

24th April, 2008

MINUTES OF CONVOCATION

Thursday, 24th April, 2008
9:00 a.m.

PRESENT:

The Treasurer (Gavin MacKenzie), Aaron, Aitken, Anand, Backhouse, Banack, Boyd, Braithwaite, Bredt, Champion, Caskey, Chahbar, Conway, Crowe, Dickson, Dray, Elliott, Epstein, Go, Ground, Halajian, Hare, Hartman, Heintzman, Henderson, Krishna, Lawrence, Lawrie, Lewis, McGrath, Millar, Minor, Murray, Pawlitzka, Porter, Potter, Pustina, Robins, Ross, Rothstein, Ruby, St. Lewis, Sandler, Schabas, Sikand, Silverstein, C. Strosberg, Swaye, Symes, Tough, Wardlaw, Warkentin and Wright.

Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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ELECTION OF BENCHER

WHEREAS Kim Carpenter-Gunn, who was elected from the Province of Ontario "B" Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors, has been appointed a judge of the Superior Court of Justice; and

WHEREAS upon being appointed a judge of the Superior Court of Justice, Kim Carpenter-Gunn became unable to continue in office as a bencher, thereby creating a vacancy in the office of bencher elected from the Province of Ontario "B" Electoral Region (the area in Ontario outside the City of Toronto) on the basis of the votes by all electors;

MOVED BY: Clayton Ruby

SECONDED BY: Paul Henderson

THAT under the authority contained in By-Law 3, Jack Braithwaite, having satisfied the requirements contained in subsections 43 (1) and 45 (1) of the By-Law, and having consented to the election in accordance with subsection 45 (2) of the By-Law, be elected by Convocation to fill the vacancy in the office of benchers elected from the Province of Ontario "B" Electoral

Region (the area in Ontario outside the City of Toronto) on the basis of the votes cast by all electors.

Carried Unanimously

TREASURER'S REMARKS

The Treasurer and benchers welcomed Jack Braithwaite to Convocation.

The Treasurer reported on his activities since March Convocation.

DRAFT MINUTES OF CONVOCATION

The draft Minutes of Convocation of March 27, 2007 were confirmed.

MOTION – APPOINTMENTS TO HEARING AND APPEAL PANELS

It was moved by Mr. Ruby, seconded by Mr. Henderson, –

That the following people be appointed to the Hearing Panel:

Robert Aaron
Melanie L. Aitken
Andrea Alexander
Raj Anand
Constance Backhouse
Larry Banack
Marion Boyd
Jack Braithwaite
Christopher Bredt
John A. Campion
James R. Caskey
Abdul Chahbar
W. Dan Chilcott
Thomas G. Conway
Austin M. Cooper
Paul Copeland
Marshall Crowe
Aslam Daud
Mary Louise Dickson
Anne Marie Doyle
W. Paul Dray
E. Susan Elliott
Seymour Epstein
Abraham Feinstein
Neil Finkelstein
Patrick Garret Furlong
Avvy Yao Yao Go

Alan Gold
Gary Lloyd Gottlieb
Jack Ground
Michelle Haigh
Jennifer A. Halajian
Susan M. Hare
Carol Hartman
Thomas G. Heintzman
Paul J. Henderson
Vern Krishna
Barbara Laskin
Brian J. Lawrie
Laura L. Legge
Doug Lewis
Margaret Louter
Susan T. McGrath
Ronald D. Manes
Dow Marmur
W.A. Derry Millar
Janet Minor
Daniel J. Murphy
Ross W. Murray
Stephen Parker
Laurie H. Pawlitzka
Julian Porter
Judith M. Potter
Nicholas John Pustina
Jack Rabinovitch
Linda Rothstein
Sydney Robins
Allan Rock
Heather J. Ross
Clayton Ruby
Mark Sandler
Arthur R.A. Scace
Paul B. Schabas
Baljit Sikand
Alan G. Silverstein
Joanne St. Lewis
Cathy Strosberg
Harvey T. Strosberg
Gerald A. Swaye
Beth Symes
Robert Topp
Bonnie A. Tough
J. James Wardlaw
Bonnie R. Warkentin
Bradley H. Wright
Roger D. Yachetti

That Larry Banack be reappointed as Chair of the Hearing Panel effective June 28, 2008.

That Bonnie Warkentin be reappointed as Vice-Chair of the Hearing Panel effective June 28, 2008.

That the following benchers be reappointed to the Appeal Panel effective June 28, 2008:

Abdul Chahbar
W. Dan Chilcott
Alan Gold
Janet Minor
Sydney Robins
Allan Rock
Mark Sandler
Bradley Wright

That Mark Sandler be reappointed Chair of the Appeal Panel effective June 28, 2008.

Carried

MOTION RE: LAWPRO POLICY

Mr. Ruby, Chair of the Professional Regulation Committee agreed to review the issue set out in the Banack/Aaron/Gold/Wright motion contained in the Convocation material.

REPORT OF THE DIRECTOR OF PROFESSIONAL DEVELOPMENT AND COMPETENCE

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

The Director of Professional Development and Competence reports as follows:

CALL TO THE BAR AND CERTIFICATE OF FITNESS

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on Thursday, April 24, 2008.

ALL OF WHICH is respectfully submitted

DATED this 24th day of April, 2008

CANDIDATES FOR CALL TO THE BAR
April 24th, 2008

Edward Joshua Doig
Robert Charles Dunford
Karen Lynne Durell
Judy Marie Manning
Marwan Hani Osseiran
Brandon Douglas Tigchelaar

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 deemed Call to the Bar candidates, be adopted.

Carried

AUDIT COMMITTEE REPORT

Ms. Symes presented the Report.

Report to Convocation
April 24, 2008

Audit Committee

Committee Members
Beth Symes (Chair)
Marshall Crowe (Vice-Chair)
Ab Chahbar
Ross Murray
Vern Krishna

Purpose of Report: Decision
Information

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

AUDIT COMMITTEE

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1. Report to the Audit Committee – Results of the 2007 Audits - In Camera
2. Investment Compliance Statements For the Year Ended December 31, 2007

COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on April 10, 2008. Committee members in attendance were Beth Symes (c.), Marshall Crowe, Ab Chahbar, and Ross Murray.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Zeynep Onen, Fred Grady, Brenda Albuquerque-Boutilier and Andrew Cawse.
3. David Thompson, Chair LibraryCo Inc., Paula Jesty, Sam Persaud and Trevor Ferguson from Deloitte & Touche also attended.

FOR DECISION

Law Society of Upper Canada, General Fund
Audited Financial Statements For The Year Ended December 31, 2007

Motion

That Convocation approve the audited, annual financial statements for the General Fund for the year ended December 31, 2007.

4. Mr. David Ross, Ms. Paula Jesty and Mr. Sam Persaud of our auditors, Deloitte & Touche LLP, will be in attendance.

General Fund
Financial Statement Highlights
For the year ended December 31, 2007

Background

5. 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.
 - o There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, Paralegal, County Libraries, Special Projects, Repayable Allowance, Endowment and the Working Capital Reserve funds.
6. Separate financial statements are prepared for the Compensation Fund, LibraryCo Inc. and the Combined Errors and Omissions Insurance Fund.
7. The Law Society's success in fulfilling its mandate, is not measurable in terms of profits or the creation of members' equity value, but rather through qualitative, non-financial results discussed in the Performance Highlights section of the Annual Report. Nevertheless, management does have financial stewardship responsibilities, which this report references within the broader context of fulfilling the Role Statement. In addition, a number of financial factors are common to all activities highlighted in this report, including close control of operating expenditures.

Accounting Standards Change – Financial Instruments

8. The Canadian Institute of Chartered Accountants introduced a new accounting standard for reporting financial instruments this year. Under this requirement, the Fund's portfolio investments are reported at fair (market) value.
9. As required by this standard, the nature and intent of the long-term investment portfolio was reviewed and the investments were classified as "held for trading". This classification method appropriately discloses the Law Society's resources and funds available for distribution.
10. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, accumulated unrealized gains of \$249,000 as at January 1, 2007 are reported on the Statement of Changes in Fund Balances.

Paralegal Fund

11. As set out in the Statement of Changes in Fund Balances, a separate fund to track activity related to paralegal regulation has been set up.

12. Convocation approved the paralegal start-up budget in February 2007. The budget projected a deficit in the fund of \$2.4 million at the end of 2007. The actual number of grandparent and transitional applicants exceeded the conservative estimate used in the start-up budget and it is expected that the actual deficit of \$822,000 will be eliminated in the first quarter of 2008 with the realization of examination fee revenue. In 2008, Convocation approved an operating budget for the ongoing regulation of paralegals.

Results of Operations

13. A summary of operations for the Society's General Fund is set out below with further details provided in the rest of the memorandum.

	2007 \$'000s	2006 \$'000s	Explanation
Total revenues	65,697	59,213	Annual fees increased and \$1.2 million was received from the Law Foundation of Ontario as a grant for CanLII.
Total expenses	66,087	58,645	Planned increases in expenses in most departments, particularly Regulation and Paralegal start-up.
(Deficit) / Surplus for the year	(390)	568	The deficit is primarily the result of the amortization of capital assets. Fee revenue is not raised to cover the cost of amortization.

Balance Sheet

Cash and short-term investments

14. Cash and short-term investments of \$20.2 million have increased by \$5 million from 2006 because more 2008 annual fees were received from lawyers before January 1, 2008 as well as examination fees paid by paralegal grandparent applicants for exams to be written in 2008.

Portfolio investments

15. Portfolio, or long-term investments increased slightly to \$10.5 million from \$9.7 million and comprise North American equities (12%) and Canadian fixed income investments (88%). 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.

16. As noted above, in 2007, portfolio investments are shown at market value compared to valuation at cost in 2006. Unrealized losses of \$415,000 at December 31, 2007 are included in investment income.

Capital assets

17. 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.
18. The decrease in capital assets from \$22.9 million to \$21.5 million reflects the accumulated amortization for the period offset by \$1.7 million in additions, for such projects as upgrading the lady benchers room, various mechanical and electrical upgrades as well as continued expansion of the Society's case management system.

Deferred revenue

19. Deferred revenue of \$8.9 million has increased from \$5.5 million, representing fees paid in advance. The balance is made up of \$6.7 million of 2008 lawyer fee revenue and \$2.2 million of paralegal grandparent examination fees.

Unclaimed trust funds

20. Unclaimed trust funds continue to increase reaching \$1.7 million in 2007 (2006: \$1.4 million). These are trust monies turned over to the Society by licensees who are unable to locate or identify the clients to whom the monies are owed. By statute, the Society administers these funds, in perpetuity, with the net income from the funds transferred to the Law Foundation of Ontario annually. The Society is reimbursed for expenses associated with the administration of unclaimed trusts to a limit of the annual income earned on funds held.

Other trust funds

21. 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 licensees 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 2007, total funds held in trust amounted to \$1.2 million (2006: \$1.2 million). The volume and value of balances depend on trusteeships at the time.

Statement of Revenues and Expenses

Revenues

22. Lawyers' fees have increased from \$40.1 million in 2006 to \$44.1 million in 2007 with an increase of approximately 825 lawyers and a fee increase of \$92 per lawyer.
23. The major components of professional development and competence ("PD&C") revenues are the lawyer's licensing process and post-call education programs. PD&C revenues increased from \$9.3 million to \$9.7 million primarily because the licensing process fee increased by \$150 to \$2,750 per candidate.

24. Included in investment income is a \$3.25 million (2006: \$3 million) transfer of investment income from the Errors and Omissions Insurance Fund assisting the increase in total investment income to \$4.4 million from \$4.1 million.
25. Included in investment income is a \$3.25 million (2006: \$3 million) transfer of investment income from the Errors and Omissions Insurance Fund assisting the increase in total investment income to \$4.4 million from \$4.1 million.
26. Investment income for the year is analyzed below:
- | | |
|--------------------------------------------------------------------|--------------------|
| Interest on fixed income investments and dividends on equities | \$1,405,000 |
| Net capital gains realized on the disposition of bonds or equities | \$181,000 |
| Unrealized loss at the end of 2007 | (\$415,000) |
| Excess investment income transferred from the E&O Insurance Fund | <u>\$3,250,000</u> |
| Total | <u>\$4,421,000</u> |

The unrealized loss of \$415,000 during the year is reducing the \$249,000 gain accounted for at the beginning of the year, to bring the portfolio investments to market value at that time.

27. Returns on the Fund's portfolio investments are set out below:

Investment Type	% of Portfolio	One Year Actual	One Year Benchmark	Annualized Return Since Inception (March 31, 2004)	Benchmark Since Inception (March 31, 2004)
Fixed Income	88.5	4.0%	4.1%	3.4%	3.4%
Canadian Equities	5.8	4.1%	9.8%	15.0%	16.0%
U.S. Equities	5.7	-16.7%	-10.6%	-3.0%	1.4%
Total Fund	100.0	2.2%	3.5%	3.7%	3.8%

28. Other revenues have increased approximately \$1.9 million over 2006, primarily attributable to the \$1.2 million in one-time funding for CanLII expenses from the Law Foundation. Also in other revenues are a variety of items such as royalties (\$1.9 million), catering revenues (\$724,000), lawyer referral service fees (\$492,000), LibraryCo Inc. administration (\$410,000), litigation and enforcement cost recoveries (\$164,000), and other miscellaneous revenues. Application fees for paralegals are included in other revenue in the paralegal restricted fund.

Expenses

29. Total net expenses of \$66.1 million have increased from \$58.6 million in 2006, with increases generally spread across most departments although the biggest individual

departmental changes were in regulation and the new expenses associated with paralegals.

Professional development and competence expenses

30. Professional development and competence expenses of \$14.6 million decreased marginally attributable to:
- o The timing of staffing vacancies in the Library.
 - o Small reductions in some program costs in Continuing Legal Education.
 - o Reductions in exam administration, materials production and instruction expenses as the streamlined licensing process in its second year transitioned from the bar admission course. The Skills & Professional Responsibility program was reduced from five weeks to four weeks.

The only notable expense increase arose in the expanded practice review program. In 2007, 64 focused reviews (2006 – 55) and 167 practice management reviews (2006 – nil) were completed at a cost of \$646,000 (2006 - \$290,000).

Professional regulation expenses

31. Direct professional regulation expenses increased from \$13.3 million in 2006 to \$15.4 million in 2007.
32. The increased costs include additional staff – two in Investigations, three in Complaints Resolution, four in Discipline and two in Trustee Services. These increases are driven directly by the increasing volume and complexity of complaints including mortgage fraud.
33. The other significant incremental expense in 2007 was an increase in outside counsel fees. The increasing costs of outside counsel in recent years is generally attributable to a number of sensitive or unusual matters, including the following:
- o The accelerated use of experts on mortgage fraud cases
 - o Potentially high profile matters involving complex issues
 - o Highly contested unauthorized practice matters
 - o Some matters assigned to outside counsel deemed especially significant to our role as a regulator.

A more comprehensive memorandum on counsel fees is provided at the end of the General Fund financial statements (in camera).

Administrative expenses

34. Administrative expenses of \$8 million, increased from \$7.1 million in 2006, comprise Finance, Information Systems and Human Resources departmental expenses. The increase was spread across all three areas as operations of the Law Society are enhanced and services expanded in line with the cumulative increase in licensees over recent years. For instance in Information Systems the case management system was expanded, and Human Resources experienced increased, recruitment and training costs.

Other expenses

35. Other expenses include benchers expense reimbursements, functions and remuneration (totaling \$1.9 million, an increase of \$370,000), catering costs (\$953,000), payments to

the Federation of Law Societies and the virtual reference library CANLII (\$1.3 million, increased by \$200,000 in 2007), insurance and audit fees (\$328,000), payments to the County & Districts Law Presidents Association, the Ontario Lawyers Assistance Program, Pro Bono Law Ontario, the Advocates Society, the Ontario Law Commission (new support of \$100,000 in 2007), severance payments and other miscellaneous expenses of the Society. Total other expenses of \$6.1 million have increased from \$5.3 million in 2006 for the reasons noted above.

Amortization

36. Amortization of \$3.1 million has increased from the \$2.4 million in 2006 with the amortization of the renovation costs of the north wing over a ten year period beginning in 2007.

Paralegal Fund

37. A separate fund to track activity related to paralegal regulation has been set up. During 2007, fees totaling \$1,077,000 were received and \$1,899,000 was expended, primarily on application processing and competence initiatives such as exam development.

Statement of Changes in Fund Balances

Unrestricted Fund

38. In addition to the previous discussion on operational revenues and expenses, several other items impact the Society's unrestricted fund balance.
39. The new disclosure requirements relating to financial instruments are being implemented in 2007. This means unrealized gains on investments at the beginning of 2007 of \$249,000 are separately identified on the Statement of Changes in Fund Balances in the Unrestricted Fund and portfolio investments are shown at market value on the Balance Sheet. Changes in unrealized gains / losses during 2007 are included in investment income.
40. There are several interfund transfers between the unrestricted fund and the Society's restricted funds.
- Transfer to special projects of \$89,000. This is unused 2007 budgeted funds for the McMurtry Gardens of Justice and the Task Force on the Retention of Women in Private Practice transferred to Special Projects for expenditure in 2008.
 - Asset capitalization of \$35,000. This represents the acquisition of a capital asset through the unrestricted fund. The expenditure qualifies as a capital asset under the Society's accounting policies and is therefore reported as a capital addition in the Invested in Capital Assets fund.
 - Transfer to county libraries of \$119,000. Annual fees raised for county libraries was under budget by \$119,000 as a result of net full fee paying equivalent membership increasing less than the budgeted 1,000. This transfer eliminates what would otherwise have been a deficit in the county libraries fund. A similar transfer of \$147,000 was made in 2006.
 - Transfer to capital allocation fund of \$1.2 million. This represents the grant payment from the Law Foundation of Ontario provided for the Society's contribution to CANLII in 2005 and 2006. In return the Society agreed to refund to the Law Foundation the \$1.2 million grant it made to the Society for the acquisition of a building in Ottawa that the Society disposed of in 2006. The

Society recorded an expense of \$600,000 in each of 2006 and 2007 in the capital allocation fund.

- Transfer to 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.

Restricted Funds

41. The Capital Allocation Fund is the funding source for approved capital projects. The fund is augmented on an annual basis by a portion of licensee fees (currently \$75, unchanged for six years) dedicated to capital funding. The Fund has increased from \$3.5 million to \$3.9 million during the year reflecting a transfer of \$1.2 million in Law Foundation of Ontario funding arising from the sale of the Ottawa property.
42. A Paralegal Fund has been set up to track activity related to paralegal regulation. During 2007, fees totaling \$1,077,000 were received and \$1,899,000 was expended, primarily on application processing and competence initiatives such as exam development. The balance at December 31, 2007 was a deficit of \$822,000. The deficit will be eliminated in 2008 with the recognition of examination and licensing application fee revenue from paralegal grandparent applicants.
43. Expenditures capitalized and reported as capital assets are maintained in the Invested in Capital Assets Fund which has decreased to \$21.5 million as amortization for the year outstripped the value of assets capitalized.
44. In 2007, the \$7.1 million in County Library expenses show a small increase from previous years. The Society levied \$224 per lawyer, then collected and remitted these funds for county library purposes to LibraryCo Inc. on a basis determined when the annual budgets were approved.
45. In 2007, the Law Society's Repayable Allowance program provided \$83,000 to 30 students (2006: \$94,000 to 28 students).
46. The Society administers the J. Shirley Denison Endowment Fund established to provide relief and assistance to lawyers, students and former members. During the year, \$47,000 was paid to 11 applicants (2006: \$53,000 to 15 applicants).
47. 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 2007 year-end balance is \$210,000 primarily to fund the Accreditation Taskforce and the Retention of Women in Private Practice Working Group.
48. The Working Capital Reserve of \$7.9 million is unchanged since being set in 2002 at a level equivalent to two months of the Society's operating expenses. Since that time operating expenses have increased so that the reserve now represents 1.6 months of operating expenses.

Unrestricted Fund, Budget to Actual Comparison – this schedule does not form part of the annual financial statements and is provided for information.

Revenues

49. Actual total revenues in the Unrestricted Fund of \$55.1 million exceeded budget by \$1.8 million, primarily in Other Income. The most significant component of this increase is the \$1.2 million unbudgeted grant from the Law Foundation for CanLII expenses.

Expenses

50. Actual total expenditures in the Unrestricted Fund of \$52.1 million are less than budget by \$1.6 million, primarily because of the variance in professional development and competence expenses of \$1.4 million. The details of this variance are:
- Licensing Process Database Support. Expenditures on the LAWS software development has been delayed as priority has been given to development of the grandparent / transitional paralegal system (separate paralegal budget) and then to the development of the LAWS Paralegal system for college graduates applicants.
 - Licensing Process Facilities Expenses – Toronto. The requirement for Ryerson University classrooms was greatly reduced due to the reduction of the Skills/PR Program by one week and a reduction in the number of candidate assessments and assignments.
 - Staffing vacancies in the director's office and the Great Library resulting in under spending in these areas.
51. Professional regulation expenses are over budget by \$1.4 million in 2007, primarily in counsel fees.
52. The only other significant variance is in Other Expenses, under budget by \$748,000 because the contingency account with a budget of \$600,000 for the year has only had \$83,000 allocated from it for the Gardens of Justice and Accreditation Task Force.
53. There are mostly small positive variances in the remaining areas such as Policy, Communications and Facilities in 2007 primarily because of staff vacancies to be filled.

General Fund

Notes to Financial Statements

Stated in whole dollars except where indicated

For the year ended December 31, 2007

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*, which came into full effect on May 1, 2007, to legislate the regulation of paralegals by the Society.

The Society exists to govern legal service providers in the public interest by ensuring that the people of Ontario are served by lawyers and paralegals who meet high standards of learning, competence and professional conduct and by upholding the independence, integrity and honour of the professions, for the purpose of advancing the cause of justice and the rule of law. The governing body of the Society, which is known as Convocation, carries out this mandate. Convocation comprises benchers and the Treasurer who presides over Convocation.

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 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, Working Capital Reserve and Paralegal funds. The Society's annual fees are based on the financial requirements of the restricted and unrestricted funds.

The Society is not subject to income or capital taxes because it is 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 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 licensee, in connection with the licensee's professional business or in connection with any trust of which the licensee was a trustee. Licensees' annual fees and investment income finance the Compensation Fund. The Compensation Fund reports fees collected by the General Fund as revenues. The Compensation Fund reimburses the General Fund for certain administrative expenses, spot audit expense and a portion of the costs of operating the investigation and discipline functions of the Society. In 2007 these amounted to \$4,282,000 (2006 – \$4,022,000).

Errors & Omissions Insurance Fund and Lawyers' Professional Indemnity Company

The Society provides professional liability insurance to lawyers through the Errors and Omissions Insurance Fund ("E&O Fund") and the Lawyers' Professional Indemnity Company ("LAWPRO"). The E&O Fund was originally set up in the Society's accounts to record insurance claims and expenses and related levies and their investment. LAWPRO took over underwriting the program commencing in 1990. LAWPRO, a wholly owned subsidiary of the Society, was incorporated in 1990 and is licensed to provide lawyer's professional liability and title insurance. On an annual basis the E&O Fund provides the General Fund with income derived from its surplus earnings. This income, reported as Investment Income of the General Fund, amounted in 2007 to \$3,250,000 (2006 – \$3,000,000). LAWPRO paid \$186,000 (2006 – \$238,000) primarily for shared information systems and governance costs.

LibraryCo Inc.

LibraryCo Inc., a wholly owned, not-for-profit subsidiary of the Society, was established to develop policies, procedures, guidelines and standards for the delivery of county law library services and legal information across Ontario and to administer funding on behalf of the Society. LibraryCo Inc. was initially incorporated under the *Business Corporations Act* of Ontario in 2001. In June 2007, the corporate structure was amended, whereby 25 of the 100 Special shares previously held by the County and District Law Presidents' Association ("CDLPA") were issued to the Toronto Lawyers Association ("TLA") for \$25. The Society continues to hold all of the 100 Common shares. 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 Inc. 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 Inc. under an administrative services agreement signed in March 2007. The total amount billed by the Society was \$410,000 (2006 - \$82,000) for administrative services and certain other services and publications. Included in accounts receivable are amounts due to the Society of \$43,000 (2006 - \$16,000).

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.

The Law Foundation of Ontario

The Law Foundation of Ontario ("LFO"), a corporation without share capital established in 1974, was created to receive interest accruing on monies held in licensee's mixed trust accounts and to establish and maintain a fund to be used for the purposes of legal education and legal research, legal aid and the establishment, maintenance and operation of law libraries. For 2007, the LFO approved grants of \$1,000,000 to the General Fund (2006 – \$1,000,000) for the operation of the Licensing Process, \$80,000 (2006 – \$76,000) for legal heritage programs and \$1,200,000 (2006: nil) to assist the Law Society's funding of CanLII, an electronic law library.

2. Change in Accounting Policy

On January 1, 2007, the General Fund adopted the Canadian Institute of Chartered Accountants' revised standards on recognition and measurement and presentation of financial instruments for not-for-profit organizations. As required, the revised standards have been applied retrospectively as at January 1, 2007, without restatement of the comparative amounts.

Under the new 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 within the scope of the new accounting standards, as they are not financial instruments.

With the exception of portfolio investments, there was no change in the measurement of any of the General Fund's financial assets and liabilities. Compliance with the new accounting standards meant that at January 1, 2007 the measurement of portfolio investments changed from being recorded at cost, net of amortization of premiums and discounts, to fair value. The adoption of these new standards resulted in transitional adjustments which increased the opening fund balance and portfolio investments by \$249,000. For other financial instruments, there was no impact on the Fund's opening balance sheet as a result of the application of these new accounting policies because there was no change in their measurement.

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

3. 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.

General Fund

The General Fund is composed of the Unrestricted Fund and a number of special purpose funds restricted by Convocation

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

Restricted Funds

The *Paralegal Fund* records transactions related to the Society's regulation of paralegals. Convocation approved the paralegal start-up budget in February 2007. During 2007, fees totaling \$1,077,000 were received and \$1,899,000 was expended, primarily on application processing and competence initiatives, such as exam development. The balance at December 31, 2007 was a deficit of \$822,000 (2006 – nil). The deficit is expected to be eliminated in 2008 with the recognition of examination and licensing fee revenue.

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, 2007 the balance was \$3,917,000 (2006 – \$3,546,000).

The *Invested in Capital Assets Fund* records transactions related to the Society's capital assets, specifically acquisitions, amortization and disposals. At December 31, 2007 the balance was \$21,505,000 (2006 – \$22,880,000).

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, 2007 the fund balance was nil (2006 – nil).

The *Repayable Allowance Fund* provides candidates in the licensing process for lawyers with funding for tuition and living expenses and is based on a candidate's ability to repay the grant within a specified period of time following the candidate's non-participation in the licensing process. At December 31, 2007, the balance was \$69,000 (2006 – \$52,000).

The *Endowment Fund*, the J. Shirley Denison Fund, provides relief and assistance to lawyers, student lawyers and former lawyers who find themselves in difficult financial circumstances. Contributions for endowments are recognized as revenue in the Endowment Fund. At December 31, 2007, the Endowment Fund balance was \$216,000 (2006 – \$253,000).

The *Special Projects Fund* is maintained to ensure that financing is available for ongoing special projects approved by Convocation. The balance at December 31, 2007 was \$210,000 (2006 – \$128,000).

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, 2007, the balance was \$7,975,000 (2006 – \$7,975,000).

Cash and short-term investments

Cash (bank balances and investments of less than ninety days duration) 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 as summarized below.

- Currency risk. At year-end, 6 % of the portfolio was invested in securities denominated in United States dollars. Under the General Fund's investment policy, 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.
- Interest rate risk. An analysis of maturity dates for the fixed income securities is set out below.

MATURITY	Interest Rate Range	2007	2006
2008-2012	4.5%-7.15%	7,228,000	5,917,000
2013 and beyond	3.96%-6.15%	1,946,000	1,899,000
Total		9,174,000	7,816,000

- Market risk 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.
- Credit risk. At year-end, all long-term debt was rated A or better. Under the General Fund's investment policy, no more than 10% of the portfolio can be invested in bonds rated BBB.
- Liquidity risk. All securities are listed on the Toronto or New York stock exchanges and the General Fund has \$20,165,000 in cash and short-term investments.
- Cash flow risk. No single instrument is individually significant to the future cash flows of the General Fund and investment income is not a primary source of revenue for the General Fund.

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 \$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 \$25,000 for 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 1st. 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

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

Professional development and competence, realized investment income and other revenues are recognized when receivable if the amounts can be reasonably estimated and collection is reasonably assured. Capital 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, under the Access to Justice Act, the provincial government appointed five paralegals to the Paralegal Standing Committee, two of whom are also benchers. The Province remunerates their 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 gratuitous 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.

4. Accounts Receivable

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

	2007	2006
The Law Foundation of Ontario	289,000	293,000
LibraryCo Inc.	43,000	16,000

5. Portfolio Investments

(\$000's)	2007		2006	
	Fair Value	Book Value	Fair Value	
Debt Securities	9,174	7,865	7,816	
<i>Canadian Equities</i>	660	743	961	
<i>United States Equities</i>	654	1,143	1,228	
	10,488	9,751	10,005	

6. Capital Assets

(\$000's)	Cost	2007		2006 Net
		Accumulated Amortization	Net	
Land and buildings	25,395	17,768	7,627	8,179
Building improvements	18,693	5,869	12,824	13,307
Furniture, equipment and computer hardware and software	5,967	4,913	1,054	1,394
	50,055	28,550	21,505	22,880

7. Unclaimed Trust Funds

Section 59.6 of the *Law Society Act* permits a licensee 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 amounts to \$1,651,000 (2006 – \$1,416,000).

8. Other Trust Funds

The Society administers client funds for licensees 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, 2007, total funds held in trust amount to \$1,164,000 (2006 – \$1,168,000).

9. Other Revenue

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

10. 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 \$357,000 (2006 – \$159,000). The Treasurer's honorarium for the year was \$99,000 (2006 – \$97,000). The total value of bencher expenses reimbursed was \$572,000 (2006 – \$489,000).

11. Pension Plan

The Society maintains a defined contribution plan for all eligible employees of the Society. Law Society employees can choose matching employee and employer contributions between 1% and 6% of annual earnings, with the exception of designated employees for whom the Society contributes 12% of annual earnings, up to the maximum deduction allowed by the Canada Revenue Agency. The General Fund pension expense in 2007 amounted to \$1,443,000 (2006 – \$1,356,000).

