

MINUTES OF CONVOCATION

Thursday, 23rd March, 2000
8:30 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Backhouse, Banack, Bindman, Braithwaite, Boyd, R. Cass, Carpenter-Gunn, Cherniak, Coffey, Copeland, Cronk, Crowe, Curtis, DiGiuseppe, E. Ducharme, T. Ducharme, Farquharson, Feinstein, Finkelstein, Furlong, Goodman, Gottlieb, Harnick, Hunter, Jarvis, Krishna, Legge, MacKenzie, Manes, Marrocco, Martin, Millar, Mulligan, Murray, O'Brien, Ortved, Porter, Potter, Puccini, Simpson, Swaye, Topp, White, Wilson and Wright.

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The reporter was sworn.

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer reported on the passing of Benchers Samuel Lerner who died on February 28th, 2000.

The Treasurer in remarking on the many accomplishments of Mr. Lerner as a practitioner and his contribution as a Benchers from 1975 described him as a "legend in the profession".

On behalf of the Benchers the Treasurer extended condolences to Mr. Lerner's family, firm and colleagues.

The Treasurer expressed his gratitude to Patricia Gyulay and the staff of the Bar Admission office who put in long hours preparing for the Call to the Bar ceremonies which were a great success.

The Treasurer commented on his recent travels to the law associations in Guelph and Wellington and his plans to visit Pickering, Bracebridge and Ottawa in April.

MOTION - Committee Appointment

It was moved by Ms. Puccini, seconded by Mr. Bindman that Judith Potter be appointed as a member to the Equity and Aboriginal Issues Committee.

Carried

REPORT OF THE PARALEGAL TASK FORCE

Messrs. Wilson, Hunter and Simpson presented the Report of the Paralegal Task Force for consideration by Convocation.

FINAL REPORT

Purpose of Report: Decision Making

FOREWORD AND ACKNOWLEDGEMENTS

The Law Society of Upper Canada regulates the legal profession in the public interest. Its role statement requires the Law Society to be vigilant in maintaining the public's confidence that those providing legal services to the public are knowledgeable, ethical and competent. The existence of legal advisors outside the regulatory control of the Law Society of Upper Canada has been a source of concern for the public, the government, and the legal profession.

In 1999 the Ontario government invited the Law Society of Upper Canada and a number of other organizations to assist it in its analysis of issues arising out of the delivery of legal services to the public by non-lawyers, including the issue of regulation of non-lawyers.

To facilitate the Law Society's participation, Convocation established a Paralegal Task Force in June 1999 to conduct research, participate in the government's process, and to provide Convocation with a report on possible approaches to regulating paralegal services. The Law Society's position on the most appropriate regulatory model will be forwarded to the provincial government. Because of its mandate to govern in the public interest the Law Society's focus in the process is on ensuring that any new path chosen will satisfactorily address the public interest.

The Task Force Members are benchers:

Richmond Wilson, Q.C. Chair,
Hon. Allan Lawrence, P.C., Q.C. Vice Chair,
Stephen Bindman,
Gillian Diamond,
Todd Ducharme,
Charles Harnick, Q.C.,

George Hunter,
Laura Legge, Q.C.,
Frank Marrocco, Q.C.,
Gregory Mulligan,
Bill Simpson, Q.C., LSM,
Bradley Wright

and non-bencher members:

Malcolm Heins and Heather McGee

In meeting its mandate the Task Force has done the following:

- (a) held informal sessions with paralegal organizations;
- (b) held public hearings at which it heard from those individuals and organizations with perspectives on the activities of paralegals including consumers, tribunals, community colleges, paralegals themselves, and lawyers;
- (c) sought and obtained written comments on the issues from the public, paralegals and members of the legal profession;

- (d) retained and instructed Strategic Counsel and their associates Professors John McCamus and Patrick Monahan of Osgoode Hall Law School to conduct an environmental scan and review of policy options pertaining to the appropriate regulation of paralegal services in Ontario.

In addition the Law Society has, throughout this process, continued its long-standing dialogue with the Ministry of the Attorney General and with legal organizations whose assistance has been invaluable.

The report that follows brings together the research, consultations, policy options, and information the Task Force has received in the months since its establishment. The Task Force is grateful for the advice, assistance, and thoughtful comments provided to it by all the participants and, in particular, to The Strategic Counsel and Professors McCamus and Monahan for their reports, which have useful in the deliberations of the Task Force.

The Task Force also wishes to acknowledge and thank Sheena Weir, Ajit John, Elliot Spears, Jane Noonan, the catering staff, and other Law Society staff who, in addition to their usual predictable excellence, stayed the course with Task Force members during the pre-dawn, all-day, and late night sessions that were necessary to meet deadlines.

