rather authorizes, condones, adopts or ratifies behaviour that is contrary to the *Code*.<sup>66</sup>

As well, the employer's liability may be engaged in some circumstances where an employee contravenes the *Code* in the course of his or her employment.

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<sup>64</sup> Aggarwal, *supra* note 14 at 264.

<sup>65</sup> Subsection 46.3 of the *Code* states: For the purposes of this Act, except [...]subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.

Section 46.2 provides that "every person who contravenes section 9 or subsection 31 (14), 31.1 (8) or 44 (13) or an order of the Tribunal is guilty of an offence and on conviction is liable to a fine of not more than \$25,000. No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General."

<sup>66</sup> Ontario Human Rights Commission, *Human Rights at Work*, *supra* note 46 at 30.

A 1993 Board of Inquiry decision, *Broadfield v. De Havilland/Boeing*,<sup>67</sup> found an employer liable for the acts of its employees for sexual harassment, stating that a significant feature of the case was that the company knew that the complainant would likely face resistance from some male employees. Moreover, the complainant reported the harassment to De Havilland/Boeing and the company did not act on the allegations.

In *Moffatt v. Kinark Child and Family Services*,<sup>68</sup> an Ontario Board of Inquiry reiterated that an employer is under a duty to take reasonable steps to address allegations of discrimination or harassment in the workplace and that a failure to do so will result in liability under the *Code*. The reasonableness test has been applied to determine quantum of damages, corporate liability in allegations of discrimination and to determine the adequacy of an employer's investigation into a complaint of discrimination to determine whether a decision to terminate is reprisal.<sup>69</sup> The Board identified the following six elements of the reasonable person test that an employer must demonstrate the following:

- a. it must be aware that harassment or discrimination are prohibited conduct;
- b. it must have a complaint mechanism in place;
- c. it must have acted with alacrity in handling the complaint;
- d. it must have dealt with the matter seriously;
- e. it must have met its obligation to provide a healthy work environment; and
- f. it must have met its obligation to inform the complainant of its response.

The Ontario Human Rights Commission states that, in the case of a corporation,<sup>70</sup> a directing mind<sup>71</sup> who discriminates against or harasses anyone in a manner contrary to the *Code*, or who knows of harassment or discrimination and did not take steps to remedy a situation, engages the liability of the employer.<sup>72</sup> Ontario Boards of Inquiry have defined "directing mind" of a

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<sup>67</sup> (1993), 19 C.H.R.R. D/347 (Ont. Bd. of Inq.). The complainant was the first female supervisor at De Havilland/Boeing of Canada Ltd. and she faced ongoing harassment in the form of threats, gender based insults, anonymous obscene phone calls at her home and was shown pornographic magazines by male workers. The Board held that the employer was liable for the sexual harassment. The employer was aware, at the time the complainant became a supervisor, of the potential for harassment and it had an obligation to take the necessary measures to prevent it or to mitigate the effects of the harassment. Once the harassment occurred the company was also liable for the failure to take the appropriate measures to address the issue.

<sup>68</sup> *Supra* note 46.

<sup>69</sup> See *Jones v. Amway of Canada, Ltd.*, [2001] O.H.R.B.I.D. No. 9 (Ont. Bd. of Inq.); *Moffatt, ibid.*; *Wall v. University of Waterloo* (1995), 27 C.H.R.R. D/44 (Ont. Bd. of Inq.) adopting *Robichaud, supra* note 62.

<sup>70</sup> The *Law Society Act* (R.S.O. 1990, c.L.8 s.61) provides that, in Ontario, two or more members may establish a law firm by forming a partnership, within the meaning of the *Partnership Act*, a limited liability partnership within the meaning of the *Partnership Act* or a professional corporation for the purpose of practising law.

<sup>71</sup> The Human Rights Commission provides the following definition of "directing mind": generally speaking, an employee who performs management duties is part of the "directing mind" of a company. Even employees with only supervisory authority may be viewed as part of a company's "directing mind" if they function, or are seen to function, as representatives of the organization. Holding an employer liable for the conduct of an employee who is part of the "directing mind" is consistent with the "organic theory" of corporate liability. Non-supervisors may be considered part of the "directing mind" if they have de facto supervisory authority or have significant responsibility for the guidance of employees. See *Human Rights at Work, supra* note 56 at 30.

<sup>72</sup> *Ibid. at* 30

corporation as “generally speaking, whenever an employee provides some function of management, he is then part of the directing mind”.<sup>73</sup>

In applying the human rights definition of “directing mind” in the context of a partnership or a limited liability partnership, it could be argued that all partners perform management duties and have responsibilities that are equivalent to those of a “directing mind” in a corporation. For this reason, the term “directing mind” is used throughout this document, when referring to those who may engage the liability of the employer and who have a responsibility to take reasonable steps to address allegations of harassment or discrimination.

#### How to Limit a Firm's Liability

Employers, including law firms, can take a number of steps to limit their liability,<sup>74</sup> such as the following:

- a. adopting a comprehensive harassment and discrimination policy that meets the standards imposed by the Ontario Human Rights Commission, the *Code* and the case law;
- b. providing for several avenues through which a complaint may be brought to the attention of management;
- c. communicating the policy to all staff and lawyers of the firm;
- d. providing education programs on addressing harassment and discrimination for staff, lawyers, paralegals and partners of the firm;
- e. using a pro active approach when implementing the policy by ensuring that directing minds maintain an awareness for signs of harassment or discrimination and take action when warranted, even if no complaint has been filed;
- f. making staff and lawyers aware that the firm is committed to a harassment and discrimination-free workplace, that the firm will not tolerate any form of harassment or discrimination in the workplace and that perpetrators may be disciplined;
- g. investigating, even in the absence of a formal complaint, rumours and unofficial complaints when warranted;<sup>75</sup>
- h. being prompt, effective, unbiased, and thorough when investigating complaints;
- i. taking strong and prompt remedial action where allegations of harassment or discrimination are substantiated, to end the harassment.

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<sup>73</sup> *Strauss v. Canadian Property Investment Corp. (No. 2)* (1995), 24 C.H.R.R. D/43 (Ontario Bd. of Inq.) at D/50. See also *Naraine v. Ford Motor Co.* (1996) O.H.R.B.I.D. no. 23; *Fu v. Ontario* (1985), 6 C.H.R.R. D/2797 (Ont. Bd. of Inq.); *Shaw v. Levac Supply Ltd.* (1990), 14 C.H.R.R. D/36 (Ont. Bd. of Inq.).