12. 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:

2008	620,000
2009	651,000
<u>2010</u>	<u>220,000</u>
Total	1,491,000

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 first installment has been included in the Special Projects Fund. 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.

13. Contingent Liabilities

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

14. Guarantees

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

The Society has also provided indemnification to all directors and officers of the Society. Under 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 and historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore no amount has been accrued in the financial statements with respect to these agreements.

15. 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

Law Society of Upper Canada, Compensation Fund
Audited Financial Statements For The Year Ended December 31, 2007

Motion

That Convocation approve the annual financial statements for the Compensation Fund for the year ended December 31, 2007.

Compensation Fund
Financial Statement Highlights
For the year ended December 31, 2007

Background

54. The Compensation 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 licensee. The Fund is financed by annual fees and investment income.

Results of Operations

55. The financial position of the Compensation Fund remains strong. Results for the year identify a surplus of \$907,000 compared to \$1.4 million for 2006. The reduced surplus is primarily due to a reduction in investment income.
56. Expenses are relatively consistent between 2007 and 2006, with some variation in the components of the net grant expense as discussed below.
57. The fund balance at the end of 2007 is \$21.4 million, up from \$19.4 million at the same time last year. In six of the last seven years, the fund balance has increased.

Balance Sheet

Cash and short-term investments

58. The Compensation Fund's short-term investments, which together with cash total \$7.5 million, are invested in banker's acceptances and Government of Canada T-bills. The increase in this balance from \$6.2 million arises from the increase in the fund balance.

Portfolio investments

59. Portfolio, or long-term investments of \$23.5 million, compared to \$22.2 million in 2006, are made up of Canadian fixed income securities (88%) and North American equities (12%). The portfolio is managed in compliance with the Compensation Fund's investment policy. Fixed income investments comprise a diversified mix of government, provincial and corporate bonds with an investment rating of "BBB" or better. Equity investments comprise a diversified mix of equities listed on the New York and Toronto stock exchanges.
60. The Canadian Institute of Chartered Accountants introduced a new accounting standard for reporting financial instruments this year. Under this requirement, the Fund's portfolio investments are reported at fair (market) value.

61. As required by this standard, we reviewed the nature and intent of the long-term investments held and classified them as “held for trading”. This classification method most appropriately discloses the results of the Fund’s long-term transaction investments.
62. Selection of the held for trading classification requires that all gains and losses, realized or unrealized, be reported as income of the period. As a transitional step, unrealized gains of \$1.2 million as at January 1, 2007 are reported in the change in fund balance section of the Statement of Revenues and Expenses and Change in Fund Balance. An unrealized loss of \$937,000 for the year reduced the value of the portfolio at December 31, 2007 to \$23.5 million.

Reserve for unpaid grants

63. Based upon the actuarial valuation, the reserve for unpaid grants has increased by \$600,000 to \$9.8 million during the year.

Statement of Revenues and Expenses and Change in Fund Balance

Revenues

Lawyers’ fees

64. Lawyers’ fees increased from \$6.1 million in 2006 to \$6.3 million in 2007 due to an increase of approximately 825 lawyers.

Investment Income

65. Investment income has decreased from \$1.3 million in 2006 to \$806,000 in 2007 as a result of unrealized losses on portfolio investments of \$937,000 at year end. This unrealized loss during the year is reducing the \$1,166,000 gain accounted for at the beginning of the year, to bring the portfolio investments to market value. Investment income is analysed below.

Interest on fixed income investments and dividends on equities	\$1,255,000
Net capital gains realized on the disposition of bonds or equities	\$488,000
Unrealized loss at the end of 2007	<u>(\$937,000)</u>
Total	<u>\$806,000</u>

66. Returns on the Fund’s portfolio investments are set out below:

Investment Type	% of Portfolio	One Year Actual	One Year Benchmark	Annualized Return Since Inception (May 31, 2003)	Benchmark Since Inception (May 31, 2003)
Fixed Income	88.7	3.9%	4.1%	5.7%	4.0%
Canadian Equities	5.7	4.1%	9.8%	15.4%	18.3%

U.S. Equities	5.6	-17.0%	-10.6%	1.1%	4.0%
Total Fund	100.0	2.2%	3.1%	6.0%	6.0%

Expenses

Net grants expense

67. The net grants expense was \$1.3 million, in line with 2006, but the components of the expense varied substantially from the prior year.
- o Grants paid during the year decreased from \$4 million in 2006 to \$1.1 million.
 - o The reduction in grants paid was offset by an increase in the reserve for unpaid grants of \$592,000 (2006 – a decrease of \$1.4 million). The change in the reserve was brought about by a combination of favourable developments on previously reserved amounts, a higher level of claims incurred during the year and lower grant payments. The actuary's report on the unpaid claims liability at year end is attached.
 - o Recoveries of grants paid at \$409,000 were just under half of 2006 levels, but recoveries do not follow any pattern.

Other expenses

68. The Compensation Fund's 2007 other expenses were generally stable compared to 2006.

Paralegals

69. A separate funding pool for paralegal licensees within the Compensation Fund will be established by fees collected from paralegals as part of their annual fee in 2008 and subsequent years.

Compensation Fund

Notes to Financial Statements

Stated in whole dollars except where indicated

For the year ended December 31, 2007

1. Description of Fund

The Compensation Fund (the "Fund"), formerly the Lawyers Fund for Client Compensation, 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 licensee, in connection with the licensee's professional business or in connection with any trust of which the licensee was a trustee. The Fund is financed by licensees' annual fees and investment income.

The *Law Society Act* was amended by the *Access to Justice Act* with full effect on May 1, 2007 to legislate the regulation of paralegals by the Society.

The *Law Society Act* now provides for a Compensation Fund, with separate pools of money, for lawyers and paralegals. In January 2008, the governing body of the Society, which is known as Convocation, approved policies and procedures for the paralegal Compensation Fund pool that mirrored those for the lawyer Compensation Fund pool. Paralegals will first receive licences in 2008, and at December 31, 2007 the paralegal Compensation Fund pool had not been funded.

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 \$4,282,000 (2006 – \$4,022,000).

2. Change in Accounting Policy

On January 1, 2007, the Fund adopted the Canadian Institute of Chartered Accountants' revised standards on recognition and measurement and presentation of financial statements for not-for-profit organizations. As required, the revised standards have been applied retrospectively as at January 1, 2007, without restatement of the comparative amounts.

Under the new 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 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 within the scope of the new accounting standards as it is not a financial instrument.

With the exception of portfolio investments, there was no change in the measurement of any of the Fund's financial assets and liabilities. Compliance with the new accounting standards meant that at January 1, 2007 the measurement of portfolio investments changed from being recorded at cost, net of amortization of premiums and discounts, to fair value. The adoption of these new standards resulted in transitional adjustments, which increased the opening fund balance and portfolio investments by \$1,166,000. For other financial instruments, there was no impact on the Fund's opening balance sheet as a result of the application of these new accounting policies because there was no change in their measurement.



The Fund has not entered into any derivative transactions. In addition, the Fund does not have any embedded features in contractual arrangements.

3. 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.

Cash and short-term investments

Cash (bank balances and investments of less than ninety days duration) 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.

Portfolio investments

Portfolio investments are recorded at fair value. The Fund manages financial risk associated with portfolio investments as summarized below.

- o Currency risk is limited, as at year-end, less than 6% of the portfolio was invested in securities not denominated in Canadian dollars. Under the Fund's investment policy, 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.
- o Interest rate risk. An analysis of maturity dates for the fixed income securities is set out below.

MATURITY	Interest Rate Range	2007	2006
2008-2012	3.55% - 4.65%	7,944,000	8,876,000
2013 and beyond	3.70% - 8.00%	12,665,000	9,842,000
Total		20,609,000	18,718,000

- o Market risk. The investments consist of a diversified portfolio of government bonds, corporate bonds, and Canadian and United States equities according to the Fund's investment policy.
- o Credit risk. At year-end, all long-term debt was rated A or better. Under the Fund's investment policy, no more than 10% of the portfolio can be invested in bonds rated BBB.
- o Liquidity risk. All securities are listed on the Toronto or New York stock exchanges and the Fund has \$ 7,558,000 in cash and short-term investments.
- o Cash flow risk. No single instrument is individually significant to the future cash flows of the Fund and investment income is not a primary source of revenue for the Fund.

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 \$939,000.

Revenue recognition

Licensee fees are recognized in the year to which they relate if the amount can be reasonably estimated and collection is reasonably assured. Interest and dividend income is recognized when receivable if the amount can be reasonably estimated. Capital 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. Grants paid from the lawyer pool of the Compensation Fund are subject to a \$100,000 limit per applicant. A reserve for unpaid grants is recorded as a liability on the balance sheet. This reserve represents an estimate of the present value of grants to be paid for unprocessed claims and the associated administrative costs, as determined by an actuary. The related net grants expense represents grant payments during the year plus the current year experience gain/loss of the reserve for unpaid grants, net of recoveries.

4. 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.

5. Portfolio Investments

(\$000's)	2007		2006	
	Fair Value	Book Value	Book Value	Fair Value
Debt Securities	20,609	18,456	18,456	18,718
Canadian Equities	1,466	1,265	1,265	1,968
United States Equities	1,439	2,520	2,520	2,721
Total	23,514	22,241	22,241	23,407

6. Guarantees

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

term of the agreement. The maximum amount of any potential future payment cannot be reasonably estimated.

The Society has also provided indemnification to all directors and officers of the Society. Under 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 and historically the Society has not made any significant payments under such or similar indemnification agreements. Therefore no amount has been accrued in the financial statements with respect to these agreements.

FOR DECISION

LibraryCo Inc. – Audited Financial Statements For The Year Ended December 31, 2007

Motion

That Convocation approve the audited financial statements for LibraryCo Inc. for the year ended December 31, 2007.

61. LibraryCo's annual financial statements were approved by LibraryCo's board on March 28, 2008.

LibraryCo Inc.
Financial Statement Highlights
For the year ended December 31, 2007

Background

62. 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.

Changes During 2007

63. In June 2007, the corporate structure was amended, whereby 25% of the 100 Special Shares, previously held by the County and District Law Presidents' Association ("CDLPA") were issued to the Toronto Lawyers Association ("TLA") for \$25. The Society continues to hold all of the 100 common shares. The Law Society may appoint up to

four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

64. The Law Society took over administration of LibraryCo based on an Administrative Services Agreement signed in March 2007.

Results of Operations

65. Results for the year identify a deficit of \$111,299 compared to a surplus of \$26,335 in 2006. The deficit is attributable to expenses incurred as LibraryCo transitioned to the new administrative arrangement. As approved by the Board of Directors, the deficit has been financed from the Reserve Fund which ends the year with a balance of \$997,452.
66. Total revenues increased from \$7.8 million in 2006 to \$8.2 million due to an increase in the grant from the Law Society. Total expenses experienced a similar increase to \$8.3 million with increases mainly in administration and higher grants to the county libraries.

Balance Sheet

67. **Deferred Revenue**
The initial advance of Law Foundation funding for 2008 of \$212,500 was received prior to year-end.
68. **Reserve Fund**
In compliance with Board policy, \$99,469 from the Reserve Fund was transferred to the General Fund as deficit financing. The Board policy on the Reserve Fund established in 2007 is that LibraryCo maintains a reserve of \$500,000 including general, capital and special needs components. Any expenses of this Fund that would reduce the Fund Balance below \$500,000 will be budgeted in the following year.
69. **Invested in Capital Assets Fund**
In previous years, expenditures capitalized and reported as capital assets were maintained in the Invested in Capital Assets Fund. In 2007, all capital assets were written off due to the closure of LibraryCo's Burlington office.

Statement of Revenues and Expenses

Revenues

70. **Law Society of Upper Canada grant**
This is the lawyer-based fee totaling \$7.2 million in 2007 (2006 - \$6.8 million) that is transferred to LibraryCo from the Law Society. The 2007 County Library Levy collected by the Law Society was \$224 per member (2006 - \$219). The increase in the per member charge was necessary due to increases in costs, particularly publishing costs.
71. **Law Foundation grant**
The total for 2007 of \$984,000 was slightly less than 2006 because the Virtual Reference Service is being phased out, although this was slightly offset by revenue for computer upgrades. Grants include funding for electronic resources, the advoCHAT project, and computer upgrades.

Expenses

72. Salaries & administration

These expenses increased from \$243,508 to \$579,532 in 2007 as a result of the administrative transition.

73. Professional fees

Professional fees have reduced from \$66,907 in 2006 to \$40,404 in 2007 due to lower accounting and consulting fees during the year.

74. Other head office expenses

Other Expenses include insurance and board expenses. At \$77,589 they are \$21,000 lower than 2006 as costs associated with head office operations were discontinued in the latter part of the year.

75. Electronic products and services

Electronic products and services expenditures at \$1.7 million for the year are nearly \$50,000 higher than 2006 due to the continued pattern of increases in publishing costs over recent years.

76. Computers

These are grants provided to assist the libraries with replacing and upgrading of aging computers and related accessories. The program was not in place in 2006.

77. Other library expenses

Other library related expenses include staff travel, COLAL and CDLPA Library Committee meetings and bulk purchase publications for the library system. The reduction from \$323,000 in 2006 to \$179,000 in 2007 is mainly attributable to the change in administrative arrangements.

78. County and District Law Libraries – grants

The remittances by LibraryCo to the county libraries totaled \$5.3 million in 2007 compared to \$5 million in 2006 based on approved increases in budgets including catching up on previous reductions in collections.

Statement of Changes in Fund Balances

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

For the year ended December 31, 2007

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 licensees of the Law Society of Upper Canada (“the Society”). LibraryCo Inc. was initially incorporated under the Business Corporations Act of Ontario in 2001.

In June 2007, the corporate structure was amended, whereby 25% of the 100 Special Shares, previously held by the County and District Law Presidents’ Association (“CDLPA”) were issued to the Toronto Lawyers Association (“TLA”) for \$25. The Society continues to hold all of the 100 common shares. The Law Society may appoint up to four directors, CDLPA may appoint up to three directors and TLA may appoint one director.

As a not-for-profit organization, LibraryCo Inc. is not subject to Federal and Provincial income and capital taxes.

Under an Administrative Services Agreement, the Society assumed most of the administrative functions of the organization in March 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. The Invested in Capital Assets Fund records the capital assets of the organization.

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 2007 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, 2007, the balance was \$997,452 (2006 - \$1,096,921).

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 appropriate restricted 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. Change in Accounting Policy

On January 1, 2007, the organization adopted the Canadian Institute of Chartered Accountants' revised standards on recognition and measurement and presentation of financial statements for not-for-profit organizations. As required, the revised standards have been applied retrospectively, as at January 1, 2007 without restatement of the comparative amounts.

Under the new 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 within the scope of the new accounting standards as they are not financial instruments.

There was no impact on the organization's opening balance sheet as a result of the application of the new accounting policy because there was no change in the measurement of any of the organization's financial assets or liabilities.

The organization has not entered into any derivative transactions. In addition, the organization does not have any embedded features in contractual arrangements.

4. Share Capital

Authorized

Unlimited number of Common shares

Unlimited number of Special shares

Issued	2007	2006
100 Common shares	\$100	\$100
100 Special shares	100	100

\$200 \$200

At incorporation, the organization issued 100 Common shares to the Law Society of Upper Canada and 100 Special shares to the County & District Law Presidents' Association for cash consideration of \$100 each. In June 2007, CDLPA transferred 25 Special Shares to the Toronto Lawyers Association for \$25.

5. 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.

6. 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.

7. County and District Law Library Grants

These grants represent the quarterly distribution of funds to the 48 County and District Law Libraries. They are distributed in accordance with policies and procedures as established by the organization's Board of Directors.

The following individual library grants were distributed by the organization during 2007 and 2006:

	2007	2006
Algoma District Law Association	\$113,944	\$110,625
Brant Law Association	73,238	71,106
Bruce Law Association	45,918	44,581
Carleton Law Association	558,836	542,559
Cochrane Law Association	34,272	35,017
Dufferin Law Association	47,149	45,775
Durham County Law Association	113,823	110,508
Elgin Law Association	64,447	54,730
Essex Law Association	235,496	228,637
Frontenac Law Association	128,302	124,565
Grey Law Association	56,047	46,575
Haldimand Law Association	25,219	23,999
Halton Law Association	112,418	103,792
Hamilton Law Association	368,886	358,142
Hastings Law Association	72,490	62,538
Huron Law Association	63,477	53,788
Kenora Law Association	74,956	72,773
Kent Law Association	60,440	50,840
Lambton County Law Association	53,294	43,902
Lanark Law Association	22,623	21,478
Leeds & Grenville Law Association	62,713	56,304
Lennox & Addington Law Association	23,258	22,581

Lincoln Law Association	143,358	139,182
Manitoulin Law Association	6,365	6,180
Middlesex Law Association	295,187	286,590
Muskoka Law Association	42,231	34,156
Nipissing Law Association	69,178	61,810
Norfolk Law Association	60,409	58,649
Northumberland County Law Association	60,206	58,453
Oxford Law Association	63,492	59,653
Parry Sound Law Association	27,486	24,987
Peel Law Association	244,806	237,675
Perth Law Association	53,668	46,131
Peterborough Law Association	94,620	86,512
Prescott & Russell Law Association	4,726	9,462
Rainy River Law Association	24,182	22,992
Renfrew County Law Association	99,661	96,758
Simcoe Law Association	119,400	115,922
Stormont, Dundas & Glengarry Law Association	63,879	54,179
Sudbury District Law Association	158,865	138,409
Temiskaming Law Association	43,379	35,271
Thunder Bay Law Association	135,776	131,821
Toronto Lawyers Association	507,979	493,184
Victoria Haliburton Law Association	71,482	69,400
Waterloo Law Association	205,379	199,397
Welland Law Association	76,903	74,662
Wellington Law Association	61,520	63,684
York Region Law Association	175,702	170,584
	<u>\$5,321,085</u>	<u>\$5,060,518</u>

8. 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 2007 was \$410,297 (2006 - \$82,424). Included in accounts payable are amounts due to the Society of \$42,898 (2006 - \$3,115).

9. 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, leasing contracts, 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.

10. 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

LAW SOCIETY AUDITOR

Motion

That Deloitte & Touche LLP be appointed auditor of the Law Society's General Fund and Compensation Fund and LibraryCo Inc. for the 2008 financial year.

80. Convocation appoints the Law Society auditor on the advice of the Audit Committee. This has been the sixth year for Deloitte & Touche as the Law Society auditor.

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

- (1) Copy of Auditors' Report to the Members of the Law Society of Upper Canada (Draft) dated February 22, 2008 together with copies of General Fund - Balance Sheet, Statement of Revenues and Expenses, Statement of Changes in Fund Balances, Statement of Cash Flows, Unrestricted Fund – Schedule of Revenues and Expenses, Paralegal Fund – Schedule of Revenues and Expenses.

(pages 16 – 32)

- (2) Copy of Report to Audit Committee (*in camera*).

(pages 33 – 37 *in camera*)

- (3) Copy of Auditors' Report to the Members of the Law Society of Upper Canada (Draft) dated February 22, 2008 together with copies of General Fund Balance Sheet, Statement of Revenues and Expenses and Change in Fund Balance, Statement of Cash Flows.
(pages 44 - 46)
- (4) Copy of a Memorandum from the Lawyers' Professional Indemnity Company dated January 23, 2008 (*in camera*).
(pages 52 – 54 *in camera*)
- (5) Copy of Auditors' Report to the Shareholders of LibraryCo. Inc. dated February 8, 2008 together with copies of LibraryCo Inc. Balance Sheet, Statement of Revenues and Expenses, Statement of Changes in Fund Balances, Statement of Cash Flows.
(Tab C, pages 60 - 64)
- (6) Copy of the Report to the Audit Committee – Results of the 2007 Audits (*in camera*).
(pages 71 – 94 *in camera*)

Re: Audited Financial Statements for the Year Ended December 31, 2007

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the audited annual financial statements for the General Fund for the year ended December 31, 2007.

Carried

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the annual financial statements for the Compensation Fund for the year ended December 31, 2007.

Carried

It was moved by Ms. Symes, seconded by Mr. Crowe, that Convocation approve the audited financial statements for LibraryCo Inc. for the year ended December 31, 2007.

Carried

It was moved by Ms. Symes, seconded by Mr. Crowe, that Deloitte & Touche LLP be appointed auditor of the Law Society's General Fund and Compensation Fund and LibraryCo Inc. for the 2008 financial year.

Carried

Items for Information

- Auditor's Report (in camera)
- Investment Compliance Report (in camera)

PROFESSIONAL REGULATION COMMITTEE REPORT

Mr. Ruby presented the Report.

Report to Convocation
April 24, 2008

Professional Regulation Committee

Committee Members
 Clayton Ruby, Chair
 Julian Porter, Vice-Chair
 Linda Rothstein, Vice-Chair
 Melanie Aitken
 Christopher Bredt
 Tom Conway
 Brian Lawrie
 Patrick Furlong
 Gary Gottlieb
 Ross Murray
 Sydney Robins
 Bonnie Tough
 Roger Yachetti

Purpose of Report: Decision

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

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For Decision

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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on April 10, 2008. In attendance were Linda Rothstein (Vice-chair and Acting Chair), Melanie Aitken, Tom Conway and Ross Murray. Staff attending were Naomi Bussin, Lesley Cameron, Terry Knott, Zeynep Onen, Elliot Spears, Sybila Valdivieso and Jim Varro.

AMENDMENTS TO BY-LAW 7.1 RESPECTING
CLIENT IDENTIFICATION AND VERIFICATION
REQUIREMENTS

Motion

2. That Convocation amend By-Law 7.1 (Operational Obligations and Responsibilities) to add requirements for client identification and verification, effective June 30, 2008, as set out in Appendix 1 to this report. The formal motion to amend the By-Law is at Tab 3.

Introduction

3. The Federation of Law Societies of Canada¹ has launched a number of initiatives to combat the threat of money laundering and terrorist financing, while maintaining the public interest in a strong and independent legal profession. The most recent of these initiatives is a Model Rule on Client Identification and Verification Requirements.
4. The Model Rule has been adopted by the Federation Council as the Federation's Model Rule. Law societies in Canada are now in the process of implementing the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.
5. To implement the provisions of the Model Rule as Law Society regulations, amendments to By-Law 7.1 (Operational Obligations and Responsibilities) are required. The amendments are being recommended jointly by the Committee and the Paralegal Standing Committee.
6. The amendments to the By-Law, Part III of which is to be effective June 30, 2008, are at Appendix 1. Appendix 2 is a redline version of By-Law 7.1 showing the amendments. Appendix 3 includes the Model Rule and an overview of its provisions.
7. The Federation of Law Societies has prepared material, including "FAQs" on the Model Rule's requirements, for use by Law Societies in their communication efforts on the new requirements. This material will be adapted to Law Society communications to licensees about the new By-Law 7.1 requirements.

Background to Development of the Federation's Model Rule

8. Growing global concern regarding money laundering led to the 1989 formation of the Financial Action Task Force ("FATF"), an inter-governmental organization which develops and promotes policies and legislation to combat money laundering and terrorist financing. In its 40 Recommendations on money laundering and 9 Special Recommendations on Terrorist Financing, the FATF recommends that countries implement legislation enabling state authorities to obtain information from financial

¹ The Federation of Law Societies of Canada is the national coordinating body of the 14 provincial and territorial governing bodies of the legal profession in Canada. Its member law societies are charged with the responsibility of regulating Canada's 95,000 lawyers and 3,500 notaries in Quebec in the public interest. The Federation is a leading voice on a wide range of issues of national and international importance involving justice and regulatory matters critical to the protection of the public.

institutions and intermediaries (such as lawyers) to facilitate the investigation and prosecution of money laundering and terrorist financing.

9. Following the 40 Recommendations, in 2000 the Canadian Parliament passed legislation now known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act"). Under the Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions (later prescribed in regulations as those involving \$10,000 or more in cash). Reporting persons are prohibited from "tipping off" their client about having made the report. Reports must be made to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC"), a federal agency which was set up to receive and analyze financial intelligence and disclose it to police.
10. Despite concerns expressed by the Federation, in November 2001 the federal government promulgated Regulations making the Act applicable to lawyers, and requiring legal counsel to secretly report suspicious transactions to FINTRAC. The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of British Columbia challenging the constitutionality of the legislation and seeking interlocutory relief from the application of the Regulations to legal counsel.
11. The Federation contended that the legislation required lawyers to act as secret agents of the state, collecting information about clients against their interests and reporting to a government agency. As a result, the legislation threatened fundamental Canadian constitutional principles, which require that lawyers maintain undivided loyalty to their clients, consistent with the independence of the Bar and the integrity of the administration of justice. The Supreme Court of Canada has affirmed that lawyers, who are bound by stringent ethical rules, must not have their offices turned into archives for the use of state authorities.
12. The B.C. Supreme Court judge agreed with these concerns, finding that the legislation represented "an unprecedented intrusion into the traditional solicitor-client relationship". She granted an interim injunction such that legal counsel were not required to report "suspicious transactions" pending a full hearing on the merits of the case. The B.C. Court of Appeal affirmed the Order, and the Supreme Court of Canada denied the government's application for a stay of the Order. Similar Orders were granted in other provinces and territories across Canada.
13. As a result of these interlocutory Orders, in May 2002 the Attorney General of Canada agreed to suspend the application of the legislation to all Canadian lawyers (including Québec notaries), pending a final decision on the merits of the constitutional challenge to the legislation. The hearing of that challenge has now been adjourned generally, and all lawyers in Canada remain exempt from the legislation by virtue of the injunction.
14. The federal government indicated that following consultations with the legal profession, the government intended to put in place a new regulatory regime for lawyers that more appropriately reflected their duties.
15. Legislative developments since the adjournment have resulted in amendments to the Act exempting lawyers from the reporting requirements and the publication of new

regulations that purport to apply to lawyers with respect to client identification and verification. These matters are discussed later in this report.

The Federation's Initiatives to Combat Money Laundering and Terrorist Financing

16. Independently of the litigation, the Federation through its Committee on Anti-Money Laundering Legislation launched its own initiatives to fight money laundering and terrorist financing.

The "No Cash" Model Rule

17. One of these initiatives was the Federation's October 2004 "No-Cash" Model Rule, pursuant to which each law society has implemented rules restricting lawyers from receiving cash in amounts over \$7,500.²
18. The adoption of the No-Cash Rule rendered unnecessary the obligation under the Act, which the federal government sought to impose on lawyers, to report transactions involving \$10,000 or more in cash.
19. In discussions with the Department of Finance during development of the Rule, the Federation affirmed that Canadian law societies take seriously their responsibility to regulate the profession in the public interest, based on a strong public interest in an independent Bar that provides confidential, loyal access to justice and a public interest in ensuring that lawyers do not participate in or facilitate money laundering or terrorist financing.
20. Implementation of the No-Cash Rule by all law societies demonstrated their commitment to both of these ideals.

Amendments to the Act Following Implementation of the No-Cash Rule

21. Following law societies' adoption of the No-Cash Rule, in October 2006 the federal government introduced Bill C-25, which made a series of amendments to the Act. The bill, which received Royal Assent in December 2006, included an amendment to exempt lawyers from the reporting requirements. Section 10.1 of the Act now reads:

Sections 7 and 9 do not apply to persons or entities referred to in paragraph 5(i) or (j) who are, as the case may be, legal counsel or legal firms, when they are providing legal services.

22. Finance Minister James Flaherty addressed the No-Cash Rule and the legislative amendment in his presentation on Bill C-25 before the relevant Standing Senate Committee on Banking, Trade and Commerce on December 6, 2006:

...I would note that Bill C-25 excludes the legal profession from reporting suspicious and prescribed transactions under the act, consistent with lawyers' obligations in respect to [sic] solicitor-client privilege.

² The Federation's "No Cash" Model Rule was adopted by Convocation and implemented through amendments to By-Laws 18 and 19 and Commentary to Rule of Professional Conduct 2.02(5) on January 27, 2005. These provisions are now in By-Law 9.

As you may know, the provincial and territorial law societies have adopted a model rule that prohibits lawyers from receiving cash over \$7,500 in respect of any file. This will address the placement of cash into the financial system and will replace the large cash reporting requirement.

23. Prior to introduction of the bill, concerns relating to the legal profession were expressed by the Department of Finance and the Auditor General of Canada in their reviews of the Canadian anti-money laundering and terrorist financing regime.
24. In a November 2004 Report, the Auditor General indicated that “the removal of lawyers from the reporting requirements of the legislation in Canada means that our anti-money laundering system does not fully meet international [FATF] standards, yet meeting them was one of the objectives of the National Initiative to Combat Money Laundering.”
25. At the same time, the Department of Finance began focusing on the FATF Recommendations that addressed standards for customer due diligence. In a June 2005 consultation paper, the Department of Finance set out the government’s proposed regulations concerning customer due diligence and record-keeping requirements for professional intermediaries. The paper did not propose that the legal profession would be subject to these requirements. However, the paper indicated that the government would assess the consistency and effectiveness of the law societies’ No-Cash rules, and consider whether the legal profession should be subject to requirements concerning customer due diligence. The paper also noted the FATF Recommendation that such requirements should be implemented by legislation or regulations, and not through self-regulatory bodies like the law societies. The Federation’s consultations with the Department on this matter were continuing throughout this period.
26. Bill C-25 implemented many of the proposals in the consultation paper and included amendments to the Act to enhance the client identification, record-keeping and reporting measures applicable to financial institutions and financial intermediaries. Included were an amended s. 6 and a new s. 6.1 of the Act, which are enabling provisions for enhanced client identification and verification, and record-keeping:
 6. Every person or entity referred to in section 5 shall keep and retain prescribed records in accordance with the regulations.
 - 6.1 Every person or entity referred to in section 5 shall verify, in the prescribed circumstances and in accordance with the regulations, the identity of any person or entity.
27. Client identification and verification regulations under these provisions were pre-published by the Department of Finance at the end of June 2007. The regulations purport to regulate how lawyers, and others, should identify and verify the identity of clients. The regulations were published (in final form) in December 2007 and, with respect to the legal profession, come into force in December 2008.³

³ The injunction described earlier in this report provides that any new Regulations will not apply to the legal profession unless the Federation of Law Societies consents.

28. The new regulations include detailed requirements for client identification, verification of client identity, record-keeping and compliance. The requirements are triggered when the lawyer receives or pays funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or organization, or gives instructions in respect of these activities. The new regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities, with some narrow exceptions. Appendix 4 includes a summary of the regulations as they apply to the legal profession.