March 2000

EXECUTIVE SUMMARY

I. Introduction

The Law Society of Upper Canada regulates the legal profession in the public interest. Its role statement requires the Law Society to be vigilant in maintaining the public's confidence that those providing legal services to the public are knowledgeable, ethical and competent. The existence of legal advisors outside the regulatory control of the Law Society of Upper Canada has been a source of concern for the public, the government, and the legal profession.

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To facilitate the Law Society's participation, Convocation established a Paralegal Task Force in June 1999 to conduct research, participate in the government's process, and to provide Convocation with a report on possible approaches to regulating paralegal services. The Law Society's position on the appropriate regulatory model will be forwarded to the provincial government. Because of its mandate to govern in the public interest the Law Society's focus in the process is on ensuring that any new path chosen will satisfactorily address the public interest.

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Malcolm Heins and Heather McGee.

In meeting its mandate the Task Force has held informal sessions and public hearings and sought and obtained written comments from various groups and individuals with an interest in this issue. The Law Society retained and instructed Strategic Counsel and their associates Professors John McCamus and Patrick Monahan of Osgoode Hall Law School to conduct an environmental scan and review of policy options pertaining to the appropriate regulation of paralegal services in Ontario. In addition the Law Society has, throughout this process, continued its long-standing dialogue with the Ministry of the Attorney General and with legal organizations whose assistance has been invaluable.

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II Overview to The Report And Recommendations

(i) Background

Concerns about the delivery of legal services to the public by non-lawyers have existed for over a decade in Ontario and elsewhere. There is a wealth of information concerning the issue both as it relates to the Ontario experience and to other jurisdictions. Central among the concerns raised throughout the discussions and debates on this issue are risk to the public, quality of service, and the erosion of the rule of law.

A number of general considerations underlie the Task Force's report, including:

- (a) The public interest must be central to the discussion of the delivery of legal services by non-lawyers and to any plan for regulating such delivery.
- (b) Appreciation of the history of this issue both in its Ontario context and in other jurisdictions would assist in the development of a plan for the future that would be realistic, fair to those affected by it, effective, and acceptable to the various groups who have an interest in the issue.
- (c) Any possible plan for addressing the delivery of legal services by non-lawyers must be measured against its ability to,
 - (i) minimize risks to the public,
 - (ii) ensure quality service to the public, and
 - (iii) address issues related to the rule of law,
- (d) Action on this issue is long overdue and the momentum created by the provincial government's initiative in this area should not be lost.

(ii) The Report

The Task Force's full report is divided into five parts:

- Part I: outlines the relevance and importance of the principle of the rule of law to any discussion on the delivery of legal services to the public by non-lawyers. This part provides the context within which the balance of the report is situated.
- Part II: provides background information through a summary of the recent history of the paralegal issue in Ontario and an overview to the findings of Strategic Counsel's environmental scan. The recommendations proposed by the Task Force flow out of its understanding of the history of the issue as well as the available evidence on the public's use of non-lawyers and risk factors related to that use.
- Part III: provides comparative information on regulation of paralegals in other countries and on regulations of other paraprofessionals in Ontario. The Task Force has drawn on the experience that has been gained in other contexts to develop its recommendations.

Part IV: discusses the two critical topics of jurisdiction and regulation. Jurisdiction in this context refers to what type of legal services might be provided to the public by non-lawyers, subject to the imposition of safeguards to minimize the risk to the public. Regulation refers to the monitoring process that could be instituted to provide those safeguards. The Task Force's recommendations are offered in the context of these two topics.

Part V: contains the Task Force's conclusions.

(iii) Recommendations

The Task Force's recommendations are as follows:

In the matter of jurisdiction:

1. Independent paralegals should be prohibited from practising in the context of Criminal Code offences and interim judicial release applications.
2. The federal government should modernize the Criminal Code and restrict agents to assisting accused persons on such matters as routine appearances, uncontested adjournments and the like. Agents should be prohibited from representing an accused person in any other capacity under the Criminal Code.
3. Subject to forum specific regulation independent paralegals should be permitted to practice in Highway Traffic Act matters, Provincial Offences Act matters, as hereinafter described, and in Small Claims Court.
4. Independent paralegals should be prohibited from representing persons charged with offences under the Provincial Offences Act where the possible penalty on conviction is,
 - (i) imprisonment; or
 - (ii) a fine greater than the monetary limit that may be claimed in a Small Claims Court proceeding in the jurisdiction in which the POA matter is heard.

In such cases only lawyers should be permitted to provide representation.