<sup>74</sup> Taken from Aggarwal, *supra* note 14 at 313.

<sup>75</sup> It is to be noted that significant harm can be caused by inappropriate response by law firms to harassment or discrimination. This can compound the victim's experience of harassment or discrimination, affect the victim's relations with peers or violate privacy interests of the victim. A law firm should make the victim aware of resources available to provide advice, such as the Discrimination and Harassment Counsel.

## Harassment or Discrimination by Clients

In addition to being responsible for their own acts of discrimination, employers can also be responsible for the actions of their agents and employees. An employer can also be liable for the acts of third parties such as clients and opposing counsel who discriminate against its employees or lawyers. An employer has a duty to intervene to stop harassment of its employees by third parties. The employer cannot be absolved of its responsibility by showing that it was responding to the real or perceived preferences of clients. In the case of harassment by clients, the employer has the greatest control over workplace conditions, and it must intervene effectively to stop harassment by third parties.

While an employer may not be able to control the remarks of a client, the employer does have control over how it responds to discriminatory conduct in the workplace, regardless of how the conduct occurred. In deciding whether an employer took reasonable steps to eliminate the problem, a tribunal will determine whether an employer acted promptly and effectively in all the circumstances in response to acts of harassment and will assess the appropriateness of its efforts to prevent harassment.

An employer will be found liable unless it can demonstrate that it did not consent to the harassment, that it exercised all due diligence to prevent the harassment from occurring, and that it attempted to mitigate the effect of the harassment. In considering due diligence, the nature of the response will be examined. The response should bear some relationship to the seriousness of the incident. The employer must take reasonable steps to alleviate, as best it can, the distress arising within the work environment, to mitigate the effects of discrimination, and to reassure workers that it is committed to a workplace free of harassment.<sup>76</sup>

Appendix 3

Equity Advisor's Report  
2008

April 8, 2009

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Report to the Equity and Aboriginal Issues Committee  
Comité sur l'équité et les affaires autochtones

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<sup>76</sup> See *Clarendon Foundation v. O.P.S.E.U., Local 593* (2000), 91 L.A.C. (4<sup>th</sup>) 105; *Stefanik v. Michaud and Spectronic Service Ltd.* (1998), 99 C.L.L.C. 145,007; *Jalbert v. Moore* (1996), 96 C.L.L.C. 145, 593; *Re Clarke Institute of Psychiatry and Ontario Nurses' Association* (1996), 54 L.A.C. (4<sup>th</sup>) 129; *Uzuoaba v. Correctional Service of Canada* (1994), 94 C.L.L.C. 16; *Mohammed v. Mariposa Stores Limited Partnership* (1990), 14 C.H.R.R. D/215 (B.C. Bd of Inq.).

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## Background

1. In May 1997, the Law Society of Upper Canada unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the “*Bicentennial Report*”).<sup>77</sup> The *Bicentennial Report* reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays, lesbians, bisexuals and transgender individuals and persons with disabilities in the profession, and the initiatives the Law Society had taken to promote equality and diversity. The *Bicentennial Report* made sixteen recommendations that have since guided the Law Society as it promotes equality and diversity within the legal profession.

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<sup>77</sup> *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997). Report available on-line at [www.lsuc.on.ca](http://www.lsuc.on.ca).

2. The adoption of the *Bicentennial Report* led to a series of systemic changes to promote equality and diversity within the legal profession and within the Law Society. In the mid-1990's, the Law Society created a standing committee of Convocation, the Equity and Aboriginal Issues Committee (the "Equity Committee")<sup>78</sup>, with a mandate to develop for Convocation's approval, policy options for the promotion of equity and diversity having to do in any way with the practice or provision of legal services in Ontario and for addressing matters related to Aboriginal peoples and Francophones; and to consult with Aboriginal, Francophone and other equality-seeking communities in the development of such policy option.<sup>79</sup> It also created the Equity Initiatives Department, with five permanent staff members and one articling student, and an advisory group, the Equity Advisory Group (the "EAG")<sup>80</sup>, consisting of expert lawyers in the area of equality rights and legal associations that promote equality and diversity.
3. On July 31, 2003, Convocation established the Bicentennial Report Working Group to review and report on the implementation status of the recommendations contained in the *Bicentennial Report*. In January 2004, the Bicentennial Report Working Group presented the *Bicentennial Implementation Status Report and Strategies*<sup>81</sup> to Convocation detailing the programs, services and policies created by the Law Society as a result of the recommendations of the *Bicentennial Report*, analyzing the implementation status of each recommendation and proposing strategies to be examined and further implemented.
4. Since 2004, the Equity Advisor presents to the Equity Committee an annual report of the activities of the Law Society to promote equality and diversity in the legal profession and within the Law Society. The Equity Advisor's Report 2008 focuses on the activities of the Equity Initiatives Department and the Equity Committee in 2008. The report is divided as follows:
  - a. Policy Development and Working Groups;
  - b. Research Projects and Submissions;
  - c. Program Development and Initiatives;
  - d. Public Education and Professional Development;
  - e. Law Society as Leading Employer.

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<sup>78</sup> The Equity and Aboriginal Issues Committee was not the first Law Society committee created to address equality issues in the legal profession. In 1988, the Law Society established a Women in the Legal Profession Subcommittee to consider emerging issues relating to women in the profession. In 1990, it became a standing committee of Convocation. In 1989, the Equity in Legal Education and Practice Committee was created. In 1996, the Women in the Legal Profession Committee and the Equity in Legal Education and Practice Committee were merged into the Admissions and Equity Committee, which later became the Equity and Aboriginal Issues Committee.

<sup>79</sup> By-Law 3 – Benchers, Convocation and Committees.

<sup>80</sup> Formerly the Treasurer's Advisory Group.

<sup>81</sup> Available on-line at [www.lsuc.on.ca](http://www.lsuc.on.ca).