The Concept of the Second Model Rule

29. The concept for the Federation's Model Rule on Client Identification and Verification Requirements was formulated in mid-2005, and was outlined in terms of appropriate client identification and verification requirements for lawyers in a September 2005 letter sent by the Federation to the Department of Finance in response to the Department's consultation paper, noted earlier. In that letter, the Federation said:

Within the next few months, the Federation will be considering a proposal for a second Model Rule on certain client identification and verification requirements that would be imposed by its member law societies on all lawyers in Canada. These requirements would be adopted by the law societies pursuant to their statutory duties to uphold and protect the public interest in the administration of justice. ...

The proposed Model Rule would make all lawyers in Canada subject to certain client identification and verification requirements when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of [specified activities respecting payment and transfer of funds].⁴

Overview of the Model Rule

30. Creation of the Model Rule on Client Identification and Verification Requirements was an independent initiative of the Federation to promote the public interest in ensuring that lawyers conduct appropriate due diligence on their clients. This includes identifying and verifying the identity of a client, which will assist lawyers in determining whether a client is attempting to use the lawyer to launder funds. In many respects, the Model Rule codifies the steps a prudent lawyer would take in the normal course to verify a client's identity upon being retained to provide legal services.
31. The Model Rule respects the threshold between constitutional and unconstitutional requirements imposed on lawyers when it comes to the gathering of information from clients: a lawyer must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities.

⁴ The Federation Council received a first draft of the Model Rule in January 2006. Dialogue between the Federation and the Department of Finance on matters relating to requirements for lawyers for client identification and verification continued throughout 2006, with notice that federal regulations on these standards applicable to the legal profession would be forthcoming in 2007. The regulations were published (in final form) in December 2007. The Model Rule was finalized in early 2008.

32. Information recorded by lawyers pursuant to the Model Rule could be obtained by law societies only for the purpose of ensuring compliance with applicable law society rules. Information obtained by law societies would not be provided to state authorities without a court Order which gave due consideration to solicitor-client confidentiality and privilege existing in respect of the information.
33. Like the adoption of the No-Cash Rule, national implementation of the Model Rule on Client Identification and Verification will demonstrate that responsible self-governance by the law societies makes federal regulation of the legal profession on this subject unnecessary.

Consultation with the Profession on the Model Rule

34. In the fall of 2007, at the request of the Federation, law societies across Canada reviewed the Model Rule and the proposed regulations at the request of the Federation. The purpose was to assist the Federation in finalizing the text of the Rule and in addressing concerns about the proposed regulations in the Federation's ongoing dialogue with the Department of Finance.
35. Some law societies, such as the Law Society of Upper Canada, Law Society of British Columbia and the Law Society of New Brunswick, requested the input of members. The Law Society of Upper Canada published the request for comment on its website with relevant background material, included notice of the request in its *e-Bulletin* and also distributed direct notice of the request by a broadcast e-mail to all licensees who have provided an e-mail address to the Law Society for such purposes.
36. By early November 2007, responses from the majority of law societies had been received by the Federation. Over 40 individual responses from lawyers were received. The Law Society of Upper Canada also requested written responses from certain legal organizations and large law firms. Five letters resulted from this request.
37. While a few respondents had concerns about the imposition of the requirements, the vast majority understood the need to formulate rules on lawyer's obligations to identify clients and perform the due diligence set out in the Model Rule. A number of respondents identified issues of interpretation and compliance but also included constructive suggestions for clarification of these issues and other provisions. Many of these suggestions were incorporated in the Model Rule.

The Proposed Amendments to By-Law 7.1 Based on the Model Rule

38. The proposed By-Law amendments which implement the Model Rule will ensure that appropriate due diligence requirements apply to licensees in Ontario as a matter of Law Society regulation. Appendix 3 includes a summary of the Model Rule's provisions which are incorporated in the By-Law amendments.
39. The amendments require licensees to follow certain client identification and verification procedures when the licensee is retained by a client and engages on behalf of a client or gives instructions on behalf of a client in respect of the activities specified in the By-Law. The amendments also require licensees to keep a record of the information and documents obtained to identify and verify the identity of clients.
40. The client identification requirements apply whenever a licensee provides professional services to a client. These requirements call for basic identification information about

individual or organizational clients in every retainer. The identify *verification* requirements are triggered where the licensee receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. A number of exceptions are included. For example, funds paid to the licensee by a financial institution, public body, or a public company, or received from the trust account of another licensee are exempt.

41. The By-Law requires a licensee to withdraw from the representation of a client in a matter when the licensee reasonably suspects that the provision of the licensee's services would assist a client in criminal or illegal activity. The duty applies to new matters for existing clients after the By-Law is in force if the suspicion arises during the identification and verification activities. The duty applies to all matters, before and after the By-Law is in force, if the suspicion arises during the course of the retainer generally.

Summary

42. The By-Law amendments are in important addition to licensee regulation. New regulations adopted by the law societies in Canada within the past three years have enhanced the legal profession's ability to regulate its members in the public interest and to respond appropriately to client activity that may be an indication of money laundering and other illegal activity. Implementation of the new Model Rule through the By-Law 7.1 amendments will add an important element to this regulatory framework.

APPENDIX 1

PROPOSED BY-LAW 7.1 PROVISIONS ON CLIENT IDENTIFICATION AND VERIFICATION (effective June 30, 2008)

PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

"financial institution" means,

- (a) a bank to which the *Bank Act* (Canada) applies,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union, credit union or caisse populaire that is regulated by an Act of a province or territory of Canada,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a company to which the *Trust and Loan Companies Act* (Canada) applies,

- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, or
- (g) a ministry, department or agent of the government of Canada or of a province or territory of Canada if the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public;

“funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

“private company” means a company the constating documents of which,

- (a) restrict the right to transfer shares,
- (b) limit the number of its shareholders, exclusive of persons who are in the employ of the company, to 50, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (c) prohibit any invitation to the public to subscribe for its shares or securities;

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,
- (b) a municipality incorporated by or under an Act of a province or territory of Canada and includes a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

Application of Part

21. This Part applies only to matters in respect of which a licensee is retained to provide her or his professional services after this Part comes into force regardless of whether the client is a new or existing client.

Application of client identification and verification requirements

22. (1) Subject to subsections (2) and (3), a licensee shall,
- (a) when the licensee is retained to provide her or his professional services to a client, comply with the client identification requirements set out in subsection 23 (1); and
 - (b) when the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds,
 - (i) comply with the client identification requirements set out in subsection 23 (2), and
 - (ii) comply with the verification requirements set out in subsection 23 (4).

Exemption re certain licensees

- (2) A licensee is not required to comply with the client identification and verification requirements set out in section 23 if,
- (a) the licensee is engaged in the activities described in subsection (1) on behalf of her or his employer;
 - (b) the licensee is engaged in the activities described in subsection (1) as agent for another licensee who has already complied with the client identification and verification requirements set out in section 23; or
 - (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by another licensee who has already complied with the client identification and verification requirements set out in section 23.

Exemptions re certain funds

- (3) A licensee is not required to comply with the client verification requirements set out in subsection 23 (4) in respect of funds,
- (a) received from a financial institution, public body or company that is not a private company;
 - (b) paid to a financial institution or public body;
 - (c) paid to a client that is a company that is not a private company;
 - (d) paid to another licensee in trust, on the direction of a client;
 - (e) received from the trust account of another licensee;
 - (f) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
 - (g) paid pursuant to a court order or to pay a fine or penalty;

- (h) paid as a settlement in any legal or administrative proceedings; or
- (i) received for professional fees, disbursements, expenses or bail.

Client identification

23. (l) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.
7. If the client is an organization, the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the licensee is retained.
8. If the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs 1 to 7, as applicable.

Same

(2) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client is an organization, in addition to complying with the client identification requirements set out in subsection (1), the licensee shall make reasonable efforts to obtain the following information about the client:

1. The name and occupation or occupations of each director of the organization, other than an organization that is a securities dealer.
2. The name, address and occupation or occupations of each person who owns twenty-five percent or more of the organization or of the shares of the organization.

Same, previous identification

(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee has previously complied with the identification requirements and has also previously complied with the verification requirements set out in subsection (4) in respect of the organization.

Client verification requirements

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information.

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1) upon engaging in the activities described in clause 22 (1) (b).

Timing of verification, organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after engaging in the activities described in clause 22 (1) (b).

Examples of independent source documents

(7) The following are examples of independent source documents for the purposes of subsection (4):

1. If the client or third party beneficiary or principal is an individual, an original government issued identification that is valid and has not expired, including a driver's licence, birth certificate, provincial or territorial health card (if such use of the card is not prohibited by the applicable provincial or territorial law), passport or similar record.
2. If the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as,
 - i. a certificate of corporate status issued by a public body,
 - ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - iii. a copy of a similar record obtained from a public body that confirms the organization's existence.
3. If the client or third party beneficiary or principal is an organization other than a corporation or society, such as a trust or partnership which is not registered in any government registry, a copy of the organization's constating documents,

such as a trust or partnership agreement articles of association, or any other similar record that confirms its existence as an organization.

Client verification, non-face-to-face

(8) When a licensee is engaged in the activities described in clause 22 (1)(b) and the client is an individual who is not instructing the licensee face-to-face, the licensee complies with the verification requirements set out in subsection (4) if the licensee obtains an attestation from a person described in subsection (9) that the person has seen the appropriate independent source documents.

Persons from whom attestations may be accepted

(9) For the purposes of section (8), a licensee may obtain an attestation from the following persons:

1. If the client whose identity is being verified is present in Canada,
 - i. a person entitled to administer oaths and affirmations in Canada, or
 - ii. any of the following persons:
 - A. a dentist,
 - B. a physician,
 - C. a chiropractor,
 - D. a judge,
 - E. a magistrate or justice of the peace,
 - F. a lawyer,
 - G. a licensee (in Ontario),
 - H. a notary (in Quebec),
 - I. a notary public,
 - J. an optometrist,
 - K. a pharmacist,
 - L. an accountant,
 - M. a professional engineer,
 - N. a veterinarian.

2. If the client whose identity is being verified is not present in Canada, a person acting on behalf of the licensee under subsection (11).

Attestation, form

(10) For the purposes of subsection (8), an attestation shall be endorsed on a legible photocopy of the document and shall include,

- (a) the name, occupation and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the document seen by the person providing the attestation.

Client verification, use of agent

(11) A licensee complies with the verification requirements set out in subsection (4) if another person acting on behalf of the licensee complies with those requirements provided that, the licensee and the other person, prior to the person acting on behalf of the licensee, enter into a written agreement specifying the steps that the person will be taking on behalf on the licensee to comply with the verification requirements.

Client verification, previous verification

- (12) A licensee complies with the verification requirements set out in subsection (4),
 - (a) in the case of an individual mentioned in subsection (1), if the licensee has previously complied with the verification requirements set out in subsection (4) in respect of the individual and recognizes the individual; and
 - (b) in the case of an organization mentioned in subsection (1), the licensee has previously complied with the identification requirements set out in subsection (2) and the verification requirements set out in subsection (4) in respect of the organization.

Copies to be obtained

(13) The licensee shall obtain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection (4), including a copy of every document used by a person acting on behalf of the licensee under subsection (11).

Record retention

(14) The licensee shall retain a record of the information obtained for the purposes of subsections (1) and (2) and copies of all documents received for the purposes of subsection (4) for the longer of,

- (a) the duration of the licensee and client relationship and for as long as is necessary for the purpose of providing service to the client; and

- (b) a period of at least six years following completion of the work for which the licensee was retained.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client information and verification requirements set out in section 23, reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

Commencement

25. This Part comes into force on June 30, 2008.

PART IV

WITHDRAWAL OF SERVICES

Application of Part

26. This Part applies to all matters in respect of which a licensee is retained to provide her or his professional services to a client, including matters in respect of which the licensee was retained before this Part came into force and matters in respect of which the licensee is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw after being retained

27. If a licensee while retained by a client reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

APPENDIX 2

REDLINE VERSION OF BY-LAW 7.1 WITH AMENDMENTS

BY-LAW 7.1

Made: October 25, 2007
Amended: November 22, 2007
January 24, 2008

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Interpretation

1. (1) In this ~~Part~~ ~~By-law~~,

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

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

PART II

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee’s practice of law in relation to the affairs of the licensee’s client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client.
- (2) Without limiting the generality of subsection (1),
- (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
 - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
 - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
 - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
 - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
 - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
 - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
- (a) to give or accept an undertaking on behalf of the licensee;
 - (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
 - (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature;
 - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
 - (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

PART III

COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- (a) the letter is in relation to the affairs of the licensee's client;
 - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - (d) the letter is on the licensee's business letterhead; and
 - (e) the letter is signed by the licensee.

PART ~~II~~ IV

OBLIGATIONS RESULTING FROM SUSPENSION

Interpretation

8. In this Part,

“existing client” means,

- (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
- (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

“former client” means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

“prospective client” means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

“suspended licensee” means a licensee who holds a Class L1 licence or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,

- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
 - (i) the suspended licensee will be unable to complete the work,
 - (ii) the client will need to retain another licensee to complete the work, and
 - (iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
- (b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client’s documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client's matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,
- (a) notify all persons who contact the suspended licensee's place of business of the suspension order; and
 - (b) notify any existing client or former client who contacts the suspended licensee's place of business of the name and contact information of another licensee who has been given possession of the clients' documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfillment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:

- 1. Preparation of a will.
- 2. Preparation of a power of attorney.
- 3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

(2) A suspended licensee shall, before the suspension begins,

- (a) return to the client all original documents; or
- (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,

- (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
- (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
- (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PART IIICLIENT IDENTIFICATION AND VERIFICATIONDefinitions

20. In this Part,

“financial institution” means,

- (a) a bank to which the *Bank Act (Canada)* applies,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act (Canada)* in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union, credit union or caisse populaire that is regulated by an Act of a province or territory of Canada,
- (d) an association that is regulated by the *Cooperative Credit Associations Act (Canada)*,
- (e) a company to which the *Trust and Loan Companies Act (Canada)* applies,
- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, or
- (g) a ministry, department or agent of the government of Canada or of a province or territory of Canada if the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public;

“funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

“private company” means a company the constating documents of which,

- (a) restrict the right to transfer shares,
- (b) limit the number of its shareholders, exclusive of persons who are in the employ of the company, to 50, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (c) prohibit any invitation to the public to subscribe for its shares or securities;

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,

- (b) a municipality incorporated by or under an Act of a province or territory of Canada and includes a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

Application of Part

21. This Part applies only to matters in respect of which a licensee is retained to provide her or his professional services after this Part comes into force regardless of whether the client is a new or existing client.

Application of client identification and verification requirements

22. (1) Subject to subsections (2) and (3), a licensee shall,
- (a) when the licensee is retained to provide her or his professional services to a client, comply with the client identification requirements set out in subsection 23 (1); and
 - (b) when the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds,
 - (i) comply with the client identification requirements set out in subsection 23 (2), and
 - (ii) comply with the verification requirements set out in subsection 23 (4).

Exemption re certain licensees

- (2) A licensee is not required to comply with the client identification and verification requirements set out in section 23 if,
- (a) the licensee is engaged in the activities described in subsection (1) on behalf of her or his employer;
 - (b) the licensee is engaged in the activities described in subsection (1) as agent for another licensee who has already complied with the client identification and verification requirements set out in section 23; or

- (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by another licensee who has already complied with the client identification and verification requirements set out in section 23.

Exemptions re certain funds

(3) A licensee is not required to comply with the client verification requirements set out in subsection 23 (4) in respect of funds,

- (a) received from a financial institution, public body or company that is not a private company;
- (b) paid to a financial institution or public body;
- (c) paid to a client that is a company that is not a private company;
- (d) paid to another licensee in trust, on the direction of a client;
- (e) received from the trust account of another licensee;
- (f) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (g) paid pursuant to a court order or to pay a fine or penalty;
- (h) paid as a settlement in any legal or administrative proceedings; or
- (i) received for professional fees, disbursements, expenses or bail.

Client identification

23. (l) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.

7. If the client is an organization, the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the licensee is retained.
8. If the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs 1 to 7, as applicable.

Same

(2) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client is an organization, in addition to complying with the client identification requirements set out in subsection (1), the licensee shall make reasonable efforts to obtain the following information about the client:

1. The name and occupation or occupations of each director of the organization, other than an organization that is a securities dealer.
2. he name, address and occupation or occupations of each person who owns twenty-five percent or more of the organization or of the shares of the organization.

Same, previous identification

(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee has previously complied with the identification requirements and has also previously complied with the verification requirements set out in subsection (4) in respect of the organization.

Client verification requirements

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information.

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1) upon engaging in the activities described in clause 22 (1) (b).

Timing of verification, organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after engaging in the activities described in clause 22 (1) (b).

Examples of independent source documents

(7) The following are examples of independent source documents for the purposes of subsection (4):

1. If the client or third party beneficiary or principal is an individual, an original government issued identification that is valid and has not expired, including a driver's licence, birth certificate, provincial or territorial health card (if such use of the card is not prohibited by the applicable provincial or territorial law), passport or similar record.
2. If the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as,
 - i. a certificate of corporate status issued by a public body,
 - ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - iii. a copy of a similar record obtained from a public body that confirms the organization's existence.
3. If the client or third party beneficiary or principal is an organization other than a corporation or society, such as a trust or partnership which is not registered in any government registry, a copy of the organization's constating documents, such as a trust or partnership agreement articles of association, or any other similar record that confirms its existence as an organization.

Client verification, non-face-to-face

(8) When a licensee is engaged in the activities described in clause 22 (1)(b) and the client is an individual who is not instructing the licensee face-to-face, the licensee complies with the verification requirements set out in subsection (4) if the licensee obtains an attestation from a person described in subsection (9) that the person has seen the appropriate independent source documents.

Persons from whom attestations may be accepted

(9) For the purposes of section (8), a licensee may obtain an attestation from the following persons:

1. If the client whose identity is being verified is present in Canada,
 - i. a person entitled to administer oaths and affirmations in Canada, or
 - ii. any of the following persons:
 - A. a dentist,
 - B. a physician,
 - C. a chiropractor,
 - D. a judge.

- E. a magistrate or justice of the peace,
- F. a lawyer,
- G. a licensee (in Ontario)
- H. a notary (in Quebec),
- I. a notary public,
- J. an optometrist,
- K. a pharmacist,
- L. an accountant,
- M. a professional engineer,
- N. a veterinarian.

2. If the client whose identity is being verified is not present in Canada, a person acting on behalf of the licensee under subsection (11).

Attestation, form

(10) For the purposes of subsection (8), an attestation shall be endorsed on a legible photocopy of the document and shall include,

- (a) the name, occupation and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the document seen by the person providing the attestation.

Client verification, use of agent

(11) A licensee complies with the verification requirements set out in subsection (4) if another person acting on behalf of the licensee complies with those requirements provided that, the licensee and the other person, prior to the person acting on behalf of the licensee, enter into a written agreement specifying the steps that the person will be taking on behalf on the licensee to comply with the verification requirements.

Client verification, previous verification

- (12) A licensee complies with the verification requirements set out in subsection (4),
 - (a) in the case of an individual mentioned in subsection (1), if the licensee has previously complied with the verification requirements set out in subsection (4) in respect of the individual and recognizes the individual; and

- (b) in the case of an organization mentioned in subsection (1), the licensee has previously complied with the identification requirements set out in subsection (2) and the verification requirements set out in subsection (4) in respect of the organization.

Copies to be obtained

(13) The licensee shall obtain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection (4), including a copy of every document used by a person acting on behalf of the licensee under subsection (11).

Record retention

(14) The licensee shall retain a record of the information obtained for the purposes of subsections (1) and (2) and copies of all documents received for the purposes of subsection (4) for the longer of,

- (a) the duration of the licensee and client relationship and for as long as is necessary for the purpose of providing service to the client; and
- (b) a period of at least six years following completion of the work for which the licensee was retained.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client information and verification requirements set out in section 23, reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

Commencement

25. This Part comes into force on June 30, 2008.

PART IV

WITHDRAWAL OF SERVICES

Application of Part

26. This Part applies to all matters in respect of which a licensee is retained to provide her or his professional services to a client, including matters in respect of which the licensee was

retained before this Part came into force and matters in respect of which the licensee is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw after being retained

27. If a licensee while retained by a client reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

APPENDIX 3

Federation of Law Societies of Canada

Model Rule on Client Identification
and Verification Requirements

Definitions

1. In this Rule,

"financial institution" means

- (a) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a cooperative credit society, savings and credit union or *caisse populaire* that is regulated by a provincial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial Act, or
- (f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

"funds" means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or interest in them;

"lawyer" means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor;

"organization" means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

"private company" means a company whose governing statute or constating documents provides that:

- (a) the right to transfer its shares is restricted,

- (b) the number of its shareholders, exclusive of persons who are in the employ of the company, is limited to 50, two or more persons holding one or more shares jointly being counted as a single shareholder; and
- (c) any invitation to the public to subscribe for its shares or securities is prohibited.

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) [or equivalent legislation] or similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization, or
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

Client Identity

2. (1) Subject to subsection (2), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule.

- (2) Sections 3 through 9 do not apply to
 - (a) a lawyer when he or she provides legal services and engages in or gives instructions in respect of any of the activities described in section 4 on behalf of his or her employer, or
 - (b) a lawyer
 - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
 - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client, when the client’s lawyer has complied with sections 3 through 9.

3. A lawyer who is retained by a client as described in section 2(1) shall obtain and record the following information:

- (a) the client’s full name,
- (b) the client’s business address and business telephone number, if applicable,
- (c) if the client is an individual, the client’s home address and home telephone number,
- (d) if the client is an organization, the organization’s incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- (e) if the client is an individual, the client’s occupation or occupations,
- (f) if the client is an organization,
 - (i) other than a financial institution, public body or company that is not a private company, the general nature of the type of business or

- businesses or activity or activities engaged in by the client, where applicable, and
- (iii) the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the lawyer is retained,
- (3) if the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs (a) to (f) as applicable.

Client Identity and Verification

4. Section 6 applies where a lawyer engages on behalf of a client in or gives instructions on behalf of a client in respect of the receiving, paying or transferring of funds.

Exemptions re: certain funds

5. Section 6 does not apply in respect of funds,
- (a) paid by a financial institution, public body or a company that is not a private company;
 - (b) paid to
 - (i) a financial institution,
 - i. a public body, or
 - ii. a client that is a company that is not a private company;
 - (c) paid to another lawyer in trust, on the direction of the client;
 - (d) received by a lawyer from the trust account of another lawyer;
 - (e) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
 - (f) paid pursuant to a court order or to pay a fine or penalty;
 - (g) paid as a settlement of any legal or administrative proceedings; or
 - (h) received for professional fees, disbursements, expenses or bail.

6. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

Examples of independent source documents

- (2) For the purposes of subsection (1), independent source documents may include:
- (a) if the client or third party beneficiary or principal is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card [if such use of the card is not prohibited by the applicable provincial or territorial law], passport or similar record;
 - (b) if the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as
 - (i) a certificate of corporate status issued by a public body,

- (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
- (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (c) if the client or third party beneficiary or principal is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

Identifying Directors, Shareholders and Owners

(3) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 4 for a client that is an organization referred to in subsection (2)(b) or (c), the lawyer shall make reasonable efforts to obtain, and if obtained, record,

- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
- (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

Client Identity and Verification in Non-Face-to-Face Transactions

(4) When a lawyer engages in or gives instructions in respect of any of the activities in section 4 for a client who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).

(5) For the purpose of subsection (4), an attestation shall be produced on a legible photocopy of the document and shall include

- (a) the name, profession and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the identifying document provided by the client.

(6) For the purpose of subsection (4), a guarantor must be a person employed in one of the following professions in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
- (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
- (m) veterinarian.

Use of Agent

(7) For the purpose of subsection (2)(a), a lawyer may, and in the case of a non-face-to-face transaction involving a client who is not present in Canada shall, rely on an agent to obtain the information, which may include, where applicable, an attestation described in this section, to verify the client's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.

(8) A lawyer who enters into an agreement or arrangement referred to in subsection (7) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.

Timing of Verification for Individuals

(9) A lawyer shall verify the identity of

- (a) a client who is an individual, and
- (b) the individual or individuals authorized to give instructions on behalf of an organization with respect to the matter for which the lawyer is retained,

upon engaging in or giving instructions in respect of any of the activities described in section 4.

(10) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.

Timing of Verification for Organizations

(11) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in section 4.

(12) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection 6(3), the lawyer is not required to subsequently verify that identity or obtain that information.

Record keeping and retention

7. (1) A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of section 6(1).

(2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

(3) A lawyer shall retain a record of the information and any documents obtained for the purposes of sections 3 and 6(3) and copies of all documents received for the purposes of section 6(1) for the longer of

- (a) the duration of the lawyer and client relationship and for as long as is necessary for the purpose of providing service to the client, and
- (b) a period of at least six years following completion of the work for which the lawyer was retained.

Application

8. Sections 2 through 7 of this Rule do not apply to matters in respect of which a lawyer was retained before this Rule comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw at time of taking information

9. (1) If in the course of obtaining the information and taking the steps required in sections 3 and 6(1) or (3), a lawyer reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer must withdraw from representation of the client.

Application

(2) This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Rule comes into force.

Criminal activity, duty to withdraw after being retained

10. (1) If while retained by a client, a lawyer reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer must withdraw from representation of the client.

Application

(2) This section applies to all matters for which a lawyer was retained before this Rule comes into force and to all matters for which he or she is retained after that time.

DESCRIPTION OF THE FEDERATION OF LAW SOCIETIES OF CANADA MODEL RULE'S REQUIREMENTS

1. Application

The Model Rule applies whenever a lawyer provides legal services to a client. The client identification requirements call for basic identification information about individual or organizational clients in every retainer. The identify *verification* requirements are triggered where the lawyer receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client.

Lawyers are exempt from the requirements where the lawyer provides the legal services on behalf of his or her employer. Lawyers are also exempt where they are engaged as an agent by a lawyer for a client or are referred a matter from a lawyer for a client when the client's lawyer has complied with the Rule.

With respect to the requirements that apply when a lawyer receives, pays or transfers funds, the lawyer is exempt from these requirements when the funds are

- paid by a financial institution, public body, or a public company,
- paid to financial institution,
- paid to a public body,
- paid to a client that is a public company,
- paid to another lawyer in trust, on the direction of the client,
- received by a lawyer from the trust account of another lawyer,
- received from a peace officer, law enforcement agency or other public official acting in their official capacity,
- paid pursuant to a court order or to pay a fine or penalty,

- paid as a settlement of any legal or administrative proceedings, or
- received for professional fees, disbursements, expenses or bail.

2. Client Identification Requirements

The identification requirements, applying to all retainers for legal services, require lawyers to obtain and record,

- the client's full name,
- the client's home or business address,
- the client's home or business telephone number,
- where the client is an individual, the client's occupation,
- where the client is an organization (other than a financial institution, public body or public corporation), the general nature of the type of business engaged in by the organization, where applicable,
- where the client is an organization, the individuals authorized to give instructions with respect to that organization, and
- where the client is acting for a third party beneficiary, necessary information about the beneficiary, such as that set out above.

3. Client Identity Verification Requirements

The requirements in the Rule oblige lawyers to obtain and maintain certain documents through which identity is ascertained. Examples of independent source documents that meet the requirements are set out in the Rule. For individuals, the documents include government-issued identification, such as a driver's license, birth certificate, provincial health card or passport or a similar record. For organizations, the Rule requires the incorporating documents of the organization, or a confirmation from a government registry as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s).

Lawyers must make reasonable efforts to obtain and if obtained, record, the name and occupation of all directors, and the name, address and occupation of all persons who own 25% or more of the organization. Because of the exemptions, this would only apply to private corporations.

For client identification and verification in non-face-to-face situations, when the client is situated elsewhere in Canada, the lawyer may obtain an attestation from a commissioner of oaths or guarantor in Canada that he or she has seen one of the documents that will verify the client's identity. A list of individuals who qualify to provide the attestation is included in the Rule. The lawyer may also use an agent with whom the lawyer has an agreement in writing for the purposes of identifying the client. If an individual client is not present in Canada, the lawyer must use the agent for the purposes of obtaining and verifying the client's identity, who may provide an attestation.

The Rule requires identity verification of individual clients at the time the lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds in relation to these clients. For organizational clients, the verification must occur within 60 days of these activities.

The Model Rule provides that "re-identification" is not required for clients on new matters, qualified by the need for the lawyer to recognize the individual client.

4. Record Keeping Requirements

The Rule requires lawyers to obtain and keep a copy of the information recorded for client identity and the documents obtained to verify the client's identity. The documents, which may be kept in machine-readable or electronic form such that paper copies can be readily produced, are to be kept for the duration of the relationship with the client and for as long as is necessary to fulfill the requirements of the retainer, but in no event less than six years.

5. When the Requirements in the Rule Apply

The Rule contains provisions about when the obligations in the Rule apply. The identification and verification requirements apply at the time the Rule is in force, in other words, on a going forward basis.

6. Withdrawal From Representation

The Rule requires a lawyer to withdraw from providing legal services when he or she reasonably suspects that the provision of the services would assist a client in criminal or illegal activity. The duty applies to new matters for existing clients after the Rule is in force if the suspicion arises during the identification and verification activities. The duty applies to all matters, before and after the Rule is in force, if the suspicion arises during the course of the retainer generally. These duties are similar to those in place in law societies' rules or codes of professional conduct.

7. Enforcement

As the Rule is to be the basis for a law society regulation to which lawyers would be subject as members of the profession in Canada, existing audit, review, investigation and disciplinary functions within each law society would apply. Breaches of the Rule, as implemented by law societies, would be dealt with as a matter of professional regulation.

APPENDIX 4

LAWYERS' OBLIGATIONS UNDER NEW FEDERAL REGULATIONS ON
CLIENT IDENTIFICATION AND VERIFICATION⁵

1. Client Identification and Verification

⁵ The new regulations relevant to the legal profession include provisions from:

- the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, Registration SOR/2002-184, May 9, 2002,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (2007-1) Registration SOR/2007-122 June 7, 2007 (published in Part II of the *Canada Gazette*, June 27, 2007), which generally come into force on June 23, 2008,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act* (2007-2) published in Part II of the *Canada Gazette* on December 26, 2007 as SOR/2007 – 293, December 13, 2007, and
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act* (2008-1) published in Part II of the *Canada Gazette* on February 20, 2008 as SOR/2008-21, January 31, 2008.