5. For other POA offences, the Court should exercise its jurisdiction under section 50(3) of the POA to bar any agent "if the court finds that the person is not competent properly to represent or advise the person for whom he or she appears as agent or does not understand and comply with the duties and responsibilities of an agent."
6. Subject to forum specific regulation, independent paralegals should be permitted to represent the public before administrative tribunals.
7. Subject to forum specific regulation, independent paralegals should be permitted to practice in the area of landlord and tenant matters.
8. To the extent that the Supreme Court of Canada determines that the Immigration Act permits non-lawyers to represent parties, and that the provinces have the constitutional jurisdiction to regulate such representation, Ontario should apply whatever regime is developed for independent paralegal regulation generally to those paralegals acting under the Immigration Act.
9. To the extent that the Supreme Court of Canada determines that the Immigration Act permits non-lawyers to represent parties, and that the provinces do not have the constitutional jurisdiction to regulate such representation, the federal government should implement an appropriate, forum-specific regulatory regime for appearances and other involvements by paralegals and consultants in federal tribunals.

10. The provinces should work together with the federal government to ensure there is an effective scheme of regulation to protect the public interest in this area.
11. Independent paralegals should be prohibited from incorporating businesses and giving legal advice on business matters.
12. Independent paralegals should be prohibited from practising in the area of wills and estates.
13. Independent paralegals should be prohibited from practising in the area of powers of attorney.
14. Independent paralegals should be prohibited from practising in the area of family law.
15. Independent paralegals should be prohibited from practising in the area of personal injury claims settlements and statutory accident benefits.
16. Independent paralegals should be prohibited from practising in the area of real estate law.
17. Independent paralegals should be permitted to do work in the following areas:
 - Criminal pardons;
 - Mediation;
 - Name change applications;
 - Process serving;
 - Commissioners of Oaths;
 - Title searching (but not opinions on or certifications of title);
 - Credit counselling; and
 - Debt collections (regulated by the Collection Agencies Act)
18. The Law Society Act should contain a definition of the "practice of law".
19. The definition of the practice of law should include the following activities:
 - (a) appearing on behalf of any person in a proceeding in any federal or provincial court or tribunal;
 - (b) drawing, revising or settling,
 - (i) a petition, memorandum or articles, application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation registration, organization, re-organization, dissolution or winding up of a corporate body pursuant to any federal or provincial statute relating to incorporations,
 - (ii) a document required in a proceeding in a federal or provincial court or tribunal,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person, or
 - (iv) an instrument relating to real or personal property that is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
 - (c) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;

- (d) advising, acting, assisting any person respecting rights to real or personal property;
- (e) giving legal advice or assistance to a party in a family law matter including the drafting and executing of agreements;
- (f) making an offer to anything referred to in paragraphs (a) to (e); and
- (g) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (d).

In the matter of regulation:

20. The regulatory scheme for all paralegals must contain the following minimum elements:

- (a) mandatory insurance for paralegals, including a requirement of personal liability as opposed to corporate liability;
- (b) a compensation fund for individuals who suffer loss as a result of unscrupulous or incompetent paralegals;
- (c) appropriate educational and training requirements;
- (d) provision for continuing legal education;
- (e) appropriate ethical standards including rules governing their conduct and a requirement that paralegals be "persons of good character";
- (f) a licensing scheme that permits the efficient identification of qualified paralegals;
- (g) an appeal process;
- (h) sufficient resources for the maintenance of meaningful quality assurance, the disciplining of paralegals violating the Rules of Professional Conduct and the prosecution of those individuals engaged in unauthorized practice as a paralegal;
- (i) a provision for trust accounts;
- (j) a fees assessment process; and
- (k) advertising rules.

In the matter of a regulatory model:

21. Convocation is requested to consider and, if appropriate approve either:

- a) Law Society of Upper Canada - Centred Tribunal Accreditation; or
- b) Ontario Legal Services - Centred Tribunal Accreditation.

2. The Task Force recommends that the requirement to be duly qualified or accredited in accordance with procedures established by a court or agency should apply to both independent paralegals and law clerks practising under the supervision of a lawyer.

III Rule of Law

The self-governance of the legal profession traces back to the importance of the rule of law, the role of legal services and advice in maintaining and advancing the rule of law, and the importance that those providing legal services and advice be independent from the state and others, all in the public interest.

In Canada, the rule of law is “a fundamental postulate of our constitutional structure. At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action.

Traditionally, legal services and advice have been delivered to the public by lawyers. In the recent past, however, paralegals have begun to deliver legal services to the public independently of lawyers raising the question of regulating paralegal delivery of legal services to the public.

The reasons for self-governance offer guidance in a discussion of the regulation of the delivery of legal services to the public by non-lawyers.

IV History and Context

In considering issues arising from the delivery of legal services to the public by non-lawyers it is important to understand both the history of the topic in Ontario and the current landscape. Over the last fifteen years a number of court rules, Task Forces, and committees have examined the issue and made recommendations.

(i) Research

Given the current state of discussions concerning the regulation of paralegals, the Law Society of Upper Canada commissioned The Strategic Counsel to conduct a comprehensive review of the current state of paralegal practices in Ontario in order to further public knowledge in this area. The findings are briefly summarized below.