### Policy Development and Working Groups

5. Over the years, the Equity Committee, under the advice of the Equity Advisory Group and the Equity Initiatives Department, developed a number of guidelines and model policies for the legal profession. The following are made readily available to the public and the profession, in both French and English:
  - a. *Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context - Information about Lawyers' Responsibilities, January 2007;*
  - b. *Pregnancy and Parental Leaves and Benefits for Professional Legal Staff and Law Firm Equity Partners – A Model Policy for Law Firms and Legal Organizations, September 2006 (under revision by the Justicia project);*
  - c. *Guide to Developing a Law Firm Policy Regarding Accommodation Requirements, updated May 2005;*
  - d. *Respect for Religious and Spiritual Beliefs – A Statement of Principles of the Law Society of Upper Canada, March 2005;*
  - e. *Sexual Orientation and Gender Identity: Creating an Inclusive Work Environment: A Model Policy for Law Firms and other Organizations, May 2004;*
  - f. *Guide to Developing a Policy Regarding Workplace Equity in Law Firms, updated March 2003;*
  - g. *Guide to Developing a Policy Regarding Flexible Work Arrangements, updated March 2003;*
  - h. *Preventing and Responding to Workplace Harassment and Discrimination, March 2002. (under revision by the Equity Committee).<sup>82</sup>*
  
6. In 2008, the following working groups were actively engaged in developing policies and initiatives:
  - a. The Equity Advisory Group ("EAG") is a group of lawyers and legal organizations with expertise in the area of equality and diversity and has a mandate to assist the Equity Committee in the development of policy options for the promotion of equity and diversity in the legal profession. EAG identifies and advises the Equity Committee on relevant issues and provides input to the Equity Committee on the planning and development of policies and practices related to equity within the profession and within the Law Society. In 2008, EAG,
    - i. participated in the Retention of Women in Private Practice Working Group and made valuable submissions to the Law Society in this area;
    - ii. made submissions to the Licensing and Accreditation Task Force, providing an analysis of the equality implications of the Task Force's proposals as they relate to the Skills and Professional Responsibility program and the articling term;
    - iii. participated in the Equity Committee and Access to Justice Committee submissions to George Thomson and Karen Cohl in the Linguistic and Rural Access to Justice Project, a project funded by the Law Foundation of Ontario;

<sup>82</sup> The guidelines and model policies are available on-line at <http://mrc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp>.

- iv. contributed to the development of a survey on the career choices of candidates in the Licensing Process and recent calls to the bar;
  - v. contributed to the development of a survey of candidates in the 2007 Bencher Election to identify campaign practices and their impact on in bencher elections;
  - vi. assisted in the creation of a mentoring program for lawyers and students with disabilities;
  - vii. assisted in organizing and participated in public education programs;
  - viii. took an active role in developing strategies to inform lawyers of the 2007 Bencher Election process and to increase representation of equality-seeking communities in the 2007 Bencher Election.
- b. The Retention of Women in Private Practice Working Group was very active in 2008. Its mandate was to consider what resources could be developed to retain women lawyers in private practice. In 2006, the Working Group conducted qualitative research with women in diverse practice types to inform it in developing recommendations. In 2008, recommendations were drafted and the Co-Chairs of the Working Group, benchers Laurie Pawlitzka and Bonnie Warkentin<sup>83</sup>, along with Josée Bouchard, Equity Advisor, consulted the legal profession across the province. The Co-Chairs and Equity Advisor spoke with more than 900 lawyers and received approximately 55 written submissions. They heard from women and men, lawyers from small, medium and large practices, and sole practitioners, as well as lawyers who are no longer in private practice. From Thunder Bay to Windsor, the report received overwhelming support. In May 2008, Convocation adopted the recommendations. The implementation phase of the Report on the Retention of Women in Private Practice has begun and will continue for the next five years. The following initiatives will be implemented as a result of the project:
- i. For medium to large firms, the Justicia project has been created and fifty-three firms have committed to adopting programs for the retention and advancement of women, focusing on tracking demographic information, maternity/parental leave and flexible working arrangements, networking and business development, and mentoring and women in leadership roles. Three working groups were created for firms of five to 25 lawyers, firms of 25 to 100 lawyers, and firms of more than 100 lawyers. Firms have held numerous meetings and are developing resources.
  - ii. For sole practitioners and firms of five lawyers or less, a paid parental leave for those who have no access to other financial plans will be created, coupled with the development of a locum registry. This will offer flexibility that will assist these firms in maintaining their practices.

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<sup>83</sup> In August 2008, The Honourable Bonnie Warkentin was appointed to the Ontario Superior Court of Justice.

- c. The Disability Working Group continued to work on implementing the recommendations of the report entitled *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession*, adopted by Convocation in December 2005. The Mentoring Program for Lawyers and Students with Disabilities was launched in 2008. The program includes resource materials for mentors and mentees and a roster of mentors.
  - d. The Aboriginal Working Group continued its work by supporting the Aboriginal Initiatives Counsel in the province-wide consultation of members of the Aboriginal community. In addition to conducting a survey to collect information about practising and non-practising Aboriginal members of the bar in Ontario, it assisted the Aboriginal Initiatives Counsel in developing an interview guide to gather qualitative information about Aboriginal members of the bar. The Aboriginal Consultation report was released to the public in January 2009.
  - e. The Equity Committee created the French Language Rights Working Group in May 2005. Members of the Working Group included members of EAG, representatives of the Association des juristes d'expression française de l'Ontario (AJEFO) and representatives of the Official Languages Committee of the Ontario Bar Association. The French Language Rights Working Group developed in 2006/2007 the document *Advising a Client of her or his French Language Rights in the Judicial and Quasi-Judicial Context - Information about Lawyers' Responsibilities*. The guidelines were launched in June 2007 at the conference of the AJEFO and a promotional brochure has been distributed to stakeholders. The French Language Rights Working Group continues to promote the guidelines and will develop resources to inform members of the public of their right to be served in French by the legal profession and in the judicial system.
  - f. The Equity Committee approved an initiative proposed by the Working Group on Anti-Semitism and other Forms of Hatred and Discrimination Based on Religion to bring together Muslim and Jewish lawyers in a spirit of understanding and mutual respect, and to build a dialogue on issues of common concern to lawyers from the Jewish and Muslim faiths. The dialogue will focus on matters related to racial and religious discrimination and human rights. It will provide a forum to exchange information and educate the legal profession about issues relevant to religious respect and diversity, and create networking opportunities for lawyers of diverse faiths. It is anticipated that the Working Group will begin implementing the initiative in 2009. The Law Society holds annual public education programs in the context of the National Holocaust Memorial Day.
7. In 2006, Convocation created the Human Rights Monitoring Group with a mandate to,
    - a. review information about human rights violations that target members of the profession and the judiciary, here and abroad, as a result of the discharge of their legitimate professional duties;
    - b. determine if the matter is one that requires a response from the Law Society;
    - c. and prepare a response for review and approval by Convocation.
  8. Since September 2006, the Monitoring Group recommended, and Convocation approved, Law Society interventions in more than thirty cases originating from countries such as Algeria, China, Democratic Republic of Congo, Egypt, Georgia, Honduras, India,

Iran, Kenya, Malaysia, Nepal, Pakistan, Peru, Philippines, Saudi Arabia, Sudan, Syria, Tunisia, Vietnam and Zimbabwe.