The new Regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities. Funds received from a public body or a publicly-traded company with minimum net assets of \$75 million and which is located in a country that is a member of the FATF are exempt. The new Regulations also exempt lawyers from the requirements when the funds are received by the lawyer from the trust account of another lawyer.

Individual clients must be identified by referring to a government-issued identification document (e.g. a birth certificate, driver's license, provincial health insurance card, passport or similar document). If the client is an organization, the lawyer must rely on identifying documents such as a certificate of corporate status, trust or partnership agreements and articles of association. The new Regulations require additional identification procedures where the client who is an individual is not physically present, and permit the identification to be done by an agent or mandatary. For such non-face-to-face situations, the Regulations require combinations of two methods of identification set out in Schedule 7 (see Appendix 1). For example, an attestation by a commissioner of oaths in Canada about the identity of the person and reference to identifying information in a credit file on the person would suffice.

Information required to be obtained during the identification process includes:

- a. For a client who is an individual, the name, address and date of birth of the person;
- b. For a client that is a corporation, the corporate name and address and the name of its directors. "Reasonable efforts" must be made to obtain the occupation of its directors and the name, address and occupation of any person who owns or control 25% or more of the corporation;
- c. For a client that is an entity other than a corporation, confirmation of its existence. The same reasonable efforts must be made to obtain the name, address and occupation of any person who owns or control 25% or more of the entity.

The new Regulations require the lawyer to document the inability to obtain through the "reasonable efforts" the specified information in b. and c.

When confirming the existence of a not-for-profit organization, a lawyer must determine whether it is a registered charity or solicits charitable financial donations.

For corporations or other organizations, the verification (the existence of the organization) must be confirmed within 30 days of the transaction. Individual clients' identity must be confirmed at the time of the transaction.

Under the new Regulations, a lawyer is not required to re-identify clients unless he or she has doubts about the veracity of the previously obtained client information.

2. Record Keeping

The new Regulations include very detailed record-keeping requirements. Various records, described below, must be kept for a period of five years.

A lawyer must keep a "receipt of funds record", a defined term in the new Regulations, when he or she has received \$3000 or more, except when the funds are received from a financial institution or public body. While parts of this record may already exist within a law office, it must include the following information:

- a. name, address and birth date of the person providing the funds,

- b. if the client is a person, the nature of the person's principal business or occupation,
- c. if the client is an organization, the address and nature of the organization's principal business,
- d. date of the transaction,
- e. account number affected by the transaction,
- f. type of account,
- g. full name of the person or entity who holds the account,
- h. monetary currency of the transaction,
- i. purpose and details of the transaction,
- j. if cash is received, how the funds are received, and
- k. amount and currency of the funds received.

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

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

The new Regulations exempt lawyers from this record keeping requirement when the funds are received by the lawyer from the trust account of another lawyer. In such cases the lawyer must keep a record of that fact and is not required to include in the receipt of funds record the number and type of the account affected by the transaction or the name of the person or organization who holds the account.

For identification of an individual, a lawyer must keep a record of the following information or keep the required document, as the case may be, which information relates to the methods required under the new Regulations for individual identity verification:

- a. for the birth certificate, driver's license, provincial health insurance card, passport or similar document, the type and reference number of the record and the place issued;
- b. with respect to the methods described in Schedule 7,
 - i. for the cleared cheque, the name of the financial entity and account number,
 - ii. for confirmation of the deposit account, the name of the financial entity, number of the account and the date of the confirmation,
 - iii. for the identification product, its name, the entity offering it, the search reference number and the date it was used to ascertain identity,
 - iv. for the credit file, the name of the company and date consulted,
 - v. for the attestation, the attestation.

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

At the time the existence of an organization is confirmed, if the lawyer has obtained the information about direct or indirect ownership and control described above, he or she must record it. As discussed earlier, where the lawyer is unable to obtain the above information, he or she must to keep a record of the reasons the information could not be obtained.

Where the entity is a not-for-profit organization a lawyer must keep a record of whether it is a registered charity or solicits charitable financial donations.

The records required under the new Regulations must be kept in a form that can be provided to an authorized person within 30 days after a request is made to examine them under section 62 of the Act. Section 62 gives FINTRAC authority to examine records of those who are subject to the Regulations.⁶

Note on Sections 62 to 65.1 of the Act

These sections effectively authorize warrantless searches of law offices for the purpose of ensuring compliance with the Regulations. The sections are based on *Criminal Code* provisions that have been struck down as unconstitutional by the Supreme Court of Canada. As such, these sections do not comply with the stringent requirements established by the Court in *Lavallee, Rackel & Heintz v. Canada*.⁷ Bill C-25, amending legislation in respect of the Act, which received Royal Assent in December 2006, did not include amendments to sections 62 to 65 to address this issue despite the apparent intention of the Department of Finance to do so. The following appeared in the Department's June 2005 consultation paper, referenced earlier:

⁶ Section 62 of the Act reads:

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

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

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

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

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

Assistance to Centre

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

⁷ *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, [2002] 3 S.C.R. 209.

6.17 Documents Protected by Solicitor-Client Privilege

Reference: PCMLTFA, sections 62 to 65

Amendment

Amend the compliance provisions that allow FINTRAC to examine documents to bring the PCMLTFA into conformity with the principles set out by the Supreme Court of Canada in its decision in the case of *Lavallee, Rackel & Heintz* in respect of solicitor-client privilege.

Explanation

In a 2002 decision in the case of *Lavallee, Rackel & Heintz*, the Supreme Court of Canada set out principles that should be followed to protect solicitor-client privilege when the police seize documents from law offices under warrants. The proposed amendments would ensure that the compliance provisions under the PCMLTFA allowing FINTRAC to examine documents are consistent with these principles.

The Federation of Law Societies of Canada, in its responding to the consultation paper in September 2005, affirmed the need to address this issue:

The Federation supports the proposal in section 6.17 of the Consultation Paper to amend sections 62 to 65 of the Act to conform with the principles established by the Supreme Court of Canada on seizure of solicitor and client privileged documents. These sections are modeled closely on those in the *Criminal Code*, which have been struck down as unconstitutional by the Supreme Court. The Court, in confirming that privilege does not come into being by an assertion of a privilege claim, but exists independently, found that by the operation of s. 488.1 of the *Criminal Code*, the “constitutionally protected right” of privilege could be violated by the mere failure of counsel to act, without instruction from or communication with the client. The Federation agrees that the Act must be amended to ensure that solicitor and client privilege is protected.

The application of sections 62 to 65.1 as currently framed in the Act to the legal profession would create serious problems for the protection of solicitor and client privilege and confidentiality.

3. Compliance

The new Regulations require lawyers or law firms to establish detailed compliance and review programs. The following is an overview of the requirements.

A lawyer or law practice must implement a program to ensure compliance with the new Regulations by:

- a. designating a person in the law practice – who, where the program is being implemented by a person, may be that person (e.g. a sole practitioner) – who is to be responsible for the implementation of the program;
- b. developing and applying written compliance policies and procedures that are approved by the law practice’s managing partner, as the case may be, and are kept up to date;
- c. assessing and documenting, in a manner that is appropriate for a law practice, the risk of money laundering or terrorist financing, taking into consideration
 - i. the clients and the business relationships of the law practice,
 - ii. the services and service delivery methods of the law practice,
 - iii. the geographic location of the activities of the lawyer, and

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

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

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

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

AMENDMENTS TO BY-LAW 8 RESPECTING LICENSEE INFORMATION REQUIREMENTS AND THE LAW SOCIETY REGISTER

Motion

- 43. That Convocation amend By-Law 8 (Reporting and Filing Requirements) by adding sections 3.1 and 3.2 and adding Part III, as set out at Appendix 5. The formal motion to amend the By-law is at Tab 3.

Introduction

- 44. Licensees are required to complete the Member's Annual Report (MAR) by March 31 of each year.⁸ Among other things, the MAR requires lawyers to provide basic contact and practice/employment information.⁹ This information is required to maintain the Law Society's record for each lawyer, for a number of regulatory purposes. The information, however, is only obtained once a year through the filing of the MAR, and is information as of December 31 in the applicable year.
- 45. For the reasons explained below, there is need to maintain up-to-date information on licensees. The Society requests licensees to report changes in contact information and makes a Change of Information Form available to them. While the majority of lawyers voluntarily advise the Society of changes in such things as their status, office location,

⁸ A form based on the MAR will be required to be filed by paralegal licensees once licenses are issued.

⁹ This includes the following:

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

home address and contact information, there is no requirement that they do so apart from the MAR. Moreover, some lawyers fail to file the MAR, leaving a gap in the Society's information about those lawyers, and the Law Society has no regulatory requirement upon which it can rely to obtain the information.

46. The Committee, together with the Paralegal Standing Committee, is proposing that By-Law 8 be amended to implement requirements that licensees provide necessary information to the Law Society when requested to do so and report changes in licensee information to the Law Society as they occur. Other proposed amendments to By-Law 8 deal with the Law Society register, prescribed under the *Law Society Act*, and the public nature of information contained in the register.

Convocation's First Consideration of the Policy

47. In March 2007, the Committee recommended to Convocation that it approve the policy for a by-law that would require a licensee to provide information to the Society on an on-going basis to keep the licensee's record with the Society current. The by-law would codify what many lawyers already do to provide the Society with relevant information and provide the Society with a regulatory foundation upon which requests for information could be made. A draft of the by-law was not prepared at that time. The Committee's report outlined the type of information the new by-law would require licensees to provide to the Society, including changes in information, and time periods within which certain information must be provided to the Society.
48. Convocation agreed in principle with this approach and with the reasons set out in the Committee's report for adopting a mandatory requirement, as follows:
- a. If a licensee is the subject of a complaint, current contact information is necessary to investigate the complaint, in particular, to request a response from the lawyer. Without current information, an investigation can be stalled, which ultimately affects the Society's ability to address in a timely way an allegation of misconduct;
 - b. If a conduct, competence or capacity matter proceeds to a hearing level, an address is required for service on the licensee. A lack of current contact information can make service more difficult and extend the time required to deal with the matter;
 - c. If a licensee's licence to practise is suspended or restricted by an order or undertaking, a lack of current contact information can impede the ability of the Society's Monitoring & Enforcement Department to monitor compliance with the order or undertaking;
 - d. If allegations are raised that a licensee has abandoned his or her practice or other issues arise that require the services of the Society's Trustee Services Department, a lack of current contact information can impede the ability of the Department to respond in a timely way to address potential risks to the public;
 - e. Changes in status will impact a lawyer's ability to use Teranet, the electronic land registry system, which relies on the Law Society's current member list (for practising status) for certain requirements under the system¹⁰. A lack of current

¹⁰ In the electronic land registry system, a "compliance with law statement" may only be made by a person who is entitled to practice law in Ontario as a solicitor. Therefore a change in the lawyer's status affects the lawyer's ability to register real estate documents containing compliance with law statements. For example, lawyers who are suspended or disbarred will be precluded from making compliance with law statements. Suspension includes a lawyer

- contact information may impede the Society's timely notification to the lawyer of a suspension, and as a result the lawyer's clients may be prejudiced;
- f. The Society's Administrative Compliances Processes Department relies on the currency of the licensee database to send notices to licensees for a number of requirements under the By-Laws (including filings for multi-discipline practices, professional corporations and affiliations). Inaccurate records may result in the inability to contact licensees, which affects the integrity of these regulatory processes and the public protections they provide.
49. The motion before March 2007 Convocation was as follows: "That Convocation approve the policy for a new by-law that would require members of the Law Society to provide current contact and other information to the Society." Convocation decided to defer its decision on the new by-law until a draft of the by-law was available for review.

Proposed By-Law Amendments

50. The proposal is that amendments with respect to these requirements be made to By-Law 8 (Reporting and Filing Requirements). A redline version of the By-Law showing the proposed amendments is at Appendix 6.
51. The proposed amendments were reviewed and approved by both the Committee and the Paralegal Standing Committee.
52. Authority to adopt this type of regulation exists under the *Law Society Act*. The Act includes by-law-making authority for the Society to require certain information from a licensee:
62. (0.1) Convocation may make by-laws,
- ...
8. requiring licensees to *register an address* with the Society and to notify the Society of any changes in the address;
9. requiring licensees or any class of licensees, or authorizing the Society to require licensees or any class of licensees, to *provide the Society with information* or to file certificates, reports or other documents with the Society, relating to the Society's functions under this Act;

(emphasis added).

Overview of the Amendments for Licensee Information

53. The proposed By-Law amendments incorporate two requirements for licensee information.
54. New Section 3.1 of By-Law 8 requires licensees to provide certain information to the Law Society *upon request*. This includes personal identification information, personal contact information, business contact information and information with respect to the licensee's professional business. The information is to be provided within 10 days of the written

suspended for "administrative" reasons such as for the failure to pay Law Society fees or LAWPRO levies or for the failure to file Law Society or LAWPRO forms. The Law Society provides timely updates to Teranet of changes in the status of lawyers.

request, but an extension of time may be granted. The authority to request the information is in addition to but does not limit the Society's authority to otherwise request the information (e.g. through the Member's Annual Report).

55. New Section 3.2 requires licensees to report changes to certain information, similar to the above, provided to the Law Society either before or after the effective date of the By-Law amendments.

The Law Society Register

56. The amendments to By-Law 8 include new Part III, which sets out the content of the Law Society's register and the manner in which the information may be made available to the public. The legislative authority for the Register is found in s. 27.1 of the *Law Society Act*:

Register

27.1 (1) The Society shall establish and maintain a register of persons who have been issued licences.

Contents of register

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.
4. An indication of every suspension, revocation, abeyance or surrender of a licence.
5. Any other information required by the by-laws.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws.

57. In light of s. 27.1(3), the Committees determined that amendments should be made to deal with the obligation to make the register available for public inspection.

APPENDIX 5

PROPOSED AMENDMENTS TO BY-LAW 8

INFORMATION: GENERAL

Requirement to provide various information

- 3.1 (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,
 - v. information with respect to the licensee's storage of wills and powers of attorney, and
 - vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Interpretation: personal and business contact information

- (2) For the purposes of subsection (1),
 - (a) personal contact information includes,
 - (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
 - (b) business contact information includes,
 - (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Notice of requirement

(3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

REPORTING CHANGES

Requirement to report changes

3.2 (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario.
5. Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies into which the licensee pays or paid money received in trust for a client.

Interpretation: personal and business contact information

(2) For the purposes of subsection (1),

(a) personal contact information includes,

(i) home address,

- (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
- (b) business contact information includes,
- (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

PART III

REGISTER

Contents of register

9. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:

1. The assumed names, if any, of each licensee.
2. An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.
3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
 - i. where and in what capacity the licensee practises law or provides legal services, and
 - ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.
4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,

- i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
 - ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.
5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

- 1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.
- 2. By publishing a print directory of licensees containing some or all of the information contained in the register.
- 3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

APPENDIX 6

REDLINE VERSION OF BY-LAW 8 WITH PROPOSED AMENDMENTS

BY-LAW 8

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

REPORTING AND FILING REQUIREMENTS

PART I

REPORTING REQUIREMENTS

FISCAL YEAR

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.

BANKRUPTCY OR INSOLVENCY OF LICENSEE

Notice of bankruptcy or insolvency

2. A licensee shall immediately notify the Society whenever any of the following events occurs:

1. The licensee receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).
2. The licensee makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

OFFENCES

Requirement to report offences: licensees

3. (1) Every licensee shall inform the Society in writing of,

- (a) a charge that the licensee committed,
 - (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee; and
- (b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(2) Despite subsection (1), a licensee is only required to inform the Society of a charge contained in an information laid under section 504 of the *Criminal Code* (Canada), other than an information referred to in subsection 507 (1) of the *Criminal Code* (Canada), and of the disposition of the charge, if the charge results in a finding of guilt or a conviction.

Time of report

(3) A licensee shall report a charge as soon as reasonably practicable after he or she receives notice of the charge and shall report the disposition of a charge as soon as reasonably practicable after he or she receives notice of the disposition.

Same

(4) In the circumstances mentioned in subsection (2), a licensee shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: "indictable offence"

(5) In this section, "indictable offence" excludes an offence for which an offender is punishable only by summary conviction but includes,

- (a) an offence for which an offender may be prosecuted only by indictment; and
- (b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

INFORMATION: GENERAL

Requirement to provide various information

3.1 (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,

- v. information with respect to the licensee's storage of wills and powers of attorney, and
- vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Interpretation: personal and business contact information

- (2) For the purposes of subsection (1),
 - (a) personal contact information includes,
 - (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
 - (b) business contact information includes,
 - (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Notice of requirement

(3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

REPORTING CHANGES

Requirement to report changes

3.2 (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario.
5. Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies into which the licensee pays or paid money received in trust for a client.

Interpretation: personal and business contact information

(2) For the purposes of subsection (1),

(a) personal contact information includes,

(i) home address,

(ii) home telephone number,

(iii) home facsimile number, and

(iv) home e-mail address; and

(b) business contact information includes,

(i) business address,

(ii) business telephone number,

(iii) business facsimile number, and

(iv) business e-mail address.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to submit annual report

4. (1) Every licensee who holds a Class L1 licence shall submit a report to the Society, by March 31 of each year, in respect of,

- (a) the licensee's professional business during the preceding year; and
- (b) the licensee's other activities during the preceding year related to the licensee's practice of law.

Annual Report

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

Exemption from requirement to submit annual report

(3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

- 1. A licensee who is over sixty-five years of age and who,
 - i. does not practise law in Ontario,
 - ii. is not an estate trustee,
 - iii. is not a trustee of an *inter vivos* trust; and
 - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
- 2. A licensee who is incapacitated within the meaning of the Act.

Application by licensee's representative

(4) The Society may permit any person on behalf of a licensee to make an application

under subsection (3).

Application form

(5) An application under subsection (3) shall be in a form provided by the Society.

Documents and explanations

(6) For the purposes of assisting the Society to consider an application under subsection (3), the licensee or the person applying on behalf of the licensee shall provide to the Society such documents and explanations as the may be required.

Consideration of application

(7) The Society shall consider every application made under subsection (3) and if satisfied that the licensee is eligible for an exemption under paragraph 1 or 2 of subsection (3), the Society shall approve the application.

Duration of exemption

(8) A licensee whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the licensee remains eligible for the exemption throughout the entire year.

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 4 is 120 days after the day the report is required to be submitted.

Reinstatement of licence

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 4, for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report in a form provided by the Society.

Requirement to submit public accountant's report

6. (1) The Society may require any licensee who is required to submit a report under subsection 4 (1) to submit, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the licensee is required to submit a report to the Society under subsection 4 (1).

Contents of report and time for filing

(2) The Society shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

Licensee's obligation to provide access to files, *etc.*

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

- (a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;
- (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
- (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

Cost

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the licensee.

Public accountant's duty of confidentiality

(6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

Period of default

7. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 6 is 60 days after the day the report is required to be submitted.

Reinstatement of licensee

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 6, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

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 4, the Society may require an investigation of the licensee's financial records to be made by a person designated by it, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

Investigation: application of subss. 6 (3) and (4)

(2) Subsections 6 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

(3) A person designated to investigate a licensee's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

Cost

(3) The cost of the investigation under this section shall be paid for by the licensee.

PART III

REGISTER

Contents of register

9. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:

1. The assumed names, if any, of each licensee.
2. An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.
3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
 - i. where and in what capacity the licensee practises law or provides legal services, and
 - ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.
4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,
 - i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
 - ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.

5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.
2. By publishing a print directory of licensees containing some or all of the information contained in the register.
3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

AMENDMENTS TO RULE 2.08 OF THE
RULES OF PROFESSIONAL CONDUCT AND RULE 5.01 OF
 THE *PARALEGAL RULES OF CONDUCT*

Motion

58. That Convocation amend

- a. subrules 2.08(6), (7) and (8) of the *Rules of Professional Conduct* as set out at paragraph 61 to reflect permitted arrangements between lawyers and paralegals for the division of fees and payment of referral fees, and
- b. subrule 5.01(10) of the *Paralegal Rules of Conduct* as asset out at paragraph 62 to be consistent with the amendment to subrule 2.08(6) above.

59. Rule 2.08 of the *Rules of Professional Conduct*, dealing with fees and disbursements, includes subrules (6), (7) and (8) on division of fees and referral fees. The current language in these subrules refers to lawyers for the purposes of these arrangements, rather than licensees. The companion rules in the *Paralegal Rules of Conduct* (subrules 5.01(10), (11) and (12)) refer to licensees (see Appendix 7).

60. For regulatory consistency and to reflect permitted arrangements, the Committee proposes that subrules (6), (7) and (8) be amended to refer to licensees in the appropriate places. This would make it clear that lawyers may divide fees with paralegals in accordance with subrule (6) and accept referral fees from paralegals to whom matters are referred in accordance with subrule (7). It will also make it clear that the prohibition in subrule (8) on splitting fees or paying referral fees does not apply to arrangements between lawyers and paralegals.

61. The following shows the proposed amendments to the subrules:

Rule 2.08

Division of Fees and Referral Fees

(6) Where the client consents, fees for a matter may be divided between licensees ~~lawyers~~ who are not in the same ~~law~~ firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

(7) Where a lawyer refers a matter to another licensee ~~lawyer~~ because of the expertise and ability of the other licensee ~~lawyer~~ to handle the matter and the referral was not made because of a conflict of interest, the referring lawyer may accept and the other licensee ~~lawyer~~ may pay a referral fee provided that

(a) the fee is reasonable and does not increase the total amount of the fee charged to the client, and

(b) the client is informed and consents.

(8) A lawyer shall not

(a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee ~~lawyer~~, or

(b) give any financial or other reward to any person who is not a licensee ~~lawyer~~ for the referral of clients or client matters.

62. A minor amendment to the *Paralegal Rules of Conduct* is also required for consistency with the above amendments. As the word "law" in subrule 2.08(6) above is being deleted, the word "paralegal" in the paralegal companion subrule 5.01(10), as shown below, should also be deleted. This amendment is being proposed through this report with the approval of the Chair of the Paralegal Standing Committee.

Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same ~~paralegal~~ firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

APPENDIX 7

PARALEGAL RULES OF CONDUCT

RULE 5.01 FEES AND RETAINERS

Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same paralegal firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

Fee Splitting

- (11) A paralegal shall not,
- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee; or
 - (b) give any financial or other reward to any person who is not a licensee, for the referral of clients or client matters.

Referral Fees

- (12) A paralegal who refers a matter to another licensee because of the expertise and ability of the other licensee to handle the matter may accept, and the other licensee may pay, a referral fee if,
- (a) the referral was not made because of a conflict of interest,
 - (b) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
 - (c) the client is informed and consents.

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

Copy of a Memorandum from Jim Varro to Convocation dated April 15, 2008 (*in camera*).
(page 61 *in camera*)

Re: Amendments to By-Law 7.1 Respecting Client Identification and Verification Requirements

It was moved by Mr. Ruby, seconded by Ms. Rothstein, that Convocation amend By-Law 7.1 (Operational Obligations and Responsibilities) to add requirements for client identification and verification, effective June 30, 2008, as set out in Appendix 1 to the Report.

It was moved by Mr. Lewis, seconded by Mr. Caskey, and accepted as a friendly amendment that the effective date of June 30, 2008 be changed to October 31, 2008.

The Ruby/Rothstein motion as amended was carried.

ROLL-CALL VOTE

Aaron	Against	Lawrie	For
Aitken	For	Lewis	For
Anand	For	McGrath	Against
Backhouse	For	Millar	For
Banack	Against	Minor	For
Boyd	For	Pawlitza	For
Braithwaite	For	Porter	For
Bredt	For	Potter	Against
Campion	For	Pustina	For
Caskey	For	Robins	For
Chahbar	For	Rothstein	For
Conway	For	Ruby	For
Crowe	For	St. Lewis	For

Dickson	For	Sandler	For
Dray	For	Schabas	For
Elliott	For	Sikand	For
Epstein	For	Silverstein	For
Go	Against	C. Strosberg	For
Halajian	For	Swaye	Against
Hare	For	Symes	For
Hartman	For	Tough	For
Heintzman	For	Warkentin	For
Henderson	For	Wright	For
Krishna	For		

Vote: 41 For; 6 Against

Re: Amendments to By-Law 8 Respecting Licensee Information Requirements and the Law Society Register

It was moved by Mr. Ruby, seconded by Ms. Rothstein, that Convocation amend By-Law 8 (Reporting and Filing Requirements) by adding sections 3.1 and 3.2 and adding Part III, as set out at Appendix 5 to the Report.

Carried

Re: Amendments to Rule 2.08 of the *Rules of Professional Conduct*

It was moved by Mr. Ruby, seconded by Ms. Rothstein, that Convocation amend

- a. subrules 2.08(6), (7) and (8) of the *Rules of Professional Conduct* as set out at paragraph 61 to reflect permitted arrangements between lawyers and paralegals for the division of fees and payment of referral fees, and
- b. subrule 5.01(10) of the *Paralegal Rules of Conduct* as set out at paragraph 62 to be consistent with the amendment to subrule 2.08(6) above.

Carried

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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PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Report to Convocation
April 24, 2008

Professional Development & Competence Committee

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

Purposes of Report: Decision

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

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COMMITTEE PROCESS

1. The Committee met on April 10, 2008. Committee members Laurie Pawlitza (Chair), Constance Backhouse (Vice Chair), Mary Louise Dickson (Vice Chair) Alan Silverstein (Vice Chair), Jennifer Halajian, Susan Hare, Laura Legge, Judith Potter, Nicholas Pustina and Heather Ross attended. Staff members Leslie Greenfield, Lisa Mallia, Diana Miles, Nancy Reason, Sophia Sperdakos and Sheena Weir also attended.

LAKEHEAD UNIVERSITY PROPOSAL FOR THE ESTABLISHMENT OF A FACULTY OF LAW

(Materials provided by Lakehead University in support of its proposal and relevant correspondence are provided under separate cover)

MOTION

2. That Convocation approve the following motion:

The Law Society recognizes that Lakehead University's proposal for the establishment of a Faculty of Law must be considered by the National Committee on Accreditation (a subcommittee of the Federation of Law Societies of Canada that will assess the proposal and make recommendations), and by the Ontario Ministry of Training, Colleges and Universities.

Convocation wishes to express to those bodies its view that the proposal is an important initiative. The proposal appears to have sound and persuasive objectives. It is worthy of careful consideration.

3. That Convocation approve providing this Report to the National Committee on Accreditation and the Ministry of Training, Colleges and Universities for their information.

Background

4. In January 2007 the Law Society received Lakehead University's ("Lakehead") proposal for the establishment of a law school. The PD&C Committee reviewed the material and

raised some concerns about the proposal as well as concerns that the 1957 (slightly amended in 1969) requirements for the approved law degree were outdated and in need of review and reform. It advised Convocation of the proposal and made a number of recommendations as follows, which Convocation approved:

1. That Convocation defer the decision respecting the Lakehead University proposal for a law school at this time.
 2. That the Law Society advise Lakehead University of its concerns with the proposal as set out in paragraph 16¹ of this report.
 3. That Convocation direct the Committee to review the 1957 (1969) requirements for a law program with a view to establishing modern, relevant criteria for the 21st century.
 4. That any ultimate recognition of the Lakehead University proposal should be subject to the understanding that if the requirements for a law program change, it will be expected to meet the new requirements.
 5. That the Law Society communicate with the Ministry of Training, Colleges and Universities to explain its decision to review the 1957(1969) criteria and advise it that the Law Society will not consider any new proposals for law programs until such time as it completes its review.
 6. That the Law Society should advise the Federation of Law Societies of Canada of the review it is undertaking.
5. Subsequently, the Committee was advised that, in fact, the responsibility for making a recommendation concerning applications for new law programs had been delegated by member law societies to the Federation of Law Societies of Canada in order to ensure that portability of common law degrees continued across the country. This means that the National Committee on Accreditation (NCA) will assess applications and make recommendations to the Federation of Law Societies and its member law societies.
 6. In May 2007 the Chair and some members of the Committee and staff met with the President of Lakehead and the Lakehead committee to discuss the university's application and some of the concerns the Professional Development & Competence Committee had raised about the proposal. At that time the Committee confirmed with Lakehead the role of the NCA as the body that would make recommendations on the proposal. The Committee suggested to Lakehead that it contact the NCA at that time to set that process in motion.
 7. In January 2008, Lakehead advised the Law Society that it had completed a revised proposal. Lakehead's revised proposal (dated January 28, 2008), the complete text of the external review conducted for Lakehead by Professor Roderick A. Macdonald, F.R. Scott Professor of Constitutional and Public Law from the Faculty of Law at McGill University (dated January 1, 2008), the University's response to the external review, and the University's further addendum to its proposal (dated February 15, 2008) are set out

¹ The text of paragraph 16 is set out at Appendix 1.

in a volume under separate cover. The Law Society has also been provided with a number of letters respecting the Lakehead proposal, which are contained in the volume under separate cover.

8. Lakehead also met with the Council of Ontario Law Deans. Lakehead's February 15, 2008 addendum contained in the volume under separate cover seeks to address some of the issues raised during that meeting. Through correspondence with Dean Monahan, the Law Society asked for the Ontario Law Deans' comments on their meeting with Lakehead. Dean Monahan's reply, the Treasurer's letter to President Gilbert seeking his comments on the Dean's letter and President Gilbert's reply are contained with Lakehead's materials in the volume under separate cover

Discussion

9. In considering the Lakehead proposal the Committee first reviewed the decision making hierarchy on this issue, as follows:
 - a. In the early 1990s, law societies in Canada agreed that a Committee of the Federation of Law Societies of Canada should assess and recommend to law societies the recognition of new full-time, part-time and joint degree law school programs. The Committee charged with this role since 1994 is the National Committee on Accreditation.
 - b. Once the National Committee makes its recommendations to the Federation and its member law societies, each of the law societies must determine whether its governing body approves that recommendation.
 - c. This means that once the National Committee on Accreditation does its assessment of the Lakehead proposal and makes its recommendations, the Law Society of Upper Canada will, along with all the other member law societies, be entitled to vote in its Convocation on whether it agrees with that recommendation.
 - d. The National Committee on Accreditation's and law societies' roles are confined to determining whether a law program is such that its graduates will be entitled to enter provincial bar admission programs without having to satisfy any additional requirements.
 - e. Before a new law faculty can be established in Ontario, the Ministry of Training, Colleges and Universities must also give its approval. This is separate and apart from any recommendation from the National Committee on Accreditation and any approval by the Law Society of that recommendation. The Ministry's criteria for approval are not the same as those of the Federation and member law societies.
10. Next the Committee considered the issue of the status of the 1957 requirements (as amended in 1969), which describe the Law Society of Upper Canada's requirements pertaining to the approval of law faculties for the purpose of admission of their graduates to the bar admission course (now licensing process). These requirements have been determined to be out of date and do not reflect a modern, national approach and given that they are under review by a Federation of Law Societies of Canada Task Force and a Law Society of Upper Canada Task Force. The Committee is of the view that commenting on the Lakehead proposal in the context of those requirements would be of

little assistance to Lakehead, the National Committee on Accreditation or the Ministry of Training Colleges and Universities. This is particularly true given that the requirements are likely to change following the reporting of the Task Forces.

11. The Committee has carefully reviewed Lakehead's revised proposal and all the supporting material it received. In the period between its first and its revised proposal, Lakehead sought out an external reviewer, Professor Roderick A. Macdonald, F.R. Scott Professor of Constitutional and Public Law from the Faculty of Law at McGill University. His detailed report, set out in the volume under separate cover, concludes that the proposal is academically sound, that the rationales given for the school's establishment persuasive, that the curriculum design and course proposals are well thought out, that resource issues are carefully considered and that the governance structure appears workable.
12. It is important to note that the Committee has considered the *content* of the proposal, not issues such as whether there is a need for additional law schools in Ontario to meet certain objectives.
13. The Committee is impressed with the work Lakehead has done since its original proposal to flesh out its objectives and the goals and to address issues related to curriculum and resources for the school. The proposal is an important initiative. The proposal appears to the Committee to have sound and persuasive objectives. The Committee is of the view that it is worthy of careful consideration. It believes this view should be communicated to the NCA and the Ministry of Training, Colleges and Universities.
14. The Committee wishes to make two additional comments. The first is to point out that it is not yet known what will emerge from the two Task Forces' work on the approved law degree. Lakehead's proposal as currently described would have to be adapted to conform to any new requirements that emerge from that review. This would apply to all established Canadian common law faculties as well.
15. The second comment relates to the component of Lakehead's proposal that addresses articling positions and its co-operative program. The Committee previously raised concerns with Lakehead about difficulties that have existed in finding articling placements in northern Ontario and elsewhere in the province outside of metropolitan areas. In doing so it made it clear to Lakehead that this issue is not part of any law society criteria relating to program approval, but rather an attempt to impress upon Lakehead the efforts that will be necessary to meet the objectives of sufficient articling and co-op positions in the north for Lakehead's students and the Law Society's continuing concern that insufficient commitments have been obtained to date to implement a co-op program and between 45-55 articling jobs. In expressing this concern, the Committee acknowledges that it is no doubt difficult to obtain commitments when the Faculty has not yet been established. Further, the Committee acknowledges that its concern is not unique to Lakehead, as established Law Faculties will have to consider more significant efforts to assist their students to obtain positions, given the likely shortage of positions in the future.

Excerpt from PD&C Committee Report to Convocation (January 2007)

16. In particular, the Committee notes the following:

- a. It would not appear that Lakehead has engaged in any meaningful discussions with the other law schools or the Council of Law Deans to gain insight into how to ensure the viability of a northern law school. The proposal is very general and basic. In the letter from Neil Gold, Vice-President, Academic, University of Windsor, he discusses the significant changes that have occurred in legal education and the importance of a law school structure that affords students the greatest opportunities for development. He notes:

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

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

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

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

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

PRIVATE PRACTICE REFRESHER PROGRAM

MOTION

16. That Convocation approve,
 - a. the termination of the Private Practice Refresher Program (PPRP); and
 - b. require that lawyer licensees who, for 80 percent or more of the five years immediately preceding the date of their application to enter private practice were not in private practice, and who now intend to practise in firms of five or fewer lawyers be subject to the re-entry review requirements (the practice management review) within 12 months of their entry into private practice; and
 - c. that during the transitional period, those applicants who have already applied and been accepted into the PPRP will be given the option of continuing with the modules and assessments or to being subject to a re-entry review.

Background

17. In September 2001, Convocation approved the introduction of the Private Practice Refresher Program (PPRP) to replace the requalification program. Under the new program member categories were defined, with rights and privileges that flow under each category:
 - Category A: Any member eligible for insurance under the Law Society's insurance plan and who is required to have insurance because he or she engages in the practice of law;
 - Category B: All members who are not in Category A or C;
 - Category C: Retired members
18. Beginning in 2007 a member seeking to change his or her category status from B or C to A was to be entitled to do so unless "for 80 percent or more of the five years immediately preceding the date of the request the member has been a category B member or a category C member"². In such cases the member was to be subject to the PPRP and would be advised which of eight (8) modules he or she would be required to complete. The modules are based on the practice management guidelines that are available to all members on the Law Society's website.
19. The eight modules are:
 - Time Management
 - File Management
 - Financial Management
 - Client Service and Communication
 - Technology
 - Professional Management
 - Personal Management
 - Professional Responsibility

² Under the revised by-laws the PPRP requirement is reflected in By-law 4, ss.3 and 4., but is worded in a different way.

20. A guide was developed at Convocation's direction and with its approval, setting out the principles and factors governing the program and a chart setting out which modules those in specified job categories should be required to complete. A copy of the guide is set out at Appendix 2. Some, but not all, of the modules were assessable. Others were "read only".
21. The program is entirely self-study. Assessments are in the form of open book take home assessments. There is no cost for the program. It is estimated that reviewing each module takes between 3 and 4 hours for a total, if all modules are required, of 32 hours of review.
22. The program went into effect in January 2007. In that year 138 lawyers who had been out of private practice for the requisite period to trigger the PPRP requested a status change. Of those, 48 requested that they be allowed to begin practising before completion of the PPRP modules. These lawyers provided undertakings to practise under supervision and complete the modules within six months. This option is not available to lawyers who wish to enter sole or small firm practice, because supervision is not feasible. The balance of affected lawyers (90) was required to complete the program before returning to practice.
23. Some lawyers who cannot meet the "practise under supervision" prerequisite for providing an undertaking view the program as a barrier to re-entry into the profession. Although it is arguable that a modest degree of planning should minimize the disruption of the program, it is true that there is a different consequence for those entering private practice as sole practitioners or in association than there is for those who return to large firms and no consequence for those who leave large firms and enter sole practice.

Program Evaluation and Quality Assurance Considerations

24. When the Law Society considered a requalification program originally in the 1990s it had done little consideration of quality assurance systems and their role in the regulatory environment. Ongoing quality assurance requirements for those in private practice were not contemplated.
25. As a first attempt at creating ongoing competence requirements the requalification program and its successor, the PPRP, were not designed to do more than provide a "refresher" in areas in which lawyers' skills may have eroded given the passage of time. Neither program was designed to evaluate performance once the lawyer returns to practice nor determine whether the lawyer has absorbed and implements any of the material included in the modules. The assessments are not based on validated performance criteria. The program is effectively no more than a modest CLE program, expanded somewhat by the presence of modest assessments.
26. There are arguably gaps and inconsistencies in who becomes subject to the program, as follows:
 - a. When the program guidelines were adopted, it was not without some opposition or criticism. A subset of the bar, namely clinic lawyers, was particularly concerned that the program unfairly discriminated against them because it suggested by its general requirements that clinic lawyers are not engaged in the practice of law. The criticism was aimed particularly at the requirement to complete some or all of the following modules: time management, financial

management, technology, professional management and professional responsibility modules.

- b. The criticisms went on to note that the PPRP does not apply to lawyers in practice in large law firms who become sole practitioners. These lawyers may never have had to consider certain practice management issues that a sole practitioner must address from the outset and on a regular basis. In response to this criticism the Committee's report noted that Convocation was free to require lawyers moving from one type of private practice to another to undertake the PPRP. To date this has not occurred.

The Law Society continues to receive some criticism of the program's fairness on the grounds set out above.

27. Although the program has only been in operation for one year it has in fact been part of the Law Society's policy landscape for over a decade. As such it is not premature to consider whether it continues to be a relevant and meaningful component of the Law Society's competence mandate or whether other approaches to quality assurance on which the Law Society has focused in recent years are better able to accomplish the Society's competence goals.

Sole and Small Firm Practice

28. Based on the 2007 statistics approximately 85% of those who return to private practice after lengthy absences enter sole or small firm environments. In 2007 88% of newly formed firms were sole practices. The question for consideration is what tools would assist these practitioners to make a successful transition, such that their practices survive and thrive? Moreover, what is the best way for the Law Society to ensure that the public interest is addressed in the process?
29. In June 2006 Convocation approved the introduction of a practice management review program whose goal is to prevent competence deficiencies. Currently the indicia for selection are those in private practice, one to eight years from call to the bar.
30. In recommending the program that Convocation adopted, the then Professional Development, Competence & Admissions Committee was particularly impressed with the role the spot audit program plays in supporting practices and providing key feedback to practitioners, particularly those in sole and small practice. The acceptance of the audit program among those who are audited³ was persuasive that this type of program, properly developed and with a focus on support and education is extremely beneficial.

³ Approximately 1000 audits are conducted per year. Each member who has been audited is surveyed for feedback on the member's view of the audit process, the auditor's conduct and the audit report and the internal control list or guide the member receives. The program has had a consistently high satisfaction rate, continued in 2005 as follows:

- a. 93% found the spot audit process constructive.
- b. 100% found the auditor's conduct to be professional and helpful.
- c. 98% found the audit report to member useful.
- d. 94% found the internal control list helpful.

31. Indeed, the evidence indicates that there is a higher life expectancy for new firms that are audited than those that are not.⁴ In the Committee's report, which Convocation approved, it noted that newly formed firms that receive a spot audit have a significantly increased chance of survival than those that did not. Statistics show that 42% of firms that were not audited would become inactive within 5 years, whereas only 25% of firms that did receive a spot audit would become inactive in the same time period. The Committee's analysis of the spot audit program is set out at Appendix 3.
32. Lawyers who received a practice management review in 2007 were asked to evaluate the experience. Approximately 50% of them (75 lawyers) responded. Satisfaction rates on the evaluative criteria have been consistently high as follows:
- | | | |
|----|------------------------------------------------------------|------|
| a. | usefulness of Practice Management Report | 98% |
| b. | usefulness of the Basic Management Checklist | 94% |
| c. | Practice Management Review was value added | 92% |
| d. | Reviewer's Conduct (very professional, courteous, helpful) | 100% |
33. The Law Society has recently completed a study aimed at developing strategies to keep women in the profession in private practice. Focus groups and interviews were conducted. The resulting report on that process noted,
- For many, business planning and client development pose key challenges. Many have opted for sole practice after leaving a large or medium sized firm due to family pressures. In essence, they did not train for, and plan to be, a sole practitioner but opted for it after being disillusioned with large and medium firms. Many left large and medium firms due to systemic gender discrimination and due to the inability to maintain a life/work balance.
- Rated of equal importance to supports for client development are programs that assist women in business planning. While some small and sole practitioners had business training, most did not. They were running their practices on an ad-hoc basis. Both business development and administrative experience was weak. For many it is setting up the systems and processes that are required to make the practice run from computer software to reporting requirements.⁵
34. The report is redolent with comments about participants' perception that they need guidance and support in managing the transition to sole practice and its ongoing pressures.
35. The Law Society's Sole and Small Firm Task Force Report clearly identified the numerous challenges that face lawyers who work in these environments, often without training in the business side of practising law. The question for consideration is whether the current PPRP plays a meaningful role in supporting this transition or has only a limited benefit.

⁴ The data comparison for this information was between the 5 years prior to the Spot Audit program and the first 5 years with an audit program).

⁵ Report of Gandulf Group on Retaining Women in Private Practice, pp. 15-16 and 22.

36. While the practice management guideline modules that are used in the PPRP may be useful reference tools for those who apply them, whether in the program or otherwise, it is highly unlikely that the completion of the PPRP reading program has a direct and measurable impact on performance in the practice environment. It is questionable how much long term positive impact the program will have on those who go through it. Given that quality assurance programs are those whose impact can be measured, the PPRP is not a quality assurance program.
37. The reasons for which Convocation adopted the practice management review program in June 2006 can easily be applied to the category of lawyers who are currently subject to the PPRP. Given the stresses this group faces and the challenges to successfully maintaining their practices, a practice review within the first year of their return to practice may be the most valuable guidance the Law Society can provide both for the lawyer and in the public interest.
38. The Practice Management Review has an educational and preventive component. It would educate lawyers who re-enter private practice in sole/small firms on the expected minimum professional competence standards, and the seasoned lawyers conducting the reviews would advise the new practitioners on practice management changes to be made before they result in serious deficiencies leading to complaints and negligence claims.

To whom would the practice review requirement apply

39. Currently, the PPRP applies regardless of in what practice environment the lawyer licensee will work. The fact that under the current PPRP those returning to larger firm environments in which they will be supervised or which have practice management infrastructures can return immediately subject to an undertaking to complete the program within a given time frame, suggests that this practice environment is viewed as a lower risk than the sole practice or other environment in which the lawyer will not be supervised or which, because of size, does not have a practice management infrastructure.
40. The Committee has considered the applicability of the practice management review program to this group and is strongly of the view that the limited available resources should be spent where they can do the most good. For that reason the Committee recommends that only those going into sole practice or small firm practice in firms of five or fewer lawyers should be subject to the review. This would mean that those lawyers returning after a significant absence, but who will be in a supervised setting, such as a large law firm, would not be subject to the review.
41. While the Committee understands that some may take from this recommendation that sole and small firm lawyers are treated more harshly than those returning to larger firms, this perception misses the point of the review, which is intended to assist where it can do the most good and enhance the new small practice's ability to survive and thrive. The Sole Practitioner and Small Firm Task Force emphasized the importance of tools and supports for sole and small firm practitioners who are most vulnerable to the stress and demands of practice.
42. The benefit of this approach is that it focuses resources where they are most needed and best applied, allows the reviews to happen more quickly because there are fewer

people in the category and allows for the further development of expertise in certain practice profiles. If there were concern in the future that lawyers returning to firms of more than five lawyers were leaving before a year was up and avoided the review it might be possible to require such lawyers to remain under supervision for a minimum of 12 months. If they were to leave the supervised environment before that period were up they could then become subject to the practice review if their new practice environment met the indicia.

43. Regardless of which members are subject to the practice management review it would continue to be worthwhile to provide the materials currently provided in the PPRP to members changing their status as an educational tool and guide that would assist them in setting up their practices.

Supportive Emphasis

44. The practice management review program is primarily a preventive program. Like the spot audit program its main purpose and indeed success is in highlighting for those reviewed the strengths and areas for improvement in their practices. At the same time participants are and must be aware that if reviewers determine that aspects of the practice place the public at risk or evoke conduct, competence or capacity issues they must address them. It is to the credit of the programs that their supportive focus is paramount.
45. The Committee is of the view that this supportive component can be even further enhanced for the PPRP lawyers who would become subject to the review as a replacement for the PPRP. This can be done by,
 - a. an effective communication piece that describes the elimination of the PPRP and the applicability of a "re-entry review" for this group; and
 - b. providing a package of information and materials to those who apply the change their status.
46. The package of materials would include,
 - a. a cover letter explaining the nature and benefits of the practice management review program;
 - b. the current PPRP modules (for information);
 - c. the information on all available practicing resources;
 - d. the self-assessment tool;
 - e. information on mentoring;
 - f. information on the practice management help line;
 - g. the bookkeeping guide; and
 - h. (when it is completed) the "opening your practice guide".

47. The Committee also discussed whether it would be feasible for the Law Society to waive the first year's fee for participation in the Lawyer Referral Program for this group of practitioners. Although the Committee was interested in this idea it agreed that the issue would benefit from a more broadly based assessment taking into account, other groups that might be included, the potential impact on the program of such changes, and the operational issues. This would likely involve input from other Committees and operational staff. The Committee proposes to return to the issue in the future.

Transitional Provision

48. On the issue of a transitional approach for the program if Convocation approves this proposal, the Committee recommends that those applicants who have already applied and been accepted into the PPRP would be given the option of either continuing with the modules and assessments or to having a re-entry review scheduled. A communication plan to the profession will be developed to address the change in the process.

Budgetary Implications

49. Reviews would not be scheduled until six months following entry into a small or sole firm practice environment in order to allow the lawyers time to establish their processes and begin to receive clients and files (otherwise there is little on which to provide input).
50. Given that, and the timing of this proposal to Convocation, if Convocation approves this proposal the first reviews would not be scheduled until the end of 2008 and into 2009.
51. For the balance of 2008 the Professional Development and Competence Department would staff the practice management review process with existing personnel. For 2009, PD&C will be requesting additional staff in the 2009 budget to support the ongoing work in this area.
52. Assuming that the number of applicants re-entering practice after 5 years remains relatively stable at 138 per year and of that group of 138, approximately 117 re-entered private practice in sole or small firms (five or fewer lawyers), then to complete Practice Management Reviews on lawyers re-entering sole and small firm practices would require an expenditure of \$200,000 per year (direct and indirect costs). It is estimated that the current cost of the PPRP is approximately 50% of what the practice management reviews that would replace it would cost.

Appendix 3

Excerpt from PDC&A Report to Convocation – June 22, 2006 respecting the spot audit program

The Committee believes these survey findings to be extremely important to Convocation's consideration of the Committee's practice review proposal for the following reasons:

- d. Considered in the abstract, members of a profession can pre-judge all quality assurance programs to be any and all of bothersome, intrusive, draconian, inflexible, arbitrary, unnecessary, over-inclusive, and unevenly applied. Depending upon the nature of a program some or all of these descriptions could be accurate. But, in examining the success of the Law Society's spot audit program, the Committee is convinced that a properly designed practice

management review program can be described in exactly the opposite terms and can become a truly useful component of a lawyer's professional development and education, while at the same time serving the public interest.

- e. Ninety-four percent of all law firms in Ontario are made up of five or fewer lawyers. This means that inevitably, these sole and small firm practices will make up a proportion of the firms that spot auditors visit each year. The Sole Practitioner and Small Firm Task Force Report identified multiple pressures on such practitioners, among them concerns that administrative burdens and requirements have a disproportionate impact on this group. The Committee was therefore impressed by the fact that lawyers in sole and small firm practice, who are clearly included in the survey results, when asked about the spot audit process, give it such a high rating.
- f. Lawyers benefit from receiving both generic practice tools, such as the internal control list, and personal guidance, such as the audit report and feedback from the auditor. Given the survey results, this also means that the Law Society is capable of developing an effective structure for and operating a required program, such as the audit program, in a manner that does not attract member suspicion and is viewed in a positive light.

There are a number of other features of the spot audit program that the Committee believes are important to note:

- g. When the program began in 1998 members were largely chosen for audits, randomly. It became clear to those administering the program that such an approach might not be the most effective way to proceed, since often audits were conducted on practices that were very low risk or had little activity in trust accounts. This also meant that resources were not being allocated as effectively as possible. In 2002 the program introduced a risk based approach in its selection of members, using a variety of indicia to identify and select potentially higher risk practices. Randomly chosen audits went from 63% of the audits to 23%. The benefits of this approach have been evident in a number of areas discussed below and at Appendix 5.¹
- h. One of the indicia the spot audit program has used since 2000 is newly formed sole practices. A comparison of sole practices created during the five years leading to the implementation of this selection approach in 2000 and the five years from 2000-2004 where spot audits were conducted on new sole practices illustrates the significant difference in the life expectancy of these types of firms. The statistics demonstrate that 42% of sole practices created in 1995 would become inactive within five years. Only 25% of those spot audited in 2000 would become inactive within five years.
- i. An examination of the nature of complaints against members from 2001 to 2004 shows a decline in the percentage of financial-related complaints. Similarly Compensation Fund claims paid have declined since the spot audit program was introduced. The Committee is aware that there is no empirical evidence to link

¹ In the coming years it is likely the mix will level out somewhat, reflecting the reduction in deficiencies identified during audits.

these trends directly to the spot audit program, but anecdotal evidence suggests there is a link. The survey results point to a connection as well, at least in so far as those members audited believe that the audits make a positive difference.

- j. The spot audit program's available audit dispositions are a continuum of options including, at the far end of the scale referral to professional regulation for a formal investigation. The continuum of options are,
 - i. Close the audit file;
 - ii. Send a follow-up letter (monitoring);
 - iii. Schedule a re-audit;
 - iv. Require the member to provide an undertaking to remedy deficiencies within a given time;
 - v. Refer the member to focused practice review for remedial assistance with the practice;
 - vi. Refer the member to Professional Regulation for a formal investigation.

In 2001 39% of audits were "closed" after the first visit. In 2005 the percentage had risen to over 50%. The number of files with significant deficiencies also decreased from just fewer than 50% in 2001 to 35% in 2005. In 2005, of 1000 audits, only 21 files (2.1%) were referred to practice review and 44 (4.4%) to professional regulation.

It is important to note that although members understand that this continuum of options includes a possible focused practice review or discipline investigation in extreme circumstances, they continue to evaluate the program positively and accept that its overwhelming priority is educational not disciplinary.

Overall, the spot audit program's record is an important example of how a quality assurance measure can work effectively and fairly. The Committee believes that the features described above can be successfully adapted to a practice management review program.

PROPOSED AMENDMENTS TO BY-LAWS 4 AND 7.1 RESPECTING LAW STUDENTS WORKING IN FIRMS DURING THE SUMMER

MOTION

- 53. That Convocation approve amendments to By-laws 4 and 7.1 as set out in paragraphs 60 and 62 below.
- 54. The formal motion amending these by-laws is found at TAB 3 of the Convocation agenda.

Background

- 55. Until relatively recently, law student summer employment in large firms was not a significant feature in the legal education landscape. For some years now, however, it has become increasingly common for law firms to hire summer law students following both first and second year law school. This summer hiring is seen as a way to develop

the talent that will eventually become articling students and possibly associates after call to the bar.

56. From a regulatory perspective, such students are under the supervision of lawyers in the law firms in which they are employed. As the numbers of summer students has increased it has become important for the Law Society to ensure that its regulation includes reference to summer students.
57. Prior to the amendments to the *Law Society Act*, summer students were able to appear on court matters in which agents could appear, subject to the permission of the court. As a result of the amendments to the Act summer students can no longer appear as agents. This has created an inadvertent gap that undermines the educational and practical experience of these law students.
58. To fill the inadvertent gap and restore summer students rights of appearance to what they were prior to amendments to the Act, amendments are required to section 34 of By-law 4 and By-law 7.1
59. Section 34 of By-law 4 currently reads:

Student under articles of clerkship

34. A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

60. It is proposed that section 34 be amended to read as follows (subsections (2) and (3) are new and will confirm the role of summer students):

Student under articles of clerkship

34. (1) A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

Other law student

- (2) *A law student who is employed by a licensee who holds a Class L1 licence or by a law firm may, without a licence, provide legal services in Ontario through the licensee's professional business or through the law firm under the direct supervision of the licensee or a licensee who holds a Class L1 licence who is part of the law firm.*

Interpretation: "law student"

- (3) *For the purposes of subsection (2), "law student" means an individual who is enrolled in a degree program at an accredited law school.*

61. Section 2 of By-law 7.1 (Operational Obligations and Responsibilities) currently reads:

Application: provision of legal services by student

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

62. It is proposed that this section be amended to read as follows (subsection (2) is new and will deal with summer students):

Application: provision of legal services by student

2. (1) This Part does not apply to the provision of legal services by a student under the supervision of a licensee pursuant to subsection 34 (1) of By-Law 4.

Application: provision of legal services by law student

(2) *This Part, subject to necessary modifications, does apply to the provision of legal services by a law student under the supervision of a licensee pursuant to subsection 34 (2) of By-Law 4.*

63. As other Committee reports are also addressing proposed amendments to By-laws 4 and 7.1, for ease of reference the formal motion amending these by-laws in both English and French is found under separate cover at TAB 3 of the Convocation agenda.

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

(1) Copy of a chart setting out Private Practice Refresher Program Modules.

(Appendix 2, pages 23 – 26)

Re: Lakehead University Law School Proposal

It was moved by Ms. Pawlitzka, seconded by Ms. Hare, that Convocation approve the following motion:

The Law Society recognizes that Lakehead University's proposal for the establishment of a Faculty of Law must be considered by the National Committee on Accreditation (a subcommittee of the Federation of Law Societies of Canada that will assess the proposal and make recommendations), and by the Ontario Ministry of Training, Colleges and Universities.

Convocation wishes to express to those bodies its view that the proposal is an important initiative. The proposal appears to have sound and persuasive objectives. It is worthy of careful consideration.

That Convocation approve providing this Report to the National Committee on Accreditation and the Ministry of Training, Colleges and Universities for their information.

Carried

Re: Amendments to By-Laws 4 and 7.1 Respecting Law Students Working in Firms During the Summer

See separate motion.

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Report.

Report to Convocation
April 24th, 2008

Paralegal Standing Committee

Committee Members
Paul Dray, Chair
Bonnie Warkentin Vice-Chair
Marion Boyd
James R. Caskey
Seymour Epstein
Michelle L. Haigh
Tom Heintzman
Paul Henderson
Brian Lawrie
Douglas Lewis
Margaret Louter
Stephen Parker
Cathy Strosberg

Purpose of Report: Decision
Information

Prepared by the Policy Secretariat
Julia Bass 416 947 5228

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For Information.....TAB C

Model Rule on Client Identification

Amendments to By-law 8 - Information

Recent Decisions: *R. v Roman Toutissani and Re Dell*

Update on the regulation of immigration consultants

COMMITTEE PROCESS

1. The Committee met on April 10th, 2008. Committee members present were Paul Dray (Chair), Bonnie Warkentin (Vice-Chair), Marion Boyd, James Caskey (by telephone), Michelle Haigh, Tom Heintzman, Paul Henderson (by telephone), Brian Lawrie (by telephone), Doug Lewis, Margaret Louter (by telephone), Stephen Parker and Cathy Strosberg. Staff members in attendance were Terry Knott, Diana Miles, Zeynep Onen, Michael Elliot, Elliot Spears, Sybila Valdivieso, Sheena Weir, Lisa Mallia, Jim Varro and Julia Bass.

FOR DECISION

AMENDMENTS TO BY-LAW 7.1: SUPERVISION RULES FOR PARALEGALS

Motion

1. That Convocation amend By-law 7.1 as shown at Appendix 1. The formal motion amending the By-law is found at TAB 3.

Background

2. On October 25th, 2007, Convocation passed By-law 7.1, which governs the supervision and delegation of tasks by lawyers to others. This includes such matters as scheduling dates and other administrative aspects of a proceeding.
3. It has since been requested that comparable provisions be extended to paralegals. The necessary amendments are shown at Appendix 1. The by-law as it would read with these amendments is attached at Appendix 2. (Since several other committees are moving by-law amendments, the formal motion has been consolidated).
4. The amendment specifies that the licensee must have 'effective control' over the work of the supervised person and must assume complete professional responsibility for the work. Where the licensee gives the supervised person express instruction and authorization, the supervised person may act on behalf of the licensee in respect of scheduling or other related routine administrative matters before an adjudicative body.

The Committee's Deliberations

5. This amendment would be of particular assistance to licensees who direct their staff to set dates, request information and perform other administrative tasks. It will also permit paralegal college students to perform routine tasks under the supervision of paralegal licensees during their field placements. The Committee was of the view that the proposed by-law amendments should be approved.

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

BY-LAW 7.1
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 24, 2008

MOVED BY

SECONDED BY

THAT By-Law 7.1 [Operational Obligations and Responsibilities], made by Convocation on October 25, 2007 and amended on November 22, 2007 and January 24, 2008 be further amended as follows:

1. Subsection 1 (1) of By-Law 7.1 is struck out and the following substituted:

Interpretation

- (1) In this Part, “non-licensee” means an individual who,
 - (a) in the case of the assignment of tasks and functions by a licensee who holds a Class L1 licence, is not a licensee who holds a Class L1 licence and, in the case of the assignment of tasks and functions by a licensee who holds a Class P1 licence, is not a licensee;
 - (b) is engaged by a licensee to provide her or his services to the licensee; and
 - (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

2. Section 2 of the By-Law is struck out and the following substituted:

Application: provision of legal services by student

2. (1) This Part does not apply to the provision of legal services by a student under the supervision of a licensee pursuant to subsection 34 (1) of By-Law 4.

Application: provision of legal services by law student

- (2) This Part, subject to necessary modifications, does apply to the provision of legal services by a law student under the supervision of a licensee pursuant to subsection 34 (2) of By-Law 4.

3. Section 3 of the By-Law is amended by striking out “practice of law” wherever it occurs and substituting “practice of law or provision of legal services”.

4. Subsection 4 (1) of the By-Law is amended by striking out “practice of law” wherever it occurs and substituting “practice of law or provision of legal services.

6. Section 6 of the By-Law is struck out and the following substituted:

Tasks and functions that may not be assigned: general

6. (1) A licensee shall not permit a non-licensee,
- (a) to give the licensee’s client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the Law Society Act to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature; or
 - (e) to forward to the licensee’s client any document, other than a routine document, that has not been previously reviewed by the licensee.

Tasks and functions that may not be assigned by Class L1 licensee

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee’s personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

Appendix 2

BY-LAW 7.1 AS AMENDED BY PROPOSED AMENDMENTS

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

Interpretation

1. (1) In this Part,
 “non-licensee” means an individual who,

- (a) in the case of the assignment of tasks and functions by a licensee who holds a Class L1 licence, is not a licensee who holds a Class L1 licence and, in the case of the assignment of tasks and functions by a licensee who holds a Class P1 licence, is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual's provision of services to the licensee.

Interpretation: "effective control"

(2) For the purposes of subsection (1), a licensee has effective control over an individual's provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society's rules of professional conduct and the Society's policies and guidelines.

PART II

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Application: provision of legal services by student

2. (1) This Part does not apply to the provision of legal services by a student under the supervision of a licensee pursuant to subsection 34 (1) of By-Law 4.

Application: provision of legal services by law student

(2) This Part, subject to necessary modifications, does apply to the provision of legal services by a law student under the supervision of a licensee pursuant to subsection 34 (2) of By-Law 4.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law or provision of legal services in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law or provision of legal services in relation to the affairs of each client.

- (2) Without limiting the generality of subsection (1),
 - (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
 - (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
 - (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
 - (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
 - (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;
 - (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
 - (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
 - (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,

- (a) to give or accept an undertaking on behalf of the licensee;
- (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
- (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. (1) A licensee shall not permit a non licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the Law Society Act to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature; or
 - (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee.