9. The interventions related to cases of human rights violations against both judges and lawyers as a result of the discharge of their professional duties. Reports of the incidents indicate that the lawyers and judges have been subjected to various forms of persecutions, including,
  - a. harassment and intimidation;
  - b. unlawful detentions and incommunicado detentions;
  - c. unlawful house arrests;
  - d. violence, abuse and torture; and
  - e. assassinations.
10. In June 2007, Convocation approved the following Monitoring Group recommendations:
  - a. That the Human Rights Monitoring Group explore the possibility of developing a network of organizations, and work collaboratively with them, to address human rights violations against judges and lawyers.
  - b. That the Monitoring Group be authorized to collaborate with the Law Society of Zimbabwe (the "LSZ") to assist it in strengthening its self-regulation capabilities and the independence of the profession.
11. In 2008, the Monitoring Group took a more systemic approach to its interventions by working closely with organizations such as Lawyers Rights Watch Canada, and by releasing public statements about countries where violations of human rights against lawyers and judges are systemic. For example, the Law Society of Upper Canada intervened on behalf of a number of Chinese human rights lawyers, such as Gao Zhisheng (letters dated October 30, 2006 and May 22, 2007), Zheng Enchong and Chen Guangcheng (letters dated October 30, 2006) and Gao Zhisheng and Li Heping (letter dated October 31, 2007). In April 2008, the Law Society released a public statement expressing its deep concern over reports of escalating human rights violations against lawyers in China, which culminated in official threats against Chinese lawyers offering legal aid to Tibetans. The Law Society indicated that these threats undermine the independence of the legal profession and the objective of establishing the rule of law in China.
12. Another example is the Law Society's interventions in Zimbabwe. In May 2008, the Law Society released a public statement expressing its deep concern over reports of escalating use of force, violence and murder by State agents in Zimbabwe to silence the political opposition and its perceived supporters, including Zimbabwe lawyers. These acts of harassment and violence undermine the independence of the legal profession and the rule of law, and threaten the democratic principles of the country. In 2001, the Law Society had conveyed to the Government of Zimbabwe its deepest concerns and strongest condemnation of the attacks on the principle of the independence and integrity of the bar and the judiciary, and to the principles of democracy, liberty, and responsibility, all in the public interest.

13. The Law Society also took an active role in condemning the actions of the President General Pervez Musharraf in Pakistan. In November 2007, it released a public statement indicating that these actions are blatant violations of fundamental human rights under international law and unacceptable attacks on the independence of the judiciary, the bar, and the rule of law. The Law Society condemned the imposition of the Proclamation of Emergency, the suspension of the *Constitution of the Islamic Republic of Pakistan*, the dismissal of Chief Justice Iftikhar Muhammad Chaudhry and over 40 other judges, the abrogation of the rule of law and of the independence of the Supreme Court Bar Association, and the reported detention of at least 3,500 lawyers and civil rights activists. On November 29, 2008, the Law Society, with the Ontario Bar Association, held a gathering to support the call for the restoration of the rule of law in Pakistan. More than 400 lawyers attended. Attendees also signed an international petition. In December 2008, the Law Society released another statement to condemn the assassination of former Pakistan Prime Minister Benazir Bhutto and of members of the Pakistan People's Party who died in the attack on her life on December 27, 2007. The assassination followed months of unrest and violations of human rights in Pakistan and has led to intensifying violence and deeper political turmoil. The Law Society joined the international legal community in calling for an international neutral investigation into the assassination of Ms Bhutto.

#### Research Projects and Submissions

14. In addition to the consultation of the Retention of Women in Private Practice Working Group with women lawyers and law firms, the Equity Committee and the Equity Initiatives Department undertook the following significant research projects:
- a. Articling Consultation;
  - b. Career Choices Survey;
  - c. Bencher Election Survey;
  - d. Aboriginal Consultation;
  - e. Submissions.

#### *Articling Consultation*

15. At its October 6, 2005 meeting, the Committee decided to give priority to identifying and developing strategies that would address barriers faced by individuals from Francophone, Aboriginal and equality-seeking communities when entering the legal profession. The study would also take into account the unique experience of internationally educated lawyers, the value they bring to the Ontario legal profession and their challenges when seeking employment in the Ontario legal profession.
16. The Law Society, through the Strategic Counsel, conducted interviews with candidates in the Licensing Process who are seeking articles and those who have withdrawn from the process. The study sought in part to uncover some of the barriers to obtaining articles, as well any commonalities among those who were unable to find articling positions. The interviews revealed that the experiences of mature students (especially women), National Committee on Accreditation ("NCA") students and members of racialized communities are unique and merit particular attention.

*Factors that Affect Career Choices Survey*

17. In 2007, the Law Society of Upper Canada retained The Strategic Counsel to conduct a survey with candidates in the Licensing Process and recent Calls to the Bar to investigate preferences and experiences from entry into law school to entry into practice. More specifically, the survey tried to identify the following: law school preferences, key factors that influence the choice of an articling position, key factors that influence practice settings and areas of practice, sources used to pay for law school education, the level and impact of student debt load, and awareness and usage of programs to address student debt loads.
18. Invitations to participate were sent to 5,310 licensing candidates and new lawyers, representing 2,501 lawyers called to the bar in the past two years, 1,366 candidates enrolled in the 2006-2007 Licensing Program and 1,443 candidates enrolled in the 2007-2008 Licensing Program. The survey was available in both English and French. Surveys were completed by 1,303 of those who were invited to participate in the research, representing a response rate of 24.54%. The report was presented to Convocation and made public in the spring of 2008.

*Bencher Election Survey*

19. Following the Bencher Election 2007, the Law Society retained the Strategic Counsel to conduct a survey with candidates in the 2007 bencher election. The purpose of the survey was to gather information to assist in developing strategies to enhance fairness in future bencher elections.
20. The survey was anonymous and participation was voluntary. All 99 incumbents were asked to participate and 55 incumbents participated in the survey. The findings of the survey were released at the end of 2008. The Committee considered the findings and decided that it would reconsider the report once data from the Member's Annual Report 2008 are released and the Governance Task Force has reported.

*Aboriginal Consultation*

21. In 2004, the Equity Initiatives Department initiated the Aboriginal Bar Consultation project.
22. The Aboriginal Bar Consultation Project combined a mail-out survey and a face-to-face consultation with Aboriginal members of the bar. The survey instrument was developed in consultation with members of the Aboriginal Working Group (AWG) of the Committee. The consultation was conducted through face-to-face and telephone interviews with Aboriginal lawyers and gathered information about the experiences of Aboriginal lawyers in law school, the Bar Admission Course (BAC) or the Licensing program and post-call. This information will be used by the Law Society to develop policies and programs to support its current and future Aboriginal lawyers.
23. The specific goals of the survey and consultation were to,
  - a. collect information about Aboriginal lawyers by identifying their experiences in law school, the Bar Admission Course ("BAC") or the Licensing Process and since their calls, where they live, in general terms, where they are working, what

- type of work they are doing and who their clientele is to create a demographic profile of the Aboriginal bar;
- b. identify the most common stressors among Aboriginal members in law school, the BAC or the Licensing program and post-call and how these stressors have influenced Aboriginal lawyers' career choices and views regarding the profession for the purpose of developing relevant Aboriginal programs and supports;
  - c. identify what Law Society services Aboriginal lawyers have used during the BAC or Licensing Process, post-call and currently for the purpose of assessing those services;
  - d. identify what other sources of support Aboriginal lawyers have accessed in law school, the BAC or Licensing Process and post-call and how these support sources have helped them for the purpose of developing relevant Aboriginal programs and supports;
  - e. identify how Aboriginal lawyers view the Law Society overall for the purpose of assessing current programs and initiatives for Aboriginal lawyers and the Aboriginal community.
24. A database of Aboriginal lawyers has been developed and on May 23, 2006, the survey was mailed out to 225 Aboriginal members of the bar. On August 27, 2006, The Strategic Counsel submitted a draft report entitled, *Survey Among Aboriginal Members of the Law Society of Upper Canada*. The report was used by the Aboriginal Initiatives Counsel to develop consultation questions for one-on-one interviews with members of the Aboriginal legal community. The consultations took place through face-to-face or telephone interviews and through written correspondence, as requested by the respondents, from August 2007 through until January 2008. As of January 31, 2008, 20 consultations were completed. The final report was released publicly in January 2009.

### *Submissions*

25. The Equity Committee made the following submissions:
- a. to the Licensing and Accreditation Task Force, providing an analysis of the equality implications of the Task Force's proposals as they relate to the Skills and Professional Responsibility program and the articling term;
  - b. to George Thomson and Karen Cohl in the Linguistic and Rural Access to Justice Project, a project funded by the Law Foundation of Ontario.

### Program Development and Initiatives

26. In 2007 – 2008, the Equity Initiatives Department and the Equity Committee created or continued to build on the following programs:
- a. Networking with Law Societies;
  - b. Collaborating with Law Schools;
  - c. Collaborating with Law Firms;
  - d. Aboriginal Initiatives;
  - e. Programs for Internationally Educated Lawyers;
  - f. Discrimination and Harassment Program;
  - g. Mentoring Program.

### *Networking with Law Societies*

27. In 2005, the Equity Initiatives Department began strengthening its relationship with other law societies by working with provincial equity advisors and discrimination and harassment counsels - or equity ombudspersons - in organizing the first national meeting of law society equity advisors and equity ombudspersons. The objective of the meeting was to exchange information about initiatives undertaken by provincial law societies and to establish network and collaborative opportunities. Issues such as the role of law societies in promoting equality and diversity, education programs for the legal profession, mentoring programs and policy development were discussed. Following the first successful meeting, the equity advisors and equity ombudspersons continued to exchange information about successful initiatives and programs via teleconference calls, emails and meetings.
28. In May 2007, the Law Society hosted the second national meeting of equity advisors and equity ombudspersons. The two-day meeting provided an opportunity to exchange information about initiatives undertaken by law societies and allowed participants to develop strategies for further collaborations. The meeting was organized in conjunction with a national diversity summit conference held at the Faculty of Law of the University of Toronto. The summit meeting combined networking and professional development opportunities for equity advisors and equity ombudspersons.
29. In March 2008, the provincial equity advisors and equity ombudspersons held their third annual meeting at the Friends of Simon Wiesenthal Center for Holocaust Studies in Los Angeles. The meeting included two days of professional development on effective teaching pedagogy in the area of equality and diversity. The annual meeting led to further discussions about inter-provincial cooperation between the law societies in the area of diversity and equality. It is anticipated that the 2009 annual meeting will be held in the spring in Montreal.

### *Collaborating with Law Schools*

30. The Equity Initiatives Department works closely with the six Ontario law schools. In addition to annual visits to law schools to discuss available resources at the Law Society and exchange information about law schools and the Law Society, staff members of the department have held meetings with career officers and staff involved in equity initiatives and academic support programs in law schools. Career Officers have worked collaboratively with the Equity Initiatives Department in developing its programs such as resources for students with disabilities and strategies to assist NCA candidates. The Career Officers also provided feedback on the career choices survey.

### *Collaborating with Law Firms*

31. Networking opportunities with law firms have increased through the department's membership in the National Association for Law Placement ("NALP"), and participation at the NALP diversity summits in Toronto, Philadelphia and Chicago. Networking with law firms continues through ongoing dialogue with professional development directors and directors of students and associates.

32. Through the Retention of Women in Private Practice project, the Law Society consulted extensively with law firms to identify strategies to address the issue of retention of women. Collaborations with law firms has increased in 2008 with the Justicia project in which 53 firms have committed to developing strategies to enhance the retention of women in private practice. The Law Society through the Equity Initiatives Department and the Retention of Women Working Group coordinates the project.

#### *Aboriginal Initiatives*

33. The Aboriginal Initiatives Counsel coordinates Aboriginal students' symposiums and works with Aboriginal Licensing Process candidates and Aboriginal members of the bar. In 2007, the Law Society organized its fourth career symposium for Aboriginal students, giving Aboriginal students from all Ontario law schools an opportunity to meet with Aboriginal members and leaders of Ontario's legal profession. Two events were held; one in Toronto and the other in Ottawa. Students and lawyers met one-on-one in Toronto and in small groups in Ottawa to discuss navigating career paths, the importance of developing mentoring relationships, exploring career options and work-life balance
34. The relationship with Aboriginal law students continues into the Licensing Program through the Aboriginal Student Support Program and through the participation of Aboriginal Elders at the Calls to the Bar.
35. Through these and other initiatives, the Law Society is making steady progress in ensuring the legal profession reflects the communities it serves. We intend to keep building on these efforts in 2008.