Tasks and functions that may not be assigned by Class L1 licensee

- (2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

PART III

COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
- (a) the letter is in relation to the affairs of the licensee's client;
 - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - (d) the letter is on the licensee's business letterhead; and
 - (e) the letter is signed by the licensee.

PROPOSED AMENDMENTS TO BY-LAWS 4 AND 5 - ANNUAL FEE

Motion

6. That Convocation amend By-laws 4 and 5 as shown at Appendix 4. The formal motion is found at TAB 3.

Background

7. By-law 5 – Annual Fee, currently provides for exemption from the annual fee for lawyers who have retired – subsection 4 (1) – or are incapacitated – subsection 4 (2). The relevant excerpt from By-law 5 is attached at Appendix 3.
8. It is proposed that similar provisions be created for paralegals. The proposed amendments to By-law 4 and 5 are attached at Appendix 4. The relevant sections as they would read as amended are attached at Appendix 5. (Since several other committees are moving by-law amendments, the formal motion has been consolidated).
9. These amendments would provide that paralegal licensees who are over 65 years of age or are incapacitated may apply to be exempted from payment of the annual fee.
10. By-law 4 provides that retired lawyers may provide *pro bono* services through a programme registered or approved by Pro Bono Law Ontario, without paying annual fees to the Law Society. It may be appropriate to consider a similar provision for paralegals when such *pro bono* programmes have been established.

The Committee's Deliberations

11. The Committee was of the view that the proposed by-law amendments should be approved.

Appendix 3

By-Law 5 - Excerpt

Made: May 1, 2007

Amended: June 28, 2007

Revoked and Replaced: January 24, 2008

ANNUAL FEE

EXEMPTION FROM REQUIREMENT TO PAY ANNUAL FEE

Application for exemption from payment of annual fee: over sixty-five years of age

4. (1) A licensee who is over sixty-five years of age and practises law only as described in subsection 3 (2) of By-Law 4 [Licensing] may apply to the Society for an exemption from payment of an annual fee.

Same: incapacity

(2) A licensee who holds a Class L1 licence and who is incapacitated within the meaning of the Act may apply to the Society for an exemption from payment of an annual fee.

Application form

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

Consideration of application

(4) The Society shall consider every application made under subsections (1) and (2) and if satisfied that the requirements described subsection (1) or (2) have been met, the Society shall approve the application.

Effective date of exemption

(5) A licensee whose application is approved is exempt from payment of the annual fee beginning on the first day of the first month after the month in which the licensee submits an application form completed to the satisfaction of the Society.

Exemption from payment of annual fee: practising law for fifty years

(6) A licensee who has practised law in Ontario as a barrister, as a solicitor or as a barrister and solicitor for a period of fifty years is exempt from payment of the annual fee.

Period of fifty years

(7) The following periods of time may be counted towards the period of fifty years required by subsection (6):

1. A period of time during which the licensee's licence is in abeyance under section 31 of the Act.
2. A period of time during which the licensee's practice of law is interrupted by war service.
3. Subject to subsection (8), a period of time during which the licensee's licence is suspended for failure to pay a fee or levy.
4. In the absolute discretion of the Professional Development and Competence Committee, a period of time during which the licensee's licence is suspended for a reason other than for failure to pay a fee or levy.

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

(8) Subject to subsection (9), the total amount of time that may be counted under paragraph 3 of subsection (7) towards the period of fifty years required by subsection (6) is one year.

Period of suspension for non-payment: exception to limit

(9) In appropriate circumstances, the Professional Development and Competence Committee may permit a period of time in excess of one year to be counted under paragraph 3 of subsection (7) towards the fifty years required under subsection (6).

Exercise of powers by Committee

(10) The performance of any duty, or the exercise of any power, given to the Professional Development and Competence Committee under this section is not subject to the approval of Convocation.

Appendix 4

EXCERPTS FROM BY-LAWS 4 AND 5 AS AMENDEDBy-law 4 - new section

Terms, *etc.*

Over 65 years

6.1 (1) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1.1) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Incapacity

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Duration of terms, *etc.*

(3) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 6.2.

Cancellation of terms, *etc.*

6.2 A licensee who is subject to a term, condition, limitation or restriction under section 6.1 may apply to the Society to have the term, condition, limitation or restriction cancelled and the Society may cancel the term, condition, limitation or restriction.

By-Law 5 – Excerpt – as amended

ANNUAL FEE

EXEMPTION FROM REQUIREMENT TO PAY ANNUAL FEE

Application for exemption from payment of annual fee: over sixty-five years of age

4. (1) A licensee who is over sixty-five years of age and practises law only as described in subsection 3 (2) of By-Law 4 [Licensing] may apply to the Society for an exemption from payment of an annual fee.

Same

(1.1) A licensee who is over sixty-five years of age and does not provide any legal services may apply to the Society for an exemption from payment of the annual fee.

Same: incapacity

(2) A licensee who is incapacitated within the meaning of the Act may apply to the Society for an exemption from payment of an annual fee.

Application form

(3) An application under subsection (1), (1.1) or (2) shall be in a form provided by the Society.

Consideration of application

(4) The Society shall consider every application made under subsection (1), (1.1) or (2) and, if satisfied that the requirements described in subsection (1), (1.1) or (2), as the case may be, are met, the Society shall approve the application.

Appendix 5
1-aes

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

BY-LAW 4
[LICENSING]

AND

BY-LAW 5
[ANNUAL FEE]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON APRIL 24, 2008

MOVED BY

SECONDED BY

THAT By-Law 4, made by Convocation on May 1, 2007 and amended by Convocation on May 25, 2007, June 28, 2007, September 20, 2007 and January 28, 2008, and By-Law 5, made by Convocation on January 28, 2008, be amended as follows:

1. By-Law 4 is amended by adding the following sections:

Terms, *etc.*

Over 65 years

6.1 (1) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1.1) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Incapacity

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

Duration of terms, *etc.*

(3) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 6.2.

Cancellation of terms, *etc.*

6.2 A licensee who is subject to a term, condition, limitation or restriction under section 6.1 may apply to the Society to have the term, condition, limitation or restriction cancelled and the Society may cancel the term, condition, limitation or restriction.

2. Section 4 of By-Law 5 is amended by adding the following subsection:

Same

(1.1) A licensee who is over sixty-five years of age and does not provide any legal services may apply to the Society for an exemption from payment of the annual fee.

3. Subsection 4 (2) of By-Law 5 is amended by striking out “who holds a Class L1 licence and”.

4. Subsection 4 (3) of By-Law 5 is amended by adding “, (1.1) or (2)” after “subsection (1)”.

5. Subsection 4 (4) of By-Law 5 is struck out and the following substituted:

Consideration of application

(4) The Society shall consider every application made under subsection (1), (1.1) or (2) and, if satisfied that the requirements described in subsection (1), (1.1) or (2), as the case may be, are met, the Society shall approve the application.

FOR INFORMATION

PROPOSED AMENDMENTS TO BY-LAW 8 - INFORMATION

12. The Committee approved the report on proposed amendments to By-law 8 submitted by the Professional Regulation Committee. The motion on this issue is being moved by the Professional Regulation Committee on behalf of both committees.

MODEL RULE ON CLIENT IDENTIFICATION

13. The Committee approved the report on the model rule on client identification submitted by the Professional Regulation Committee. The motion on this issue is being moved by the Professional Regulation Committee on behalf of both committees.

RECENT DECISIONS: *R. V. ROMAN TOUTISSANI*

14. On March 26th, Justice J. Casey of the Ontario Court of Justice released his decision in the case of *R. v. Roman Toutissani*, on an application for an order removing Mr Toutissani's unlicensed representative. Mr Toutissani was charged with offences under the *Immigration Act*, and the Crown chose to proceed by way of summary conviction.
15. The agent had argued that the *Law Society Act* licensing provisions contradicted the sections of the *Criminal Code* permitting agents to appear and were thereby rendered inoperative by the paramountcy doctrine. Justice Casey held that there was no conflict between the federal and provincial provisions since it is possible to comply with both, such that paramountcy is not in issue. Accordingly the unlicensed agent was not entitled to appear. A copy of the case is attached at Appendix 6.

RECENT DECISIONS: OMB DECISION RE DELL

16. On February 26th, Ontario Municipal Board member S.W. Lee released a decision on a motion challenging the ability of a Mr Greg Dell to represent persons other than himself at a hearing. Mr Lee found that the Board should not function as an 'enforcer' for the Law Society and that insufficient evidence had been presented as to whether Mr Dell might be in an exempted category. The Board also adopted an interpretation of subsection 23 (3) of the *Statutory Powers Procedure Act* with which the Law Society disagrees. On the basis of this reasoning, Mr Dell was permitted to appear. The case is attached at Appendix 7.
17. The case may lack precedential weight, as it appears that Mr Dell was representing himself and may have been exempt under By-law 4.

UPDATE ON THE REGULATION OF IMMIGRATION CONSULTANTS

18. A letter from Brian Goodman, the Chairperson of the Immigration and Refugee Board, is attached at Appendix 8.
19. The House of Commons Standing Committee on Citizenship and Immigration is holding hearings across Canada on a number of topics including the regulation of immigration consultants. The meeting in Toronto was on April 9, 2008. The CEO made a presentation on behalf of the Law Society. The announcement of the hearings, the Law Society's submission and some media coverage are attached at Appendix 9.
20. The Law Society's legal challenge to the CSIC regulations is currently under appeal, and is scheduled to be heard in the Federal Court of Appeal in June.

For information contact:
Malcolm Heins, Chief Executive Officer (416) 947-3309
Sheena Weir, Manager, Government Relations (416) 947-3338

1. My name is Malcolm Heins. I am Chief Executive Officer of the Law Society of Upper Canada and I am here today to give you our perspective on the attempted regulation of immigration consultants by the Canadian Society of Immigration Consultants.
2. The Law Society of Upper Canada, founded in 1797, is Canada's oldest regulating authority. The Law Society is created by statute and is responsible to the Province of Ontario for the regulation of legal service providers in the public interest. Today, the Law Society licenses forty thousand lawyers and paralegals.
3. CSIC was the creation of Citizenship and Immigration Canada, even though it is a private corporation. Citizenship and Immigration agreed to fund CSIC for its first two years and to amend the Immigration and Refugee Protection Regulations so as to recognize only its members as persons who could, together with lawyers regulated by Canadian law societies or notaries regulated by the Chambre des Notaries, represent individuals in immigration proceedings.
4. The proposed regulations implementing this scheme were pre-published in the Canada Gazette on December 13th, 2003 together with a regulatory impact statement. It was stated that the purpose of the regulations was to prescribe who may or may not, for a fee, represent, advise or consult with a person who is the subject of an immigration or refugee proceeding or application before the Minister, an officer or the Immigration and Refugee Board.
5. The Law Society expressed its concerns about the proposed regulations in a letter dated January 12, 2004. Despite our concerns, and the concerns of other legal organizations and others, the Regulations were enacted by way of an Order in Council on March 30, 2004.
6. I wish to disclose that as a consequence of our concerns, the Law Society brought an application before the Federal Court in 2005 for a declaration that the Regulations were contrary to law, that they created a delegation that is not statutorily authorized and exceeded the scope of the regulation-making authority conferred upon the Governor-in-Council in the Immigration and Refugee Protection Act, S.C. 2001, c.27 and that they were discriminatory. This action is currently before the Federal Court of Appeal.
7. I don't wish to discuss the details of the case here today but rather focus on the outcome of what we believe was a well-intentioned but ill-conceived attempt at the regulation of immigration consultants. The problem with CSIC is that it is not an independent statutory regulatory body created with authority to accredit and license. While a person must join CSIC to appear before the IRB, there is no need to do so to provide advice to an unsuspecting client. Unlike the Law Society, it is not authorized to prosecute unauthorized practice, to investigate, to enter business premises of the person under investigation and require the production of documents, including client files.
8. The Law Society's concerns about CSIC, and the failure of the regulations to create a comprehensive statutory regulatory model, are spelled out in my letter of January 12,

2004 addressed to the Department of Citizenship and Immigration and copied to the Minister of Immigration and the Minister of Justice. I have attached a copy for your reference. The concerns about the ability of CSIC to be effective, without the appropriate statutory mandate are, in my view, largely responsible for the continuing concerns with respect to abuses visited on unsuspecting immigrants and refugees by unregulated consultants. This is not a criticism of CSIC per se but rather its lack of statutory authority. As a private corporation, CSIC is only able to regulate those individuals who choose to join it. The activities of those individuals who do not join CSIC and do not represent someone for a fee are outside its authority.

9. If you want to be serious about regulating this area of activity, and better protect the public, it would be our suggestion that direction be given that a statutory regulatory body be created in conjunction with the provincial legal regulatory bodies, so that all activities in relation to immigration can be regulated. Without such a course of action, the present problems associated with unscrupulous consultants will persist.

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

- (1) Copy of the *R. v. Roman Toutissani* case. (Appendix 6, pages 20 – 37)
- (2) Copy of the OMB Decision re Dell. (Appendix 7, pages 38 – 46)
- (3) Copy of a letter from Brian Goodman, Chairperson, Immigration and Refugee Board dated January 16, 2008 re: Ontario Paralegals Representing Persons before the Immigration and Refugee Board of Canada together with a copy the Treasurer's (Gavin MacKenzie) reply dated January 23, 2008. (Appendix 8, pages 47 – 49)
- (4) Copy of an announcement of hearings held by the House of Commons Standing Committee on Citizenship and Immigration. (Appendix 9, pages 50 – 52)

Re: Amendments to By-Law 7.1: Supervision Rules for Paralegals

See separate motion.

Re: Amendments to By-Laws 4 and 5: Exemptions from Annual Fee

See separate motion.

Items for Information

- Model Rule on Client Identification
- Amendments to By-Law 8 – Information
- Recent Decisions: *R. v. Roman Toutissani* and *Dell*
- Update on the Regulation of Immigration Consultants

MOTION – AMENDMENTS TO BY-LAWS 4, 5, 7.1, 8 and 11

It was moved by Mr. Ruby, seconded by Mr. Henderson, that By-Laws 4, 5, 7.1, 8 and 11 (English and French versions) be amended as set out in the motion distributed under separate cover.

Carried

THAT the By-Laws, made by Convocation under subsections 62 (0.1) and (1) of the *Law Society Act*, in force immediately before the making of this motion, be amended as follows:

BY-LAW 4
[LICENSING]

1. By-Law 4 is amended by adding the following sections:

Terms, *etc.*

Conditions

Over 65 years

Plus de 65 ans

6.1 (1) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (1.1) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

6.1 (1) Il est interdit aux titulaires de permis qui satisfont aux conditions d'exemption de la cotisation annuelle énoncées au paragraphe 4 (1.1) du Règlement administratif n° 5 [Cotisation annuelle] de fournir des services juridiques en Ontario.

Incapacity

Incapacité

(2) A licensee who is granted an exemption from payment of the annual fee by meeting the requirements described in subsection 4 (2) of By-Law 5 [Annual Fee] is prohibited from providing legal services in Ontario.

(2) Il est interdit aux titulaires de permis qui satisfont aux conditions d'exemption de la cotisation annuelle énoncées au paragraphe 4 (2) du Règlement administratif n° 5 [Cotisation annuelle] de fournir des services juridiques en Ontario.

Duration of terms, *etc.*

Durée des dispositions

(3) A term, condition, limitation or restriction imposed on a licensee under this section remains in effect until it is cancelled under section 6.2.

(3) Les conditions ou restrictions imposées aux titulaires de permis en vertu du présent article demeurent en vigueur jusqu'à leur annulation en vertu de l'article 6.2.

Cancellation of terms, *etc.*

Annulation des dispositions

6.2 A licensee who is subject to a term, condition, limitation or restriction under section 6.1 may apply to the Society to have the term, condition, limitation or restriction cancelled and the Society may cancel the term, condition, limitation or restriction.

6.2 Les titulaires de permis qui sont assujettis à des conditions ou à des restrictions en vertu de l'article 6.1 peuvent s'adresser au Barreau pour faire annuler ces conditions ou restrictions et le Barreau peut acquiescer à cette demande.

2. Section 34 of By-Law 4 is struck out and the following substituted:

Student under articles of clerkship

34. (1) A student may, without a licence, provide legal services in Ontario under the direct supervision of a licensee who holds a Class L1 licence who is approved by the Society.

Other law student

(2) A law student who is employed by a licensee who holds a Class L1 licence or by a law firm may, without a licence, provide legal services in Ontario through the licensee's professional business or through the law firm under the direct supervision of the licensee or a licensee who holds a Class L1 licence who is part of the law firm.

Interpretation: "law student"

(3) For the purposes of subsection (2), "law student" means an individual who is enrolled in a degree program at an accredited law school.

Stagiaires

34. (1) Sans permis, un ou une stagiaire peut fournir des services juridiques en Ontario sous la surveillance immédiate d'un ou d'une titulaire de permis de la catégorie L1 agréé(e) par le Barreau.

Autres étudiants en droit

(2) Sans permis, un étudiant ou une étudiante en droit engagé(e) par un ou une titulaire de permis de la catégorie L1 ou par un cabinet peut fournir des services juridiques en Ontario par l'entremise du cabinet exploité par le ou la titulaire de permis ou par ledit cabinet sous la surveillance immédiate du ou de la titulaire de permis ou d'un ou d'une titulaire de permis de la catégorie L1 qui fait partie du cabinet.

Interprétation : « étudiant en droit »

(3) Aux fins du paragraphe (2), « étudiant en droit » s'entend d'une personne inscrite à une faculté de droit agréée.

BY-LAW 5
[ANNUAL FEE]

3. Section 4 of By-Law 5 is amended by adding the following subsection:

Same

(1.1) A licensee who is over sixty-five years of age and does not provide any legal services may apply to the Society for an exemption from payment of the annual fee.

Idem

(1.1) Les titulaires de permis âgés de plus de 65 ans qui ne fournissent pas de services juridiques peuvent présenter au Barreau une demande d'exemption du paiement de la cotisation annuelle.

4. Subsection 4 (2) of By-Law 5 is amended by striking out "who holds a Class L1 licence and/de catégorie de permis L1".

5. Subsection 4 (3) of By-Law 5 is amended by adding ", (1.1) or/ou (2)" after "subsection/paragraphe (1)".

6. Subsection 4 (4) of By-Law 5 is struck out and the following substituted:

Consideration of application

(4) The Society shall consider every application made under subsection (1), (1.1) or (2) and, if satisfied that the requirements described in subsection (1), (1.1) or (2), as the case may be, are met, the Society shall approve the application.

Examen de la demande

(4) Le Barreau examine chaque demande déposée en vertu des paragraphes (1), (1.1) et (2) et, si à son avis la demande répond aux exigences visées aux paragraphes (1), (1.1) ou (2), selon le cas, le Barreau approuve la demande.

BY-LAW 7.1
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]

7. By-Law 7.1 is amended by
- (a) striking out “GENERAL/GÉNÉRALITÉS” immediately after “PART/ PARTIE I” and substituting “SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS/SURVEILLANCE DES TÂCHES ET FONCTIONS”;
 - (b) striking out the heading immediately before section 2;
 - (c) striking out the heading immediately before section 7; and
 - (d) striking out “PART/PARTIE IV” immediately before “OBLIGATIONS RESULTING FROM SUSPENSION/OBLIGATIONS EN CAS DE SUSPENSION” and substituting “PART/PARTIE II”.
8. Subsection 1 (1) of By-Law 7.1 is struck out and the following substituted:

Interpretation

- (1) In this Part, “non-licensee” means an individual who,
- (a) in the case of the assignment of tasks and functions by a licensee who holds a Class L1 licence, is not a licensee who holds a Class L1 licence and, in the case of the assignment of tasks and functions by a licensee who holds a Class P1 licence, is not a licensee;
 - (b) is engaged by a licensee to provide her or his services to the licensee; and
 - (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interprétation

- (1) Dans la présente partie, « non-titulaire de permis » S’entend d’une personne qui,
- a) dans le cas de l’assignation de tâches et de fonctions par un ou une titulaire de permis de la catégorie L1, n’est pas titulaire d’un tel permis et, dans le cas de l’assignation de tâches et de fonctions par un ou une titulaire de permis de la catégorie P1, n’est pas titulaire d’un tel permis;
 - b) est embauchée par un ou une titulaire de permis pour lui fournir des services;
 - c) convient formellement avec le ou la titulaire de permis que celui-ci ou celle-ci exercera un contrôle efficace des services qu’elle lui fournit.

9. Section 2 of By-Law 7.1 is struck out and the following substituted:

Application: provision of legal services by student

2. (1) This Part does not apply to the provision of legal services by a student under the supervision of a licensee pursuant to subsection 34 (1) of By-Law 4.

Application: provision of legal services by law student

(2) This Part, subject to necessary modifications, does apply to the provision of legal services by a law student under the supervision of a licensee pursuant to subsection 34 (2) of By-Law 4.

Application : prestation de services juridiques par un étudiant

2. (1) La présente partie ne s’applique pas à la prestation de services juridiques par un étudiant ou une étudiante placé(e) sous la surveillance d’un ou d’une titulaire de permis conformément au paragraphe 34 (1) du Règlement administratif n° 4.

Application : prestation de services juridiques par un étudiant en droit

(2) Sous réserve des modifications requises, la présente partie s’applique à la prestation de services juridiques par un étudiant ou une étudiante en droit placé(e) sous la surveillance d’un ou d’une titulaire de permis conformément au paragraphe 34 (2) du Règlement administratif n° 4.

10. Section 3 of By-Law 7.1 is amended by striking out “practice of law/exercice du droit” wherever it occurs and substituting “practice of law or provision of legal services/exercice du droit ou la prestation de services juridiques”.

11. Subsection 4 (1) of By-Law 7.1 is amended by striking out “practice of law/exercice du droit” wherever it occurs and substituting “practice of law or provision of legal services/exercice du droit ou la prestation de services juridiques”.

12. Section 6 of By-Law 7.1 is struck out and the following substituted:

Tasks and functions that may not be assigned: general

Tâches et fonctions qui ne peuvent être assignées : généralités

6. (1) A licensee shall not permit a non-licensee,

6. (1) Un ou une titulaire de permis ne permet pas à un non-titulaire de permis,

(a) to give the licensee’s client legal advice;

a) de donner des conseils juridiques à son client;

(b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;

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

(c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);

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

(d) to sign correspondence, other than correspondence of a routine administrative nature; or

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

(e) to forward to the licensee’s client any document, other than a routine document, that has not been previously reviewed by the licensee.

e) de faire suivre au client du ou de la titulaire de permis des documents, autres que des documents de routine, que le ou la titulaire de permis n’a pas examiné auparavant.

Tasks and functions that may not be assigned by Class L1 licensee

(2) A licensee who holds a Class L1 licence shall not permit a non-licensee to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

Tâches et fonctions qui ne peuvent être assignées par les titulaires de permis de la catégorie L1

(2) Il est interdit aux titulaires de permis de la catégorie L1 d'autoriser un non-titulaire de permis à utiliser leurs disquettes personnalisées et encodées afin d'accéder au système d'enregistrement électronique des titres de propriété.

13. By-Law 7.1 is further amended by adding the following:

PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

“financial institution” means,

- (a) a bank to which the *Bank Act* (Canada) applies,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union, credit union or caisse populaire that is regulated by an Act of a province or territory of Canada,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, or
- (g) a ministry, department or agent of the government of Canada or of a

PARTIE III

IDENTIFICATION DES CLIENTS ET VÉRIFICATION

Définitions

20. Dans la présente partie,

« compagnie privée » S'entend d'une compagnie dont la loi d'application ou les actes constitutifs,

- a) restreignent le droit de transférer ses actions;
- b) limitent le nombre de ses actionnaires, excluant les personnes qui sont employées par la compagnie, à cinquante, deux personnes ou plus qui détiennent en commun une ou plusieurs actions étant comptées comme un seul actionnaire;
- c) interdisent tout appel au public pour la souscription de ses actions ou titres.

« établissement financier » S'entend,

- a) d'une banque exploitée conformément à la *Loi sur les Banques* (Canada);
- b) d'une banque étrangère autorisée au sens de l'article 2 de la *Loi sur les banques* (Canada), à l'égard de ses activités au Canada;

province or territory of Canada if the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public;

“funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

“private company” means a company the constating documents of which,

- (a) restrict the right to transfer shares,
- (b) limit the number of its shareholders, exclusive of persons who are in the employ of the company, to 50, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (c) prohibit any invitation to the public to subscribe for its shares or securities;

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,
- (b) a municipality incorporated by or under an Act of a province or territory of Canada and includes a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada including any local board as defined in the *Municipal Act* (Ontario) or similar body incorporated under the law of another province or territory,

- c) d’une société coopérative de crédit, d’une caisse d’épargne et de crédit, d’une *credit union* ou d’une caisse populaire réglementée sous le régime d’une loi d’une province ou d’un territoire du Canada;
- d) d’une association réglementée par la *Loi sur les associations coopératives de crédit* (Canada);
- e) d’une société assujettie à la *Loi sur les sociétés de fiducie et de prêt* (Canada);
- f) d’une société de prêt ou de fiducie réglementée sous le régime d’une loi d’une province ou d’un territoire du Canada;
- g) d’un ministère, d’un service ou d’un mandataire du gouvernement du Canada, d’une province ou d’un territoire du Canada si le ministère, le service ou le mandataire en question accepte des sommes en dépôt lorsqu’il fournit des services financiers au public.

« fonds » S’entend des espèces, de la monnaie, des titres et des effets négociables et d’autres instruments financiers qui indiquent le titre de la personne et ses intérêts dans ceux-ci.

« organisme » S’entend d’une personne morale, d’une société de personnes, d’un fonds, d’une société de fiducie, d’une coopérative ou d’une association non constituée en personne morale.

« organisme public » S’entend,

- a) d’un ministère, d’un service ou d’un mandataire du gouvernement du Canada ou d’une province ou d’un

- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.
- territoire du Canada;
- b) d'une municipalité constituée par ou en vertu d'une loi d'une province ou d'un territoire du Canada qui comprend notamment une ville, un village, une municipalité de communauté urbaine ou régionale, un comté, un district ou une municipalité rurale ou encore un autre organisme municipal constitué en personne morale ou ses mandataires;
- c) d'un conseil local d'une municipalité constituée en personne morale par ou en vertu d'une loi d'une province ou d'un territoire du Canada, au sens de la *Loi sur les municipalités* de l'Ontario, ou autre organisme similaire constitué en personne morale en vertu d'une loi d'une autre province ou d'un autre territoire;
- d) d'un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la *Loi sur la taxe d'accise* (Canada) ou tout mandataire de celui-ci;
- e) d'une entité constituée en personne morale par ou en vertu d'une loi d'une province ou d'un territoire du Canada à des fins d'intérêt public.

Application of Part

21. This Part applies only to matters in respect of which a licensee is retained to provide her or his professional services after this Part comes into force regardless of whether the client is a new or existing client.

Application of client identification and verification requirements

22. (1) Subject to subsections (2) and (3), a licensee shall,

- (a) when the licensee is retained to provide her or his professional services to a client, comply with the client identification requirements set out in subsection 23 (1); and
- (b) when the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds,
 - (i) comply with the client identification requirements set out in subsection 23 (2), and
 - (ii) comply with the verification requirements set out in subsection 23 (4).

Exemption re certain licensees

(2) A licensee is not required to comply with the client identification and verification requirements set out in section 23 if,

- (a) the licensee is engaged in the activities described in subsection (1) on behalf of her or his employer;
- (b) the licensee is engaged in the activities described in subsection (1) as agent for another licensee who has already complied with the client identification and verification requirements set out in section 23; or
- (c) the licensee is engaged in the

Application de la présente partie

21. La présente partie ne s'applique qu'aux affaires pour lesquelles les services professionnels d'un ou d'une titulaire de permis sont retenus, après son entrée en vigueur, qu'il s'agisse de nouveaux clients ou de clients actuels.

Application des exigences relatives à l'identification des clients et aux vérifications

22. (1) Sous réserve des paragraphes (2) et (3), le titulaire de permis,

- a) se conforme aux exigences d'identification des clients visées au paragraphe 23 (1) lorsque ses services professionnels sont retenus par un client,
- b) lorsqu'il reçoit, débourse ou vire des fonds ou donne des directives à cet effet,
 - (i) se conforme aux exigences d'identification des clients visées au paragraphe 23 (2);
 - (ii) se conforme aux exigences d'identification des clients visées au paragraphe 23 (4).

Exemptions relatives à certains titulaires de permis

(2) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients et aux vérifications de l'article 23,

- a) s'ils prennent part aux activités visées au paragraphe (1) au nom de leur employeur;
- b) s'ils prennent part aux activités précisées au paragraphe (1) en tant que mandataires de titulaires de permis qui se sont déjà conformés aux exigences relatives à l'identification des clients et aux

activities described in subsection (1) for a client referred to the licensee by another licensee who has already complied with the client identification and verification requirements set out in section 23.

vérifications visées à l'article 23;

- c) s'ils prennent part aux activités visées au paragraphe (1) dans le cadre de dossiers de clients qui leur sont confiés par d'autres titulaires de permis qui se sont déjà conformés aux exigences relatives à l'identification des clients et aux vérifications visées à l'article 23.

Exemptions re certain funds

(3) A licensee is not required to comply with the client verification requirements set out in subsection 23 (4) in respect of funds,

- (a) received from a financial institution, public body or company that is not a private company;
- (b) paid to a financial institution or public body;
- (c) paid to a client that is a company that is not a private company;
- (d) paid to another licensee in trust, on the direction of a client;
- (e) received from the trust account of another licensee;
- (f) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (g) paid pursuant to a court order or to pay a fine or penalty;
- (h) paid as a settlement in any legal or administrative proceedings; or
- (i) received for professional fees, disbursements, expenses or bail.

Exemptions relatives à certains fonds

(3) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients et aux vérifications visées au paragraphe 23 (4) relativement aux fonds,

- a) reçus d'un établissement financier, d'un organisme public ou d'une société qui n'est pas une compagnie privée;
- b) versés à un établissement financier ou à un organisme public;
- c) versés à un client constitué en société qui n'est pas une compagnie privée;
- d) versés en fiducie à d'autres titulaires de permis selon les directives d'un client;
- e) reçus du compte en fiducie d'autres titulaires de permis;
- f) reçus d'un agent de la paix, d'un organisme chargé de l'application de la loi ou de tout autre agent public dans l'exercice officiel de ses fonctions;
- g) versés conformément à une ordonnance de la cour ou pour payer une amende ou une sanction;
- h) versés à titre de règlement d'une

procédure judiciaire ou administrative;

- i) reçus pour des honoraires professionnels, débours, dépenses ou cautions.

Client identification

23. (l) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.
7. If the client is an organization, the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the licensee is retained.
8. If the client is acting for or

Identification des clients

23. (l) Lorsque les services professionnels d'un titulaire de permis sont retenus par un client, le titulaire de permis obtient les renseignements suivants au sujet de son client :

1. son nom complet;
2. son adresse professionnelle et son numéro de téléphone au travail, le cas échéant;
3. si le client est une personne physique, son adresse domiciliaire et son numéro de téléphone au domicile;
4. si le client est un organisme, le numéro de constitution ou d'identité de l'organisme et le lieu d'émission de ce numéro, le cas échéant;
5. si le client est une personne physique, sa profession ou son métier;
6. si le client est un organisme, autre qu'un établissement financier, une entité publique ou une société autre qu'une compagnie privée, la nature générale de ses affaires ou de ses activités, le cas échéant;
7. si le client est un organisme, le nom, le titre et les coordonnées des personnes autorisées à donner des directives quant aux affaires pour lesquelles les services du titulaire de permis sont retenus;
8. si le client est le mandataire d'un tiers bénéficiaire ou d'un mandant, des renseignements au sujet du

representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs 1 to 7, as applicable.

bénéficiaire ou du mandant, tels que visés aux paragraphes 1 à 7, le cas échéant.

Same

Idem

(2) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client is an organization, in addition to complying with the client identification requirements set out in subsection (1), the licensee shall make reasonable efforts to obtain the following information about the client:

(2) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b) et que le client est un organisme, il doit, en plus de se conformer aux exigences d'identification des clients du paragraphe (1), prendre des mesures raisonnables pour obtenir les renseignements suivants au sujet de son client :

1. The name and occupation or occupations of each director of the organization, other than an organization that is a securities dealer.
2. The name, address and occupation or occupations of each person who owns twenty-five percent or more of the organization or of the shares of the organization.

1. le nom et les fonctions de chaque administrateur de l'organisme, autre qu'un organisme qui est une maison de courtage de valeurs;
2. le nom, l'adresse et les fonctions de chaque personne qui détient 25 pour cent ou plus de l'organisme ou des actions de l'organisme.

Same, previous identification

Idem, identification préalable

(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee has previously complied with the identification requirements and has also previously complied with the verification requirements set out in subsection (4) in respect of the organization.

(3) Les titulaires de permis se conforment aux exigences d'identification visées au paragraphe (2) s'ils se sont déjà conformés auxdites exigences d'identification des clients ainsi qu'aux exigences de vérification visées au paragraphe (4) à l'égard de l'organisme.

Client verification requirements

Exigences de vérification

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information.

(4) Lorsque les titulaires de permis se livrent aux activités décrites à l'alinéa 22 (1) b), ils prennent des mesures raisonnables pour confirmer l'identité du client et, lorsque la situation s'y prête, du tiers bénéficiaire ou du mandant, en se servant de ce qu'ils peuvent raisonnablement considérer comme étant des documents, des données ou des renseignements de source fiable et indépendante.

Timing of verification, individuals

Moment de la vérification de l'identité des particuliers

- (5) A licensee shall verify the identity of

an individual mentioned in subsection (1) upon engaging in the activities described in clause 22 (1) (b).

Timing of verification, organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after engaging in the activities described in clause 22 (1) (b).

Examples of independent source documents

(7) The following are examples of independent source documents for the purposes of subsection (4):

1. If the client or third party beneficiary or principal is an individual, an original government issued identification that is valid and has not expired, including a driver's licence, birth certificate, provincial or territorial health card (if such use of the card is not prohibited by the applicable provincial or territorial law), passport or similar record.
2. If the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as,
 - i. a certificate of corporate status issued by a public body,
 - ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - iii. a copy of a similar record

(5) Les titulaires de permis doivent vérifier l'identité des personnes physiques visées au paragraphe (1) lorsqu'ils se livrent aux activités visées à l'alinéa 22 (1) b).

Moment de la vérification des organismes

(6) Les titulaires de permis doivent vérifier l'identité de l'organisme mentionné au paragraphe (1) dans un délai de 60 jours suivant le moment où ils se livrent aux activités visées à l'alinéa 22 (1) b).

Exemples de documents de source indépendante

(7) Aux fins du paragraphe (4), les documents de source indépendante peuvent inclure :

1. si le client, le tiers bénéficiaire ou le mandant est un particulier, une pièce d'identité valide et originale émise par le gouvernement, incluant un permis de conduire, un acte de naissance, une carte-santé émise par une entité provinciale ou territoriale (si un tel usage de la carte n'est pas interdit par la loi provinciale ou territoriale applicable), un passeport ou autre document semblable;
2. si le client ou le tiers bénéficiaire ou le mandant est un organisme, tel qu'une personne morale ou une société constituée conformément à une autorisation légale, une confirmation écrite provenant d'un registre du gouvernement quant à l'existence, le nom et l'adresse de l'organisme, incluant le nom de ses administrateurs et de ses membres de la direction, telle que :
 - i. un certificat de constitution émis par un organisme public;
 - ii. une copie obtenue d'un organisme public, d'un document que l'organisme

obtained from a public body that confirms the organization's existence.

est tenu de déposer annuellement aux termes de la loi;

3. If the client or third party beneficiary or principal is an organization other than a corporation or society, such as a trust or partnership which is not registered in any government registry, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.
- iii. une copie, obtenue d'un organisme public, d'un document semblable qui confirme son existence;
3. si le client ou le tiers bénéficiaire ou le mandant est un organisme, autre qu'une personne morale ou une société, qui n'est enregistré dans aucun registre du gouvernement, tel qu'une société de fiducie ou une société de personnes, une copie des actes constitutifs de l'organisme, tels qu'une convention de fiducie ou de société, un acte d'association ou tout autre document semblable qui confirme son existence en tant qu'organisme.

Client verification, non-face-to-face

(8) When a licensee is engaged in the activities described in clause 22 (1)(b) and the client is an individual who is not instructing the licensee face-to-face, the licensee complies with the verification requirements set out in subsection (4) if the licensee obtains an attestation from a person described in subsection (9) that the person has seen the appropriate independent source documents.

Persons from whom attestations may be accepted

(9) For the purposes of section (8), a licensee may obtain an attestation from the following persons:

1. If the client whose identity is being verified is present in Canada,
 - i. a person entitled to administer oaths and affirmations in Canada, or
 - ii. any of the following persons:
 - A. a dentist,
 - B. a physician,
 - C. a chiropractor,
 - D. a judge,
 - E. a magistrate or a justice of the peace,
 - F. a lawyer,
 - G. a licensee (in Ontario)
 - H. a notary (in Quebec),
 - I. a notary public,
 - J. an optometrist,
 - K. a pharmacist,

Vérification des clients lors de transactions qui ne sont pas en face à face

(8) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b) et que le client est une personne physique qui n'est pas présente pour donner ses directives, le titulaire de permis se conforme aux exigences de vérification des clients visées au paragraphe (4) s'il obtient une attestation de l'une des personnes visées au paragraphe (9) indiquant qu'elle a pu confirmer l'identité du client à partir de documents d'une source indépendante.

Personnes qui peuvent confirmer l'identité d'un client

(9) Aux fins du paragraphe (8), les titulaires de permis peuvent obtenir une attestation de l'une ou l'autre des personnes suivantes :

1. si le client visé par la confirmation d'identité se trouve au Canada,
 - i. une personne autorisée à faire prêter serment au Canada;
 - ii. une des personnes suivantes :
 - A. un dentiste;
 - B. un médecin;
 - C. un chiropraticien;
 - D. un juge;
 - E. un juge de paix;
 - F. un avocat;
 - G. un titulaire de permis (en Ontario);
 - H. un notaire (au Québec);
 - I. un notaire public;

L. an accountant,

M. a professional engineer,

N. a veterinarian.

J. un optométriste;

K. un pharmacien;

L. un comptable;

M. un ingénieur;

N. un vétérinaire;

2. If the client whose identity is being verified is not present in Canada, a person acting on behalf of the licensee under subsection (11).

2. si le client visé par la confirmation d'identité se trouve à l'extérieur du Canada, les mandataires des titulaires de permis, conformément au paragraphe (11).

Attestation, form

(10) For the purposes of subsection (8), an attestation shall be endorsed on a legible photocopy of the document and shall include,

- (a) the name, occupation and address of the person providing the attestation;
- (b) the signature of the person providing the attestation; and
- (c) the type and number of the document seen by the person providing the attestation.

Contenu de l'attestation

(10) Aux fins du paragraphe (8), une attestation doit être produite sous forme de photocopie lisible du document et doit contenir les renseignements suivants :

- a) le nom, la profession et l'adresse de la personne fournissant l'attestation;
- b) la signature de la personne fournissant l'attestation;
- c) le type et le numéro de référence du document vérifié par la personne fournissant l'attestation.

Client verification, use of agent

(11) A licensee complies with the verification requirements set out in subsection (4) if another person acting on behalf of the licensee complies with those requirements provided that, the licensee and the other person, prior to the person acting on behalf of the licensee, enter into a written agreement specifying the steps that the person will be taking on behalf of the licensee to comply with the verification requirements.

Vérification des clients, utilisation d'un mandataire

(11) Les titulaires de permis se conforment aux exigences de vérification du paragraphe (4) si leurs mandataires se conforment auxdites exigences, pourvu que les titulaires de permis et leurs mandataires signent une entente avant que ces derniers n'agissent au nom des titulaires de permis, dans le cadre de laquelle sont précisées les mesures qu'ils prendront au nom des titulaires de permis en vue de se conformer aux exigences de vérification.

Client verification, previous verification

(12) A licensee complies with the verification requirements set out in subsection (4),

Vérifications antérieures

(12) Les titulaires de permis se conforment aux exigences de vérification du paragraphe (4),

- (a) in the case of an individual mentioned in subsection (1), if the licensee has previously complied with the verification requirements set out in subsection (4) in respect of the individual and recognizes the individual; and
- (b) in the case of an organization mentioned in subsection (1), the licensee has previously complied with the identification requirements set out in subsection (2) and the verification requirements set out in subsection (4) in respect of the organization.

Copies to be obtained

(13) The licensee shall obtain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection (4), including a copy of every document used by a person acting on behalf of the licensee under subsection (11).

Record retention

(14) The licensee shall retain a record of the information obtained for the purposes of subsections (1) and (2) and copies of all documents received for the purposes of subsection (4) for the longer of,

- (a) the duration of the licensee and client relationship and for as long as is necessary for the purpose of providing service to the client; and
- (b) a period of at least six years following completion of the work for which the licensee was retained.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client information or verification requirements set out in section 23, reasonably suspects that he or she is or would be assisting a client in dishonesty,

- a) dans le cas d'une personne physique visée au paragraphe (1), s'ils se sont déjà conformés aux exigences de vérification du paragraphe (4) relativement à la personne et se souviennent de son identité;
- b) dans le cas d'un organisme visé au paragraphe (1), s'ils se sont déjà conformés aux exigences d'identification du paragraphe (2) ainsi qu'aux exigences de vérification du paragraphe (4) à l'égard de l'organisme.

Obtention de copies

(13) Aux fins du paragraphe (4), les titulaires de permis obtiennent une copie de tous les documents utilisés afin de confirmer l'identité d'une personne physique ou d'un organisme, y compris une copie de tous les documents utilisés par les mandataires des titulaires conformément au paragraphe (11).

Tenue et conservation de documents

(14) Les titulaires de permis conservent un registre des renseignements obtenus aux fins des paragraphes (1) et (2) ainsi que des copies de tous les documents reçus aux fins du paragraphe (4) pendant la période la plus longue de celles qui suivent :

- a) la durée de la relation avec le client et aussi longtemps qu'il est nécessaire aux fins de la prestation de services au client;
- b) pendant au moins six ans à compter de la clôture des dossiers pour lesquels leurs services ont été retenus.

Activité criminelle, obligation de se retirer d'un dossier au moment d'obtenir les renseignements

24. Si, en vérifiant l'identité des clients conformément à l'article 23, les titulaires de permis ont des raisons valables de soupçonner qu'ils contribuent ou pourraient contribuer à un

fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

acte malhonnête, à une fraude, à un crime ou à la conduite illégale d'un client,

- a) ils cessent immédiatement toute activité qui pourrait contribuer à l'acte malhonnête, à la fraude, au crime ou à la conduite illégale en question;
- b) s'ils sont dans l'incapacité de se conformer à l'alinéa a), ils cessent de fournir des services professionnels au client.

Commencement

Entrée en vigueur

25. This Part comes into force on June 30, 2008.

25. La présente partie entre en vigueur le 30 juin 2008.

PART IV

PARTIE IV

WITHDRAWAL OF SERVICES

RETRAIT DE SERVICES

Application of Part

Application de la présente partie

26. This Part applies to all matters in respect of which a licensee is retained to provide her or his professional services to a client, including matters in respect of which the licensee was retained before this Part came into force and matters in respect of which the licensee is retained after that time regardless of whether the client is a new or existing client.

26. La présente partie s'applique aux affaires pour lesquelles les services professionnels des titulaires de permis sont retenus par un client, y compris les affaires pour lesquelles les services des titulaires de permis étaient retenus avant l'entrée en vigueur de la présente partie ainsi que les affaires pour lesquelles les services des titulaires sont retenus après l'entrée en vigueur de la présente partie, qu'il s'agisse d'un nouveau client ou d'un client actuel.

Criminal activity, duty to withdraw after being retained

Activité criminelle, obligation de se retirer du dossier après avoir été engagé

27. If a licensee while retained by a client reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

27. Alors que les services professionnels des titulaires de permis sont retenus par un client, s'ils ou si elles ont des raisons valables de soupçonner qu'ils ou elles contribuent ou pourraient contribuer à un acte malhonnête, à une fraude, à un crime ou à une conduite illégale, les titulaires de permis,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

- a) cessent immédiatement toute activité qui pourrait contribuer à l'acte malhonnête, à la fraude, au crime ou à la conduite illégale en question;
- b) s'ils sont dans l'incapacité de se conformer à l'alinéa a), ils cessent de fournir des services professionnels au client.

BY-LAW 8 [REPORTING AND FILING REQUIREMENTS]

14. By-Law 8 is amended by adding the following:

INFORMATION: GENERAL

RENSEIGNEMENTS : GÉNÉRALITÉS

Requirement to provide various information

3.1 (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,
 - v. information with respect to the licensee's storage of wills and powers of attorney, and
 - vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Exigences de divulgation de renseignements

3.1 (1) Le Barreau peut exiger des titulaires de permis de lui divulguer les renseignements suivants :

1. des renseignements personnels servant à les identifier, y compris leurs noms officiels et pseudonymes;
2. leurs coordonnées personnelles;
3. leurs coordonnées professionnelles;
4. des renseignements propres à leurs activités professionnelles, notamment :
 - i. des renseignements confirmant l'exercice du droit en Ontario en tant qu'avocats plaidants et procureurs ou la prestation de services juridiques en Ontario;
 - ii. des renseignements indiquant le lieu de l'exercice du droit ou de la prestation de services juridiques et à quel titre ces services sont fournis;
 - iii. des renseignements relatifs à la gestion de fonds et d'autres biens;
 - iv. des renseignements relatifs à la conservation des dossiers de clients;

- v. des renseignements relatifs à la conservation des testaments et des procurations;
- vi. des renseignements relatifs à la conservation de registres de sociétés, y compris les procès-verbaux et les sceaux.

Interpretation: personal and business contact information

- (1), (2) For the purposes of subsection (1),
- (a) personal contact information includes,
- (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
- (b) business contact information includes,
- (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Interprétation : coordonnées personnelles et professionnelles

- (2) Aux fins du paragraphe (1),
- a) « coordonnées personnelles » S'entend notamment de ce qui suit :
- (i) adresse domiciliaire;
 - (ii) numéro de téléphone au domicile;
 - (iii) numéro de télécopieur au domicile;
 - (iv) courriel personnel.
- b) « coordonnées professionnelles » S'entend notamment de ce qui suit :
- (i) adresse professionnelle;
 - (ii) numéro de téléphone au travail;
 - (iii) numéro de télécopieur au travail;
 - (iv) courriel utilisé au travail.

Notice of requirement

(3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Exigence de divulgation

(3) Le Barreau avise par écrit les titulaires de permis de l'exigence de divulguer les renseignements visée au paragraphe (1) et leur fait parvenir une liste détaillée des renseignements exigés.

Échéancier propre à la divulgation

(4) Sous réserve du paragraphe (5), les titulaires de permis divulguent au Barreau les renseignements précis exigés dans les dix jours qui suivent la date précisée sur l'avis de divulgation de renseignements.

Extension of time for providing information

(5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

Prolongation de l'échéancier

(5) Sur requête d'un titulaire de permis, le Barreau peut prolonger l'échéancier à l'intérieur duquel le titulaire de permis doit divulguer au Barreau les renseignements exigés.

Demande de prolongation de l'échéancier

(6) Le titulaire de permis dépose auprès du Barreau la requête écrite de prolongation de l'échéancier visée au paragraphe (5) avant la clôture de l'échéancier à l'intérieur duquel, en vertu du paragraphe (4), il ou elle est tenue de divulguer au Barreau les renseignements exigés.

Pouvoir supplémentaire d'exiger des renseignements

(7) La prérogative du Barreau d'exiger des titulaires de permis de divulguer certains renseignements visés au présent article s'ajoute à son pouvoir d'exiger de ceux-ci de divulguer certains renseignements en vertu d'autres parties du présent règlement administratif, d'autres règlements administratifs ou de la Loi et n'en limite nullement la portée.

REPORTING CHANGES

Requirement to report changes

3.2 (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.

DÉCLARATION DE MODIFICATIONS

Exigences de déclarer certaines modifications

3.2 (1) Un titulaire de permis avise sans délai le Barreau par écrit de toute modification des renseignements suivants préalablement fournis au Barreau, avant ou après l'entrée en vigueur du présent article, notamment :

1. son nom officiel et pseudonyme;
2. ses coordonnées personnelles;
3. ses coordonnées

- | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4. | Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario. | professionnelles; |
| 5. | Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the <i>Credit Unions and Caisses Populaires Act, 1994</i> applies into which the licensee pays or paid money received in trust for a client. | 4. les renseignements relatifs à l'exercice du droit en Ontario en tant qu'avocat plaidant ou procureur ou relativement à la prestation de services juridiques en Ontario;

5. les renseignements relatifs à l'adresse des banques à charte et aux numéros des comptes détenus auprès de celles-ci, de la Caisse d'épargne de l'Ontario, d'une <i>credit union</i> ou d'une fédération visée par l'application de la <i>Loi de 1994 sur les caisses populaires et les credit unions</i> dans lesquelles le titulaire de permis verse ou a versé des fonds reçus en fiducie au nom d'un client. |

Interpretation: personal and business contact information

- (1), (2) For the purposes of subsection (1),
- (a) personal contact information includes,
- (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
- (b) business contact information includes,
- (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Interprétation : coordonnées personnelles et professionnelles

- (2) Aux fins du paragraphe (1),
- a) « coordonnées personnelles » S'entend notamment de ce qui suit :
- (i) adresse domiciliaire;
 - (ii) numéro de téléphone au domicile;
 - (iii) numéro de télécopieur au domicile;
 - (iv) courriel personnel.
- b) « coordonnées professionnelles » S'entend notamment de ce qui suit :
- (i) adresse professionnelle;
 - (ii) numéro de téléphone au travail;
 - (iii) numéro de télécopieur au travail;
 - (iv) courriel utilisé au travail.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Renseignements exigés

(3) L'avis exigé en vertu du paragraphe (1) comprend les détails des modifications et leur date d'entrée en vigueur.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

Documents et explications

(4) Les titulaires de permis remettent au Barreau les documents et explications portant sur les modifications mentionnées au paragraphe (1) qu'exige le Barreau.

15. By-Law 8 is further amended by adding the following:

PART III REGISTER	PARTIE III REGISTRES
<p>Contents of register</p> <p>9. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:</p> <ol style="list-style-type: none"> 1. The assumed names, if any, of each licensee. 2. An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario. 3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario, <ol style="list-style-type: none"> i. where and in what capacity the licensee practises law or provides legal services, and ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address. 4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario, <ol style="list-style-type: none"> i. if the licensee is otherwise working, the licensee's business 	<p>Contenu du registre</p> <p>9. (1) En sus des renseignements mentionnés au paragraphe 27.1 (2) de la Loi, le registre que le Barreau est tenu de créer et de tenir à jour en vertu de l'article 27.1 de la Loi contient les renseignements suivants :</p> <ol style="list-style-type: none"> 1. Les pseudonymes de chaque titulaire de permis, le cas échéant; 2. Une mention des moments au cours desquels les titulaires de permis ont exercé le droit en Ontario en qualité d'avocats plaidants et de procureurs ou y ont fourni des services juridiques; 3. À l'égard de chaque période pendant laquelle les titulaires de permis ont exercé le droit en Ontario en qualité d'avocats plaidants et de procureurs ou y ont fourni des services juridiques, <ol style="list-style-type: none"> i. le lieu de l'exercice du droit ou de la prestation des services juridiques et la qualité en vertu de laquelle ils fournissent de tels services; ii. leurs coordonnées professionnelles, notamment leur adresse, leurs numéros de téléphone et de télécopieur et leur courriel; 4. À l'égard de chaque période

- contact information, including address, telephone number, facsimile number and e-mail address, or
- ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.
5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.
- pendant laquelle les titulaires n'exercent pas le droit en Ontario en qualité d'avocats plaidants et de procureurs ou n'y fournissent pas de services juridiques,
- i. s'ils travaillent en une autre qualité, leurs coordonnées professionnelles, notamment leur adresse, leurs numéros de téléphone et de télécopieur et leur courriel;
 - ii. s'ils ne travaillent pas, les renseignements nécessaires pour que leurs anciens clients puissent communiquer avec eux;
5. quant aux titulaires de permis décédés, le nom et les coordonnées du fiduciaire testamentaire de la succession, le cas échéant.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.
2. By publishing a print directory of licensees containing some or all of the information contained in the register.
3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

Mise à la disposition du public

(2) De l'une ou de plusieurs des façons suivantes, le Barreau met le registre à la disposition du public à des fins de consultation :

1. en créant et en mettant à jour un registre des titulaires de permis qui présente certains renseignements ou l'ensemble de ceux-ci affichés sur son site web;
2. en imprimant un registre des titulaires de permis qui présente certains renseignements ou l'ensemble des renseignements contenus dans le registre;
3. en mettant en service une ligne téléphonique pendant les heures de bureau normales du Barreau afin de répondre aux requêtes du public au sujet des titulaires de permis inscrits au registre.

BY-LAW 11

[REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE]

16. Section 44 of the French version of By-Law 11 is struck out and the following substituted:

Constitution du Comité d'autorisation des instances

44. (1) Le Comité d'autorisation des instances est maintenu sous le nom de Proceedings Authorization Committee en anglais et Comité d'autorisation des instances en français.

Composition

- (2) Le Comité est composé de cinq personnes nommées par le Conseil, dont
 - a) une assume la présidence ou la vice-présidence du Comité de la réglementation professionnelle;

- b) une assume la présidence ou la vice-présidence du Comité du perfectionnement professionnel;
- c) une est,
 - (i) jusqu'à la première élection de conseillers et conseillères sous réserve du paragraphe 16 (1) de la Loi, une des deux personnes mentionnées au paragraphe 16 (6) de la Loi,
 - (ii) une conseillère ou un conseiller qui détient un permis pour fournir des services juridiques en Ontario.

Admissibilité aux nominations

- (3) Seul un conseiller ou une conseillère peut être nommé membre du Comité.

Mandat

- (4) Sous réserve du paragraphe (5), le mandat des membres du Comité est d'une durée d'un an et peut être renouvelé.

Nomination à titre amovible

- (5) Les membres du Comité sont nommés à titre amovible.

17. Subsections 47 (2) and 47 (3) of the French version of By-Law 11 are struck out and the following substituted:

Membres provisoires

(2) S'il est impossible d'atteindre le quorum fixé à deux membres du Comité, pour cause d'empêchement, pour quelque raison que ce soit, d'au moins quatre membres du Comité, la présidente ou le président du Comité peut, sous réserve du paragraphe (3), nommer une ou plusieurs personnes en qualité de membres provisoires du Comité afin de constituer le quorum; ces membres provisoires sont réputés être membres du Comité pour l'application du paragraphe (1).

Admissibilité aux nominations

- (3) Une personne ne peut être nommée membre provisoire du Comité sous réserve du paragraphe (2) à moins que cette personne soit,
 - a) un conseiller ou une conseillère;
 - b) jusqu'à la première élection de conseillers et conseillères sous réserve du paragraphe 16 (1) de la Loi, une des deux personnes mentionnées au paragraphe 16 (6) de la Loi.

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COMPENSATION FUND COMMITTEE REPORT

Mr. Wright presented the Report.

Report to Convocation
April 24, 2008

Compensation Fund Committee

Committee Members

- Brad Wright, Chair
- Marshall Crowe
- Michelle Haigh
- Susan McGrath
- Stephen Parker
- Nicholas Pustina
- Baljit Sikand
- Gerald Swaye

Purpose of Report: Decision
 Information

Prepared by the Compensation Fund Department
(416 947-3343)

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COMMITTEE PROCESS

1. The Committee met on February 6, 2008. Members in attendance were Committee Chair Brad Wright (by telephone), Marshall Crowe, Nicholas Pustina (by telephone) and Baljit Sikand. Staff and others in attendance were Dan Abrahams, Fred Grady, Maria Loukidelis, Zeynep Onen and Craig Allen (LawPRO VP & Actuary)*.

*Since the date of the meeting, Craig Allen has left the employ of LawPRO to pursue other interests.

INCREASING THE PER CLAIMANT LIMIT

Motion

6. That Convocation approve an increase in the per claimant limit from \$100,000 to \$150,000, to apply only to the claims in respect of funds advanced to a lawyer licensee on or after the date on which Convocation approves the increased limit.

Introduction and Background

7. In 1953, the Law Society of Upper Canada established a Compensation Fund to relieve the hardship of clients who have suffered a financial loss due to their lawyer's dishonesty. A fund is required because errors and omission insurance covers potentially negligent conduct but does not cover dishonest conduct, such as theft.
8. The Compensation Fund is established pursuant to section 51 of the Law Society Act. The Act provides that Convocation, in its absolute discretion, may make grants from the Fund as follows:
 - 51(5) Convocation in its absolute discretion may make grants from the Fund in order to relieve or mitigate loss sustained by a person in consequence of,
 - (a) dishonesty on the part of a person, while a licensee, in connection with his or her professional business or in connection with any trust of which he or she was or is a trustee; or
 - (b) dishonesty, before the amendment day, on the part of a person, while a member, in connection with his or her law practice or in connection with any trust of which he or she was or is a trustee.

9. Convocation has established a set of “Guidelines for the Determination of Grants from the Fund” pursuant to its authority in subsection 51(5). The Guidelines indicate the circumstances in which a grant may be awarded from the Compensation Fund. The Guidelines provide consistency and certainty for staff and decision makers when determining if a grant should be awarded. A copy of the Guidelines relating to claims against lawyer licensees is attached as Appendix 2.
10. Over the years, Convocation has established a per claimant limit for claims advanced to the Fund:
- (i) For funds advanced to a solicitor on or after:
- | | |
|------------------|------------------------|
| June 01, 1979 | \$50,000 per claimant |
| January 01, 1988 | \$60,000 per claimant |
| May 25, 1990 | \$100,000 per claimant |
11. A per claimant limit means that a claimant may receive no more than the limit, regardless of how large their actual loss is. As illustrated above, the current per claimant limit of \$100,000 has been in place since May 1990.

Other Jurisdictions

12. Many Compensation Funds across Canada and the U.S. have per claim limits. Set out below is a comparison of compensation fund limits from other comparable jurisdictions across Canada and the United States. This comparison suggests that our current limit is generally lower than other jurisdictions.

COMPARISON OF CANADIAN AND US JURISDICTIONS – COVERAGE LIMITS

Law Society	BC*	Alta.	Ontario	Barreau du Quebec	New York	New Jersey	California
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Limits of Coverage

\$ Per Lawyer	No cap**	No cap	No cap	\$250,000	No cap	\$1 million	No cap
\$ Per Claim	\$300,000	No cap	\$100,000	\$50,000	\$300,000	\$250,000	\$50,000

*BC has moved to an insurance model for lawyer theft compensation

**profession-wide annual aggregate \$17.5 million, with per claim limit of \$300,000

Financial Implications and Recommendation

13. Craig Allen, former Vice-President and Actuary at LawPRO, prepared an analysis of the impact of a limit increase on the annual cost of claims, using models with varying limits. As mentioned in Mr. Allen's report, the Federation of Law Societies is currently considering the limits issue with a view to harmonizing limits across the country. This report informed the Committee's discussions and is attached at Appendix 3.
14. In light of the eighteen years that have elapsed since the last increase and keeping in mind the mandate of the Law Society to govern in the public interest, the Committee determined that an increase in the per claimant limit is appropriate at this time.
15. At their meeting on April 10, 2008, the Finance Committee considered the Fund's recommendation, including its financial impact on the projected financial plans for 2008. The Finance Committee concluded the Fund has a sufficient balance to meet the projected increase in claims expenses arising from any increase in the claims limit in 2008. The Committee also found that the current Fund balance would assist in moderating levy increases in 2009 and beyond, even with the proposed increase in the per claimant limit, but that possible declining investment returns should be considered in future budgets when assessing the implications of higher grant expenses due to increased claim limits.

Appendix 2

The Law Society of Upper Canada

GENERAL GUIDELINES FOR THE DETERMINATION OF GRANTS FROM THE COMPENSATION FUND

1. It must be shown that, at the time the lawyer licensee received funds or property of a claimant,
 - a) a solicitor and client relationship existed between the claimant and the lawyer, and that
 - b) the lawyer received funds or property of the claimant in his or her capacity as a lawyer, and that
 - c) the claimant's loss was in consequence of dishonesty, on the part of the lawyer, in connection with such lawyer's professional business*.