#### Programs for Internationally Educated Lawyers

##### Ontario Regulators for Access

36. The Equity Advisor is Co-Chair, with Christyna Schillemore of the Ontario College of Pharmacists, of the Ontario Regulators for Access Consortium ("ORAC"). The ORAC is a group of approximately 25 professional regulatory bodies. The ORAC is designed to help Ontario regulatory bodies improve access by international candidates to self-regulated professions in Ontario while maintaining standards in the public interest. ORAC offers information, tips, promising practices, and guidelines for Ontario regulatory bodies. Designed by and for the regulators of Ontario's self-regulated professions, ORAC also produces information of interest to immigrant professionals, community groups, governments, colleges and universities, employers and professional associations. ORAC meets quarterly and holds teleconference call and working group meetings when necessary.
37. In 2008, ORAC received funding from the Ministry of Citizenship and Immigration ("MCI") to develop education programs on managing cultural differences. Six workshops were completed with members of regulatory boards and staff of regulatory bodies involved in assessing credentials of internationally educated individuals. Due to their success, it is anticipated that by the end of 2008, ORAC will deliver two additional workshops. In

addition, French and English language manuals have been developed to complement the face-to-face workshops and it is anticipated that they will be available by the end of the summer of 2008 for distribution.

38. In November 2007, ORAC and MCI hosted at the Law Society of Upper Canada a Learning Day on Bridging Programs for regulators, educators, employers, and other stakeholders involved in a variety of professions and trades. The goal of the Learning Day was to provide an overview of promising practices and lessons learned with respect to integration of skilled immigrants in the Ontario and Canadian economy. A report has been published in French and English, summarizing this event and drawing upon other resources to provide a comprehensive overview of best practices drawn from a variety of bridging programs in a variety of regulated and non-regulated fields.

#### On-Line Career Map

39. The Law Society also worked with the Ontario government and the NCA to develop an on-line career map, which includes detailed information in plain language about the NCA and its processes, the Law Society Licensing Process and the call to the bar process. The purpose of the Career Map is to readily provide information to internationally educated lawyers and to increase transparency of the process. The Career Map was posted on-line in French and English in 2007 and is regularly updated.

#### NCA Symposium

40. In 2008, the Equity Initiatives Department organized and hosted a symposium for NCA candidates to provide information and networking opportunities. The symposium was delivered to approximately 90 NCA candidates and the evaluations were very positive.

#### Office of Fairness Commissioner

41. On March 21, 2007, Honourable Jean Augustine, PC, was appointed Ontario's first Fairness Commissioner. The OFC's mandate is set out in the *Fair Access to Regulated Professions Act, 2006* ("FARPA"), and is responsible for,
- a. assessing the registration practices of Ontario's regulated professions;
  - b. monitoring third-party agencies that regulated professions rely on for assessment of applicants' qualifications;
  - c. setting out guidelines for the content and form of the regulatory bodies' yearly reports to the OFC;
  - d. consulting with the regulated professions about the scope, timing and cost of the audits required by the act;
  - e. specifying the criteria and standards for these audits;
  - f. receiving and reviewing audit reports;
  - g. investigating systemic problems with registration practices;
  - h. issuing compliance orders, where necessary, to the non-health professions;
  - i. advising the Minister of Citizenship and Immigration about the OFC's work;
  - j. advising other government ministries about issues related to the registration practices of the regulated profession that fall under their respective jurisdictions;
  - k. advising the regulated professions about their registration practices with respect to the requirements of FARPA;

- I. advising qualification-assessment agencies, colleges and universities, community agencies and other organizations with a stake in the registration practices of the regulated professions about matters related to FARPA.
42. In 2008, the OFC held introductory meetings with regulated professions, an open house and a number of consultations with regulated bodies. Staff from the Equity Initiatives Department and from the Professional Development and Competence Department established close relationships with the OFC, attended meetings and consultations, and submitted information about the Law Society.

#### Global Experience Ontario

43. Global Experience Ontario (“GEO”) helps internationally trained and educated individuals find out how to qualify for professional practice in Ontario. The GEO centre provides information for people who intend to apply to a regulatory body to obtain licensure to work in their field. Staff members of GEO explain the process for licensing and registration in Ontario and respond to information requests from prospective newcomers. English and French services are available in person, by telephone and online.
44. In 2008, staff members of the Equity Initiatives Department have established strong relationships with GEO, attending regular meetings to exchange information about the Law Society and GEO.

#### *Discrimination and Harassment Counsel Program*

45. In June 2001, the Law Society adopted the permanent DHC Program. Funded by the Law Society, the program operates at arms-length, and is available free-of-charge to the Ontario public and lawyers.<sup>84</sup> Since its creation, the person who has held the position of DHC has been bilingual (French and English). In 2004, the position of Alternate DHC was created. In 2005, the Law Society appointed two Alternate DHC. The Alternate DHC assume the functions of the DHC when she is unable to perform the function. The Alternate DHC may also provide mediation services.
46. In January 2008, the DHC presented a five-year report summarizing the data between January 1, 2003 and December 31, 2007. There have been a total of 880 contacts with the DHC Program during the five-year period since January 1, 2003. There were 180 new contacts in 2003, 234 in 2004, 180 in 2005, 156 in 2006 and 130 in 2007. The Program has received an average of 14-15 new contacts per month over the past 5 years. Since January 1, 2003, 35 individuals have communicated with the DHC in French.
47. Of the 880 contacts with the Program over the past five years, the DHC dealt with a total of 295 discrimination and harassment complaints against lawyers. (The remaining contacts with the Program involved general inquiries or matters outside the Program mandate.) There were a total of 66 complaints in 2003, 78 complaints in 2004, 60 in 2005, 56 complaints in 2006 and 35 complaints in 2007.

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<sup>84</sup> Minutes of Convocation, June 22, 2001.

48. Out of the 295 discrimination and harassment complaints received since January 1, 2003, there have been 174 complaints from the public and 121 complaints from members (or student members) of the Law Society. Over the past 5 years, complaints from the public have constituted on average 59% of all discrimination and harassment complaints raised with the DHC.
49. A total of 31 students<sup>85</sup> have made discrimination and harassment complaints to the DHC Program in the five years since January 1, 2003. Student complaints constitute 26% of the discrimination and harassment complaints received from members of the profession over the past 5 years.
50. The overwhelming majority (83%) of discrimination and harassment complaints made by lawyers and law students arise in the context of the complainant's employment or in the context of a job interview. There have been some discrimination and harassment complaints from lawyers in non-employment contexts, such as complaints about the conduct of opposing counsel, mediators or investigators.
51. Of the 121 lawyers and law students who reported discrimination and harassment to the DHC since January 1, 2003, 95 (78%) were women.
52. A significant proportion (48%) of public complaints involves clients complaining about their own lawyer or a lawyer that they attempted to retain.
53. Of the 174 members of the public who have made discrimination and harassment complaints to the DHC over the past 5 years, 113 (65%) were women.
54. Overall, there was a total of 295 discrimination and harassment complaints against lawyers between January 1, 2003 and December 31, 2007. Of these,<sup>86</sup>
- a. sex was raised as a ground of discrimination in 153 complaints (52%);
  - b. disability was raised as a ground of discrimination in 61 complaints (21%);
  - c. race was raised as a ground of discrimination in 50 complaints (17%);
  - d. sexual orientation was raised as a ground of discrimination in 19 complaints (6%);
  - e. age was raised as a ground of discrimination in 12 complaints (4%);
  - f. religion was raised as a ground of discrimination in 9 complaints (3%);
  - g. family status was raised as a ground of discrimination in 9 complaints (3%);
  - h. national/ethnic origin was raised as a ground of discrimination in 9 complaints (3%);
  - i. ancestry was raised as a ground of discrimination in 3 complaints (1%);
  - j. place of origin was raised as a ground of discrimination in 3 complaints (1%);
  - k. marital status was raised as a ground of discrimination in 1 complaint; and
  - l. record of offences was raised as a ground of discrimination in 1 complaint.
55. Since its creation as a permanent program, the expenses and budget for the DHC Program are as follows:

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<sup>85</sup> Either articling students or law students employed during the summer.

<sup>86</sup> The sum of the numbers in this paragraph exceeds 295 and the sum of the percentages exceeds 100% because many of the complaints involved multiple grounds of discrimination.

	<u>2008 *</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>	<u>2004</u>	<u>2003</u>	<u>2002</u>	<u>2001</u>
Expenses	71,920	42,555	65,184	74,714	66,298	79,401	71,412	106,740
Budget	100,000 (to be adjusted in 2009 to 150,000)	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Under (over)	28,080	57,445	34,816	25,286	33,702	20,599	28,588	(6,740)

- Fee increase from 175 to 250/hour. Budget increase to \$150,000 adjusted in 2009

#### *Mentoring Program*

56. The Law Society offers a structured mentoring program, which promotes law as a career choice and assists law students and recent calls to the bar by matching mentors – experienced members of the bar – with new lawyers, students-at-law, students in law school as well as university and high school students.<sup>87</sup> Since 2003, the number of lawyers available as mentors and the number of mentees has steadily increased. The following chart shows the number of mentees, mentors and matches between 2003 and 2007.

	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
Mentors	70	100	145	165	175	180
Mentees	15	46	58	35	30	22
Matches	8	38	47	29	26	21
Increase of matches	0	30	9	-18	-3	-5
Regions	Toronto and Ottawa	Toronto (+90%), Ottawa, Windsor, Kitchener, Lindsay, Bancroft, Trenton,	Toronto (+ 90 %), Ottawa, Windsor, Kitchener, Lindsay, Barrie, Bancroft, Trenton, Oakville, London,	Toronto, Ottawa, Windsor, Kitchener, Waterloo, Barrie, Oakville, Brampton,	Toronto, Ottawa, Windsor, Kitchener, Barrie, Oakville, Brampton, London,	Toronto, Mississauga, Brampton, Thornhill, Ottawa, Niagara Region, Temiskaming

<sup>87</sup> Information available on Law Society website at [www.lsuc.on.ca](http://www.lsuc.on.ca).

		Oakville, Hamilton	Hamilton.	London, Hamilton.	Hamilton.	District
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57. Staff members also coordinate student outreach initiatives to promote law as a career. The following activities were undertaken in 2007 - 2008

<u>Activity</u>	<u>Number of Participants</u>
Disability Mentoring Program launch	March 2008 170 participants
NCA Symposium	Spring 2008 – 90 participants
Department of Justice (Ottawa and Toronto)	70 lawyers and judges
Aboriginal law students (U of O and Ryerson)	21 (2007) By letter 23 (2008)
Public Interest Day – Osgoode Hall Law School and U of Toronto	200 (2007) 120 (2008)

#### Public Education and Professional Development

58. In 2008, the Law Society undertook the following equity educational programs for the public and the legal profession.

	<u>Panel 2004</u>	<u>Event 2004</u>	<u>Panel 2005</u>	<u>Event 2005</u>	<u>Panel 2006</u>	<u>Event 2006</u>	<u>Panel 2007</u>	<u>Event 2007</u>	<u>Panel 2008</u>	<u>Event 2008</u>
Access	60 (Ottawa)	N/A	155	120	N/A	N/A	175	N/A	170	170
Black History	150	175	90	120	300	200	N/A	150	150	150
IWD	70	110	95	130	150	160	200	175	75	75
IDERD	N/A	N/A	N/A	300	200 (Ottawa)	170 (Ottawa)	185	250		175

Holocaust	N/A	N/A	230	110	130	110	120	90	120	140
Asian	120	180	100	140	130	150	140	140	140	150
National Aboriginal	135	150	155	150	100	80	115	140	160	160
Pride	95	200	N/A	200	150	250	140	200	170	200
Louis Riel	175	200	125	150	80	80	100	100	TBD	TBD

59. The Equity Initiatives Department has broadened its network of partners and community engagements. Partners include: Aboriginal Legal Services of Ontario, Association des juristes d'expression française de l'Ontario, ARCH Disability Law Centre, B'nai Brith Canada, Canadian Association of Black Lawyers, City of Toronto, Feminist Legal Analysis Committee of the Ontario Bar Association (OBA), Human Rights Research and Education Centre of the University of Ottawa, Human Rights Watch Canada, Métis Nation of Ontario, Official Languages Committee of the OBA, Pro Bono Law Ontario, Rotiio > taties Aboriginal Advisory Group, Sexual Orientation and Gender Identity Committee of the OBA, South Asian Legal Clinic of Ontario, Ontario law schools, Women's Future Fund, Women's Law Association of Ontario; and many others.
60. The Law Society continued to work in partnership with legal associations and communities to educate members of the public and the profession on equality and diversity issues. Each year, it hosts and participates in a number of public education events. The number of public education events and the overall participation rate at these programs has increased considerably in the last few years. Most programs are web broadcast, which has increased access to the information provided in public education programs.