*Professional business means the practice of law and the business operations relating to it

2. Notwithstanding the requirements of guideline 1(a) a solicitor and client relationship between the claimant and the lawyer is not required,

- a) when it can be shown that the claimant relied on the lawyer and the loss was in consequence of dishonesty by the lawyer in connection with any trust related to the lawyer's professional business where the lawyer is or was a trustee; or
 - b) when the claimant is a beneficiary of an estate of a deceased person whose personal representative has a solicitor and client relationship with the lawyer. Beneficiaries of an estate will be allowed to make claims to the Fund on their own account and separate per claimant limits will apply to each individual claim.
3. Money left with a lawyer to be used in a venture, in which the lawyer and the person advancing the money are both participants, is not money received by the lawyer in connection with his or her professional business, or in his or her capacity as a lawyer, despite the fact that the lawyer performs legal services in connection with the venture. Misappropriation by the lawyer of money left with the lawyer to participate in a venture with the lawyer, or failure to properly account by the lawyer, is not conduct for which relief from the Fund is available.
4. a) There shall be no recovery of money advanced to the lawyer if the purpose of such advance was known by the claimant to be a loan to the lawyer or in circumstances where the claimant should have known that the advance was a loan to the lawyer. It is deemed that the advance was to the lawyer, if it was for the lawyer personally or to the lawyer's spouse or a corporation, syndicate or partnership in which the lawyer or lawyer's spouse or both of them directly or indirectly, have a substantial interest.
- b) Notwithstanding the foregoing, if a claimant is induced to lend money to a lawyer because of a solicitor and client relationship, consideration can be given to making a grant when the loan is not repaid.
5. There must be satisfactory proof that money or money's worth was received by the lawyer from or on behalf of the claimant and equivalent money or money's worth has not been returned or accounted for to the claimant.
6. Ordinarily,
- a) the amount of the loss in respect of which a grant may be made is the difference between the amount received by the lawyer and the actual amount returned or otherwise accounted for to the claimant; and
 - b) all amounts paid to the claimant, even though purporting to be interest, or on account of interest, should be deducted in determining the amount of the grant, less the amount of any income tax paid on that interest.

Payment of interest to the claimant, or costs (except counsel fees set out below), expenses or damages incurred or suffered by the claimant will not be made out of the Fund. Counsel fees may be allowed as follows: \$500. (may be increased in complicated cases) for preparation of claim documents and final resolution of the claim plus \$800. per day in the discretion of the Referee if a hearing is held.

7. The amount of a grant may be reduced in circumstances where the claimant expected or should reasonably be considered as having expected that the funds entrusted to the lawyer were to be invested in a risky investment that might not be recovered in full.
8. Carelessness, on the part of the claimant, which causes or contributes to a loss, is a factor which may be considered in making a grant from the Fund. It is not feasible to attempt to exhaustively define what constitutes carelessness. Each claim for a grant depends on its particular facts. It may be considered to be carelessness where a claimant advances or continues to advance money to a lawyer, if the claimant has knowledge of facts which reasonably should cause the claimant to doubt the integrity, or the financial reliability of the lawyer.
9. Where the dealings with the lawyer have been conducted by a trustee or agent for or on behalf of another person, the merits of the claim, the decision to make a grant and the amount of the grant should be determined as though the trustee or agent had been dealing with his or her own funds. If a grant is made, care should be taken that it reaches and thereafter will be preserved for the person beneficially entitled. If the formal written claim is not made in the name of the person entitled to benefit from any grant made in respect of that claim, the record should be corrected to meet the circumstances and to ensure that the proper person receives the benefit of the grant.
10. Where a claimant has a reasonable cause of action against some other person, which would reimburse the claimant or reduce the amount of his or her loss, and would not be recoverable by such other person from the Fund, the claimant, as a general rule, should be required to take all reasonable steps to effect recovery from such other person before a grant is made from the Fund. It is in the discretion of the Committee whether all reasonable steps have been taken, but such discretion should be exercised primarily in the interests of the claimant rather than the protection of the Fund.
11. Where the lawyer would appear to have a valid claim against the claimant for fees and disbursements in respect of services that have been rendered to the claimant, the approximate amount thereof, can, in the discretion of the Referee, be deducted from the amount of the grant that would otherwise be made.
12. Where a claim arises out of circumstances that strongly suggest criminal conduct on the part of the lawyer, the claimant shall report the facts to the relevant police authority for investigation. The claimant must then satisfy the Fund that he or she has done so failing which the claim may not be entertained.
13. The financial circumstances of the person actually suffering the loss and the degree of hardship suffered by that person as a result of the loss are factors to be taken into account when determining any grant. No grant shall be made to a bank or other financial institution engaged in the business of lending money.
14. Ordinarily, a claimant who elects to take steps to recover the loss in pursuit of a private agreement with an apparently dishonest lawyer will not be entitled to a grant unless the Law Society Compensation Fund and Discipline Departments have been informed before any such steps are taken.
15. In the case of a lawyer who conducts the practice of law in a jurisdiction outside Ontario, other than a practice within Canada that complies with the provisions of the Inter-

Jurisdictional Practice Protocol, no grant shall be paid out of the Fund when the funds or property of the claimant were received by or on behalf of the lawyer in connection with a matter that originated in that jurisdiction or in connection with a trust of which the lawyer was or is a trustee that originated outside Ontario.

Revised April 30, 2007

Approved (Convocation) September 2007

FOR INFORMATION

CURRENT FUND STATUS

16. The Committee was provided with the annual report by Craig Allen, reporting on the unpaid claims liability and Fund balance as of December 31, 2007. The report indicates a slight increase of approximately \$592,000 in the unpaid claims liability between December 31, 2006 and December 31, 2007. The Fund Balance as at December 31, 2007 is \$21.6 million, increased from \$19.4 million at December 2006 and decreased from \$21.9 million as at September 30, 2007.
17. As previously reported, the bulk of the increase in the Fund Balance since the end of 2006, \$1.2 million, is related to changes in the accounting recognition of financial instruments, beginning January 1, 2007, which changed the treatment of unrealized gains on investments. Mr. Allen attributes the remaining \$1.0 million increase in the Fund Balance to a number of items, including favourable development on claims reported prior to 2007, realized capital gains and recoveries.
18. The report is attached as Appendix 4.

APPOINTMENT TO THE REVIEW SUB-COMMITTEE

19. With Robert Aaron's resignation from the Compensation Fund Committee, the Review Sub-Committee of the Fund which reviews the recommendations of staff for all grants in excess of \$5,000 required a third member to consider grant recommendations.
20. The Committee formally approved the appointment of Baljit Sikand to the Review Sub-Committee, to join current members Gerald Swaye and Marshall Crowe.

GRANTS PAID BY THE FUND

21. The Committee wishes to report that the following grants were approved and paid from the Fund between August 29, 2007 and January 24, 2008, in the amounts shown. (Only members whose discipline proceedings are completed or who are deceased are identified by name.)

Licensee (Status if Disciplined)	Number of Claimants	Total Grants Paid (\$)
----------------------------------	---------------------	------------------------

Codina, Angelina M. (Disbarred October 17, 2002)	1	\$ 50,000.00
Comstock, John T. (Disbarred May 16, 2000)	1	\$ 70.00
Dagenais, Mary B. (Disbarred November 21, 2002)	1	\$ 9,500.00
Edwards, Alan Wayne (Disbarred February 16, 2007)	1	\$ 11,000.00
Haque, Zeyaul (Deceased May 7, 2005)	1	\$ 12,000.00
Iglar, Edward E. (Deceased November 24, 2004)	3	\$ 48,350.00
Miller, Hale Luther (Disbarred October 23, 2007)	1	\$ 41,166.93
Singh, Tapishar (Disbarred September 11, 2007)	1	\$ 2,500.00
Solicitor #145 (Suspended July 11, 2006)	1	\$ 1,000.00
Solicitor #170 (Suspended June 29, 2007)	1	\$ 501.33
Solicitor #171 (Suspended February 18, 2005)	2	\$ 1,300.00
TOTAL		\$177,388.26

Appendix 3

TO: Lawyers' Fund for Client Compensation Committee

FROM: Craig Allen
Vice President & Actuary

DATE: January 30, 2008

RE: Investigation of the Financial Impact of an Increase in the Limit per-Claimant

The limit for grants by the Lawyers' Fund for Client Compensation has remained at \$100,000 per claimant since May 1990.

On the Committee's request, I have investigated two matters pertaining to the limit.

Current Dollar Equivalent

The first matter is what would be the current dollar equivalent limit, reflecting increases in the Consumer Price Index (CPI) since May 1990.

The CPI for All Items, for Ontario, at May 1990, base year 1986, was 121.3. The corresponding value of the index at December 2007 was 172.7. This represents an increase of 42.4%. Thus, a limit of \$142,400 in December 2007 would be equivalent, in purchasing power terms, to \$100,000 in May 1990.

Increase in Limit Scenarios

An increase in the per-claimant limit would clearly increase the annual cost of claims for the Fund.

The cost of claims budgeted for 2007 is \$2.7 million. Under the following limits, this cost would increase by the following percentage amounts, to the corresponding dollar amounts.

Note that this analysis assumes that for all claims where payments exceed \$98,000, the claim cost projected under the alternative limit is the amount claimed by the claimant. This is a conservative assumption as, on average, the Fund pays only 75% of the amount claimed, where a payment is granted.

Limit	Estimated Claim Dollars	Estimated Average Dollar Increase per Year	Percentage Increase	Average Annual Count of Claimants Not Fully Satisfied, 1998-2007
\$100,000	\$2,700,000	\$0	0.0%	6
\$142,400	\$2,808,000	\$108,000	4.0%	4
\$150,000	\$2,827,000	\$127,000	4.7%	3
\$200,000	\$2,927,000	\$227,000	8.4%	2

The column on the right indicates the average number of claimants whose claims are not fully satisfied, due to their claim being limited by the per-claimant limit.

The current average number of such claimants is 6 per year.

We see from this table that increasing the limit to its CPI-indexed level would reduce the number of such unsatisfied claimants to 4, a reduction of only two claimants per year on average.

Risk/Benefit Analysis

It should be noted that the above table shows annual averages of additional dollars and of claimants not fully satisfied. The quoting of these averages masks significant variability from one year to the next in both items.

Of claims closed in 2004, there was only one claimant whose claim was not fully satisfied, as a result of the \$100,000 limit. Increasing the limit to \$200,000 would not have resulted in that claimant being fully satisfied. Thus, such a limit increase in that year would have no benefit, in terms of reducing the number of unsatisfied claimants.

On the other hand, the cost of increasing the limit to \$200,000 would have been as high as \$891,000 on claims closed in 1999 – almost quadruple the estimated average quoted in the table.

Thus, the financial risks of such an increase in the limit are relatively high, in exchange for an uncertain benefit (in terms of reducing the number of unsatisfied claimants).

Concurrent Deliberations on Compensation Fund Limits

The issue of appropriate limits for mobile lawyers has been the subject of a national project by the Federation of Law Societies. The project is currently in progress. I would suggest that the Committee defer any decision on whether to increase the limit until the Federation project is complete. That would allow the Committee to decide whether to harmonize the Ontario home-jurisdiction coverage with the coverage provided for mobile lawyers.

Appendix 4

LAWYERS' PROFESSIONAL INDEMNITY COMPANY
MEMORANDUM

TO: LAW SOCIETY OF UPPER CANADA

FROM: CRAIG ALLEN

CC: MICHELLE STROM

DATE: JANUARY 23, 2008

RE: UNPAID CLAIMS LIABILITY, DECEMBER 31, 2007, LAWYERS' FUND FOR CLIENT COMPENSATION

The unpaid claims liability, as at December 31, 2007 for the Compensation Fund, is estimated to be \$9,835,000. This amount is

- discounted for the time value of money (in the amount of \$515,000),
- includes a provision for internal claims handling expenses (in the amount of \$2,690,000), and
- includes a margin to provide for unfavourable developments as claims proceed toward resolution (in the amount of \$1,054,000).

To calculate the unpaid claims liability amount, add to the undiscounted claims liability the provision for unfavourable developments and subtract the time value of money.

The table below presents the items in this calculation December 31, 2007. For comparison, the corresponding items are presented for December 31, 2006.

Item	Dec. 31, 2007	Dec. 31, 2006
Undiscounted claims liability	\$9,296,000	\$8,720,000
Add: Provision for unfavourable developments	\$1,054,000	\$990,000
Less: Time value of money	\$515,000	\$467,000
Unpaid Claims Liability	\$9,835,000	\$9,243,000

The following table summarizes the individual items that account for the carrying forward of the December 31, 2006 undiscounted claims liability through to December 31, 2007:

	Claims	Internal Costs	Total
Claims Liability at December 31, 2006	\$6,016,000	\$2,704,000	\$8,720,000
Add: Adverse (Favourable) Development on Claims Reported before December 31, 2006	(1,074,000)	(468,000)	(1,542,000)
Claims Liability at December 31, 2006 with	4,942,000	2,236,000	7,178,000

Benefit of Hindsight			
Add: Claims Incurred in Jan.- Dec 2007	2,658,000	2,390,000	5,048,000
Less: Payments Made in Jan.- Dec 2007	1,151,000	1,779,000	2,930,000
Claims Liability at Dec 30, 2007	6,449,000	2,847,000	9,296,000

Fund Balance

The Fund Balance as at December 31, 2007 is \$21.6 million, increased from \$19.4 million at December 2006 and decreased from \$21.9 million as at September 30, 2007.

In keeping with changes in the accounting for financial instruments, beginning January 1, 2007, Compensation Fund assets are now held at market value. They were held at amortized cost prior to January 1, 2007.

With this change in accounting, on January 1, 2007, the Fund Balance increased by \$1.2 million over its December 31, 2006 value, to \$20.6 million.

Thus, between January 1, 2007 and Dec. 31, 2007, the Fund Balance increased in value by \$1.0 million (from \$20.6 million to \$21.6 million). The following items account for the growth in the Fund Balance.

Item	Amount
1. Favourable development on claims reported prior to 2007	\$1.1 million
2. Realized capital gains	\$0.5 million
3. Recoveries	\$0.3 million
4. Unrealized capital gains (losses) since January 1, 2007	(\$0.9 million)
5. Total	\$1.0 million

About half the favourable development in Item 1 arises in the provision for claims reported in 2006. Of 81 claims reported in 2006 and closed to date in 2007, the number closed with a grant payment was 37. This is about 10 fewer than was projected at Dec. 31, 2006 for the period. In addition, nine matters that were first handled in 2006 by other Law Society departments were assigned to Compensation Fund claims in 2007 (and thus assigned a 2006 "reported" date). This is 24 fewer such matters than was forecast at Dec. 31, 2006.

December 2007 Potential Claims

In December 2007, a matter came to light that caused the reporting, in that month, of 42 potential claims arising from the activities of one lawyer. In the context of the total of 184 matters reported during the year, this number of reported incidents is significant. To date it is unclear whether the lawyer's involvement in this matter was sufficient to merit any grant payments from the Fund. The Fund is in the process of investigating the matter.

As these potential claims were only recently reported, little is currently known about their origins. Thus, in this report, the 42 potential claims are incorporated into the analysis in the same manner as the remaining reported potential claims for 2007 – that is, an average value is assigned, equivalent to that for any other collection of 42 potential claims reported in 2007. In this report, the value assigned to the 42 claims is roughly \$640,000. It should be noted, however, that as facts emerge about this matter, the value could be less than or greater than this amount.

Re: Per Claimant Limit Increase

It was moved by Mr. Wright, seconded by Mr. Sikand, that Convocation approve an increase in the per claimant limit from \$100,000 to \$150,000, to apply only to the claims in respect of funds advanced to a lawyer licensee on or after the date on which Convocation approves the increased limit.

Carried*Items for Information*

- Current Fund Status
- Appointment to the Review Sub-Committee
- Grants Paid by Fund

PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REPORT

Ms. Pawlitza presented the Report.

Re: Private Practice Refresher Program

It was moved by Ms. Pawlitza, seconded by Ms. Dickson, that Convocation approve,

- a. the termination of the Private Practice Refresher Program (PPRP); and
- b. require that lawyer licensees who, for 80 percent or more for the five years immediately preceding the date of their application to enter private practice were not in private practice, and who now intend to practise in firms of five or fewer lawyers be subject to the re-entry review requirements (the practice management review) within 12 months of their entry into private practice; and
- c. that during the transitional period, those applicants who have already applied and been accepted into the PPRP will be given the option of continuing with the modules and assessments or to being subject to a re-entry review.

Carried*ITEMS FOR INFORMATION ONLY*EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES REPORT

- Endorsement of Statement about Lawyers and Judges in Pakistan
- Public Education

Report to Convocation
April 24, 2008

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
 Paul Henderson
 Doug Lewis
 Judith Potter
 Robert Topp

Purposes of Report: Decision and Information

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

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COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on April 10, 2008. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson, Avvy Go, Paul Henderson and Judith Potter participated. Milé Komlen, Chair of the Equity Advisory Group (the "EAG"), also participated. Staff members Josée Bouchard and Marisha Roman attended. Hugh Anderson, of the Strategic Counsel, attended to present a report.

ENDORSEMENT OF STATEMENT ABOUT LAWYERS AND JUDGES
IN PAKISTAN.

67. On April 10, 2008, the Human Rights Monitoring Group considered a request by the Lawyers' Rights Watch Canada to endorse the Statement provided at Appendix 7 about lawyers and judges in Pakistan. The Monitoring Group approved the request. Lawyers' Rights Watch wished to release the statement urgently. Therefore, in light of the urgency of the matter, the Treasurer approved the request on April 10, 2008.
68. The request was based on the following mandate, approved by Convocation:
- a. The mandate further states that where Convocation's meeting schedule makes such a review and approval impractical, the Treasurer may review such responses in Convocation's place and take such steps, as he or she deems appropriate. In such instances, the Human Rights Monitoring Group shall report on the matters at the next meeting of Convocation.

EQUITY PUBLIC EDUCATION SERIES CALENDAR
2008

National Holocaust Memorial Day *Lifting the Veil of Secrecy on Holocaust-era Documentation: The Struggle for Full Disclosure on War Criminals Past and Present*

In partnership with B'nai Brith Canada

Date: April 30, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

Description: In commemoration of Holocaust Memorial Day, the Law Society of Upper Canada and the League for Human Rights of B'nai Brith Canada have invited a panel of distinguished lawyers and archival experts, to discuss the obligation of governments across the globe to open up Holocaust-era archives to which access has been blocked, potentially shielding perpetrators from justice. The principle of full disclosure as it impacts war criminal investigations will be highlighted in an attempt to ensure that obstacles in past investigations will not once again stand in the way of justice, as the world contends with yet another generation of war crime perpetrators worldwide.

A reception will be held at 6:00 P.M. in Convocation Hall at the Law Society to commemorate Holocaust Memorial Day, which will feature music composer Ruth Fazal and her chamber music group.

South Asian Heritage Month – *Building the Case for Diversity in the Legal Profession*

In partnership with the South Asian Legal Clinic of Ontario and the South Asian Bar Association

Date: May 12, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

Hear from a panel of legal professionals representing law firms and legal workplaces, who will discuss initiatives and innovative ways to increase diversity in their organizations. The session will examine the benefits of diversity, how it strengthens organizations, and why it makes good business sense. What initiatives are working? How do these programs work? And, what can you

do within your firm or organization to support these initiatives? Speakers will address these and other questions through presentations and an open forum.

National Aboriginal Day

Date: June 16, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

Pride Week

In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association

Date: June 24, 2008

Time: Panel Discussion from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

Louis Riel Day

Date: November 13, 2008

Time: Workshop from 4 to 6 p.m., Donald Lamont Learning Centre

Reception: 6 p.m., Convocation Hall

APPENDIX 7

LAWYERS' RIGHTS WATCH CANADA

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

Pakistan: Human rights groups denounce burning to death of up to 7 lawyers in Karachi and call for immediate action.¹

Thursday, April 10, 2008

(Follow-up to Jan. 22/08 statement and Feb. 20/08 Statement to the United Nations Human Rights Council-UNHRC)²

¹ This statement is also endorsed by Elise Groulx in her capacity as President of the International Criminal Defence Attorneys Association (ICDAA).

² *Statement by Lawyers Rights Watch Canada to the Seventh Session of the Human Rights Council regarding unlawful emergency measures in Pakistan*, February 20, 2008. Endorsed by: Dutch Lawyers for Lawyers Foundation-L4L, Asian Legal Resource Centre Commission-ALRC, Lawyers Without Borders Canada-LWB/C, International Association of Democratic Lawyers-IADL, Republican Attorneys Association-RAV, Bar Human Rights Committee of England and Wales-BHRC, National Lawyers Guild-NLG, American Association of Jurists-AAJ, Rule of Law Project, Lahore University of Management Sciences-LUMS, International Association of People's Lawyers-IAPL, National Union of Peoples' Lawyers-NUPL, Counsels for the Defense of Liberties-CODAL, Front Line-International Foundation for the Protection of Human Rights Defenders, International Criminal Defence Attorneys Association-ICDAA, South Asian Network for Secularism and Democracy-SANSAD, Law Society of Upper Canada-LSUC, Trial Lawyers Association of British Columbia-TLABC.

Lawyers Rights Watch Canada (LRWC), the Asian Legal Resource Centre (ALRC) and Lawyers Without Borders/Canada (LWB/C) call on the Government of Pakistan to immediately provide effective protection to Pakistan lawyers and to prevent future and punish past attacks on them.

LRWC, ALRC and LWB/C repeat the call on the new government of Pakistan to act to ensure:

1. The reinstatement of all judges removed from office by the Provisional Constitution Order No. 1 of 2007, November 3 2007 in accordance with the Murree Declaration; and
2. The rescission of all laws, including amendments to the *Constitution of the Islamic Republic of Pakistan* (Constitution), purporting to come into force under authority of the *Proclamation of Emergency Declaration* of November 3, 2007, the *Provisional Constitutional Order No. 1 of 2007* and the *Oath of Offices (Judges) Order, 2007*
3. Withdrawal of charges laid after November 3/07 against lawyers and others for protesting the imposition of martial law including charges of high treason, sabotage, destroying public property and maintenance of public order.
4. Strict adherence by Pakistan officials to laws validly in force prior to November 3, 2007 and to applicable international standards protecting the independence of lawyers and judges including those embodied in the UN *Basic Principles on the Role of Lawyers*³ and the *Basic Principles on the Independence of the Judiciary*.⁴

Background

LRWC, ALRC and LWB/C deplore the death of 11 people in Karachi including the death by burning of 6 people believed to be lawyers. LRWC rejects false accusations against members of the Lawyers Movement and regards all attempts to vilify these lawyers and other social justice activists as a pretext to justify illegal activities: the continuation of the suspension of the Pakistan legal system and extra-legal attacks on and executions of those advocating its return.

Since March 2007 millions of people inspired by thousands of lawyers, have peacefully protested the destruction of the Pakistan legal system by the Musharraf regime and advocated for the restoration of an independent judiciary and the law, properly enacted for a proper constitutional purpose. Pakistan lawyers, Pakistan citizens and lawyers around the world have protested against the March 2007 suspension and house arrest of the Chief Justice of the Pakistan Supreme Court, the arrest and maltreatment of thousands protesting the chief justice's removal, the *Emergency Measures Declaration of November 3, 2007* and suspension of the Constitution, the sacking and detention of judges who refused to conform to the *Oath of Offices (Judges) Order 2007* and the arrests of thousands of lawyers and activists, including Pakistan's most senior lawyers.

The emergency measures imposed on November 3, 2007 by Musharraf were unlawful under the Constitution, failed to meet United Nations standards for states of emergency and violate international standards for non-derogable rights. On November 5, 2007 the High Commissioner

³ Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

www.lrwc.org/documents/Pakistan.LRWC.Statement.to.UNHRC.Mar.08.doc

⁴ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

of Human Rights Louise Arbour characterized the state of emergency as illegitimate and called on Musharraf to restore the independent judiciary before the election. Instead thousands of lawyers, judges and activists were arrested for peacefully advocating adherence to customary international law and the Constitution and for peacefully protesting the military regime's suspension of the Constitution, sacking of judges, arrest of thousands of human rights defenders and violations of fundamental human rights and freedoms.

LRWC, ALRC, LWB/C and 16 other NGOs representing thousands of lawyers around the world concluded, in the statement⁵ submitted to the UNHRC, that the November 3, 2007 emergency measures were illegal and that all laws created and state actions taken into reliance on the Proclamation of Emergency of November 3, 2007 were enacted and done without legal authority and therefore are null and void, ab initio and must be reversed.

On March 10, 2008 the Pakistan People's Party (PPP) and the Pakistan Muslim League (N) agreed, *inter alia*, " that the deposed judges would be restored, on the position as they were on November 2, 2007, within 30 days of the formation of the federal government through a parliamentary resolution."⁶ Parliament was recalled on March 17, 2008. Prime Minister Gilani unambiguously confirmed this commitment (the Murree Declaration) when he was sworn in on March 24/08. However, it appears that the Parliament of Pakistan is unable to restore the judiciary or the Constitution while Musharraf is President without risking dissolution. Pressure from certain foreign governments seeking a military presence in Pakistan may also be a factor.

Required Action

LRWC, ALRC and LWB/C call on the government of Pakistan to:

- o denounce attacks on lawyers and others advocating the restoration of the judiciary and the Constitution; and,
- o denounce the attacks that resulted in the deaths of lawyers and other people in Karachi, April 9, 2008; and,
- o negotiate with all political parties and with representatives of the Lawyers Movement to reach an agreement on how best to honour the Murree Declaration and to restore and protect an independent judiciary; and,
- o prevent further attacks and punish past attacks on lawyers, other rights-defenders and other people in Karachi by:
 - a) immediately providing effective protection; and,
 - b) conducting prompt and effective investigations into the deaths of all the people killed in Karachi on April 9, 2008; and,
 - c) ensuring the accountability of perpetrators including state agents, through proper prosecutions and fair trials and in accordance with the requirements of the UN *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*.

Lawyers Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in danger because of their advocacy. LRWC is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC/UN). Other statements on Pakistan: www.lrwc.org/pub1.php

⁵ *Supra*, note 1.

⁶ Murree Declaration, para. 2, <http://www.hindu.com/nic/pakistan-murree.htm>

Asian Legal Resource Centre (ALRC) is a Hong Kong-based NGO with General Consultative status with ECOSOC/UN. Founded in 1986 by a prominent group of jurists and human rights activists in Asia, ALRC promotes respect for human rights in the region through the strengthening of institutions of the rule of law, notably the police, prosecution and judiciary. It also seeks to strengthen and encourage positive action on legal and human rights issues by the bar and other legal bodies and personnel, at the local and national levels and to promote rights in the region through advocacy, research and publications, such as Article 2.

CONTACTS:

Lawyers Rights Watch Canada www.lrwc.org; lrwc@portal.ca; +1 604 738 0338
Asian Legal Resource Centre Basil Fernando, Executive Director, Tel: +(852) - 2698-6339,
alrc@alrc.net; www.alrc.net

FINANCE COMMITTEE REPORT

- Compensation Fund Increase to Claimant Limit
- Discrimination and Harassment Counsel Increase in Hourly Rate

Report to Convocation
 April 24, 2008

Finance Committee

Committee Members
 Derry Millar, Chair
 Brad Wright, Vice-Chair
 Melanie Aitken
 Jack Ground
 Susan Hare
 Carol Hartman
 Janet Minor
 Jack Rabinovitch
 Paul Schabas
 Gerald Swaye

Purposes of Report: Decision
 Information

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

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For Decision:

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1. Compensation Fund Increase the Per Claimant Limit
2. Discrimination and Harassment Counsel Increase in Hourly Rate

COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on April 10, 2008. Committee members in attendance were: Derry Millar(c.), Brad Wright (vc.), Melanie Aitken, Susan Hare, Carol Hartman, Janet Minor, Jack Rabinovitch, Paul Schabas, and Gerald Swaye.
2. Staff in attendance were: Wendy Tysall, Fred Grady, Josee Bouchard and Andrew Cawse.

FOR INFORMATION

COMPENSATION FUND
INCREASING THE PER CLAIMANT LIMIT

12. The Compensation Fund Committee has drafted a report for Convocation in April recommending an increase in the per claimant limit from \$100,000 to \$150,000. This change is intended to take effect during the 2008 budget year and the Finance Committee assessed the financial impact of the change to the projected financial plans for 2008 as set out in the budget approved by Convocation in October 2007.
13. The impact of the increase in the limit was supported by an actuarial report included with the Compensation Fund Committee’s report.
14. The actuary’s report notes significant variability from year to year but estimates the limit increase to \$150,000 would see the cost of claims budgeted for 2008 of \$2.7 million increase by \$127,000 or nearly 5%. The increase would result in the average annual count of claimants not fully satisfied in the last ten years falling from 6 per year to 3 per year.
15. The Committee considered the current financial position of the Compensation Fund and concluded the Fund has a sufficient fund balance to meet the projected increases in claims expenses arising from an increase in the claims limit in 2008. The size of the fund balance will also assist in moderating levy increases in 2009 and beyond when the increase in per claimant limit is taken into account in setting budgets for those years.

DISCRIMINATION AND HARASSMENT COUNSEL INCREASE IN HOURLY RATE

16. The Equity and Aboriginal Affairs Committee has drafted a report for Convocation in April recommending an increase in the hourly rate for the Discrimination and Harassment Counsel ("DHC") from \$175 / hour to \$250 / hour. This change is intended to take effect during the 2008 budget year and the Finance Committee assessed the financial impact of the change to the projected financial plans for 2008 as set out in the budget approved by Convocation in October 2007.
17. Increasing the hourly rate of the DHC from \$175 to \$250 per hour would represent a 43% increase and would require an increase in the annual budget allocated to the DHC Program from \$100,000 to \$150,000.
18. Since its creation as a permanent program, the expenses and budget for the DHC Program are as follows:

\$	2007	2006	2005	2004	2003	2002	2001
Expenses	42,555	65,184	74,714	66,298	79,401	71,412	106,740
Budget	100,000	100,000	100,000	100,000	100,000	100,000	100,000
Under/(Over)	57,445	34,816	25,286	33,702	20,599	28,588	(6,740)

19. The DHC Program has functioned well below its budget. In 2001, the DHC Program was slightly over budget due to more extensive promotional activities in its first year. From 2002 to 2007, the DHC Program was significantly under budget.
20. The Committee concluded the financial implications of the rate increase were acceptable. The current budget for the DHC has some space for the rate increase with any excess over budget because of the new rate for the rest of 2008 funded from the contingency account. The contingency account has not been used to date and has a balance of \$725,000.

The Treasurer announced that Robert Nairn, Shari Novick and John Wilson are appointed as Referees to the Compensation Fund.

CONVOCATION ROSE AT 1:05 P.M.

Confirmed in Convocation this 22nd day of May, 2008

Treasurer