<u>Program</u>	<u>Topic</u>	<u>Attendees</u>
AJEFO - 2007	Human Rights Reform and impact on Francophone community	70 to 100 lawyers and judges
Retention of Women Consultation	Presentations to lawyers across Ontario	900 lawyers and students
DOJ	Respect in the Workplace	40 lawyers and staff
University of Ottawa	Women in the Profession	30 students

Large firm	Addressing Harassment and Discrimination	70 students, lawyers and judges
Large firm	Women in the Profession	80 students and lawyers
Large firm	Women in the Profession	60 students and lawyers
Queen's University	Women in the Profession	20 students and professors
University of Ottawa	Routes to Freedom Conference – March 14 0 16, 2008	150
Queen's Law School	Alternative Careers	80 students
York University	Diversity in the legal profession	15 students
University of Toronto	Women in the legal profession	30 students and lawyers
University of Ottawa	Retention of women in the profession – Shirley Greenberg tea	60 students and lawyers

61. Topics of training programs delivered have included to following:

- a. Transformation of the legal profession and how to increase diversity;
- b. The duty to accommodate family responsibilities;
- c. Diversity in the legal profession;
- d. Respect in the workplace;
- e. Addressing issues of harassment and discrimination in the provision of services;
- f. Addressing harassment and discrimination in the legal workplace;
- g. The duty to accommodate persons with disabilities;
- h. Law as a career for Aboriginal communities;
- i. Women and diversity in the legal profession;
- j. Maternity leaves;
- k. Mentoring models;
- l. Women in the profession;
- m. Developing equity plans.

62. CLE, presentations and public education programs include information about the current demographics of the legal profession, barriers experienced by lawyers, impact of these barriers on organizations, the responsibilities of individuals to ensure that barriers do not exist and/or are addressed.

### Law Society as Leading Employer

63. The Equity Initiatives Department continued to work with its Human Resources Department to promote equality and diversity within the Law Society.

#### *Workplace Policies*

64. The Equity Initiatives Department continues to work with the Human Resources department to ensure that all internal workplace policies are regularly updated. For example, the Accommodation Policy, the Preventing Harassment and Discrimination Policy, the Maternity and Parental Leave Policy and the Religious Observance Policy of the Law Society were all recently updated to reflect recent case law development.

#### *Advisors Appointed under the Harassment and Discrimination Policy*

65. A group of advisors is in place to assist employees who may have questions about harassment and discrimination in the workplace. All advisors have attended intensive training programs on preventing and addressing harassment and discrimination, the Law Society policies, and their roles as advisors. Advisors meet four times a year with the Director of Human Resources and the Equity Advisor, to discuss recent case law and maintain up-to-date on developments in this area.

#### *Education Programs for Law Society Staff*

66. As part of the commitment to promoting diversity and equity, all employees attend training sessions to assist them in being more culturally sensitive in dealing with each other and with persons from diverse backgrounds. For example, all new employees attend training on the prevention of harassment and discrimination. All managers attend extensive training on those issues. The Equity Initiatives Department delivers the education programs on harassment and discrimination to new employees and managers. Training programs are also delivered to specific department on demand.
67. Staff members in the Equity Initiatives Department and in the Professional Development and Competence Department attended a custom-designed training program on providing mentoring and accommodations for students and lawyers with disabilities.

#### *Lunch and Learn*

68. The Equity Initiatives Department organized for its seventh consecutive year a lunch and learn program to commemorate the Montreal Polytechnique massacre on December 6. Approximately 60 staff members attended this year's event, organized with the Charities committee. The event discussed the role of the media in addressing violence against women.

#### *Accountability Process*

69. The Equity Initiatives Department monitors the activities of the Law Society in the area of equity and diversity. The Equity Advisor is a member of the Senior Management Team and regularly reports on activities to the team. The CEO reports on the equity and diversity activities to the membership through its Annual Report and to Convocation

through the CEO's operational reports. The Equity Advisor also produces a report to the Equity Committee annually to provide updates on the implementation of the Bicentennial Report.

#### Budget of the Equity Initiatives Department

70. Since its creation, the Equity Initiatives Department has functioned within its budget, which represents less than 3% of the overall Law Society budget.

Appendix 4

#### PUBLIC EDUCATION EQUALITY SERIES CALENDAR 2009

##### Asian & South Asian Heritage Month

In partnership with the Federation of Asian Canadian Lawyers, Metro Toronto Chinese and Southeast Asian Legal Clinic, South Asian Bar Association, and the South Asian Legal Clinic of Ontario

Topic: *Immigration Issues and Trends for Diverse Communities*

Date: May 5, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

A panel of legal experts will discuss immigration issues and address questions concerning spousal sponsorship, including the genuineness of marriages, validity of foreign divorces, and failing to declare family members. The panel will also examine emerging issues, particularly legal issues dealing with the Live-In Caregiving Program in Canada, and immigration issues for same-sex couples from diverse communities.

##### Speakers:

Rafael Fabregas, Immigration lawyer

Avvy Go, Law Society Benchers, Executive Director, Metro Toronto Chinese and Southeast Asian Legal Clinic

Azma Khadim, Immigration lawyer

EI-Farouk Khaki, Immigration lawyer

Shalini Konanur, Executive Director of the South Asian Legal Clinic of Ontario will be the discussion moderator.

The keynote speaker for the reception is Toronto lawyer Susan Eng, who will present on the topic, "Implications of the Recession on the Struggle for Equality."

Benchers Raj Anand will introduce Susan Eng. SABA representative Shahana Kar will be the MC at the Reception.

National Access Awareness

In partnership with ARCH Disability Law Centre

Topic: *Access to Justice for Persons with Disabilities*

Date: May 25, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

National Aboriginal Day

In partnership with the Toronto Aboriginal City Celebration Committee, Aboriginal Legal Services of Toronto, the Aboriginal Law Section of the Ontario Bar Association and Rotiio> taties Aboriginal Advisory Group

Topic: *Perspectives in the Indian Residential Schools Resolution Process*

Date: June 11, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

Pride Week

In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association

Topic: *Politics and Legal Rights: Advocating for Equality for Gay, Lesbian, Bisexual, and Transidentified People*

Date: June 25, 2009

Time: Panel Discussion from 4 to 6 p.m.

Reception: 6 p.m.

CONVOCATION ROSE AT 12:30 P.M.

Confirmed in Convocation this 28<sup>th</sup> day of May, 2009

Treasurer