The quantitative and qualitative information gathered from the surveys and interviews provides invaluable insight into issues such as public perceptions and use of paralegals, nature of matters for which the public chooses lawyers or paralegals, quality of service perceptions, awareness and attitudes toward regulation, and the scope of paralegal activity.

Paralegal users

- Of the 250 paralegal users interviewed, 36% reported that they had also used legal services at least once in the last five years.
- The majority of those using legal services did so for a real estate matter, or for will and estate planning purposes. Family law matters, including divorce, separation and child custody cases also figure prominently.
- Two-thirds of paralegal service users (66%) consider regulation to be of some importance.
- Cost, access and interest are key factors in the decision to hire a paralegal over a lawyer.
- With over 80% of users of legal and paralegal services expressing general satisfaction, and approximately one-half saying they were “very satisfied” overall, it is clear that both types of service providers are meeting the needs of their respective clienteles.

- Those areas where lawyers are overwhelmingly preferred are, as might be expected, areas of high risk.
- Paralegals are preferred over lawyers in four main areas: representation at small claims court, obtaining government benefits, traffic ticket offences and credit counselling.
- Only two-in-five (39%) respondents are aware that paralegals are currently unregulated in the province.
- No one model of regulation is viewed as most appropriate by a majority of respondents.

Paralegal Practitioners

- A telephone survey of 200 paralegal practitioners across the province was conducted.
- Overall, research findings indicate a wide diversity of services being offered by paralegal organizations.
- By and large, the paralegal industry appears to be dominated by sole proprietorships and small partnerships.
- At present, most paralegal activity is limited to work for the public rather than the corporate sector.
- Among those charging an hourly rate, the average rate for services is \$93.
- 71% seek regulation, and 42% of those are strongly in favour of it.
- While there is strong support for the regulation of paralegal activity, this is not the case as far as the means of regulation are concerned. Indeed, no one model is supported by a majority of paralegals.

Elite Survey Exploring the Impact of Paralegal Activity on the Administration of Justice

- 25 personal interviews were conducted with groups involved in the administration of justice, including judges, tribunal adjudicators, hearing officers and Crown Attorneys.
- A number of those interviewed indicated having noticed a measurable increase in the mid-1990's shortly after significant changes were made in the legal aid plan.
- Others suggested that the increasing number of administrative tribunals, and the increase in the jurisdiction of these tribunals, have played a role in the growing number of paralegal practitioners.
- A third explanation for the increase in paralegal activity put forward by those interviewed is that paralegals are effective and prolific advertisers.
- in almost all cases, respondents indicated that the majority of paralegals fall into the "do no harm" to "highly effective" range.
- Given the nature of those interviewed in this research, awareness that there is currently no regulation governing paralegals was universal. There was no agreement on models of regulation.

Elite Survey Exploring the Impact of Paralegal Activities on Stakeholder Constituencies

- 20 personal interviews were conducted with stakeholders including community colleges, ethnic/immigrant associations, financial institutions and credit counselling services.
- Among stakeholders and their constituents, there are a number of perceived advantages to hiring a paralegal over a lawyer. The prevailing rationale, however, appears to be a perception of lower cost. Other perceived advantages include: better value for money with respect to "basic", "straightforward" matters; more individualized service; and greater accessibility.
- Paralegals are perceived by a few stakeholders to offer greater flexibility than lawyers in terms of payment, and provide services in one's language of choice - thus servicing communities seen as previously neglected by the legal profession.
- The greatest disadvantage lies in the inconsistency of services provided.
- Another significant disadvantage to hiring a paralegal versus a lawyer, mentioned by a number of stakeholders, is the perceived lack of accountability.

V Jurisdiction

The Strategic Counsel study provides clear evidence that a broad range of legal services are in fact currently being provided by independent paralegals in Ontario. It is realistic to assume that some proportion of those services includes the provision of legal advice. This appears to infringe upon the statutory monopoly conferred upon the legal profession to provide such services to the public. It is relevant to consider, however, whether from the perspective of the public interest a need for such services exists and, if so, whether the provision of legal services by non-lawyers should be tolerated and/or regulated in some fashion.

The Strategic Counsel's survey of users of paralegal services reveals consumer demand for paralegal services in such areas as Highway Traffic Act defences, immigration matters, landlord and tenant disputes, and debt collection. The survey also indicates a number of other areas in which such services are provided. The consumer demand cannot be ignored in considering whether paralegals should be entitled to provide certain kinds of services.

One of the concerns raised about equating public perception of the need for paralegals with actual need for their services is that the perception is a false one arising from,

- (a) misleading information from paralegals;
- (b) ignorance about the qualifications of paralegals;
- (c) ignorance about the cost and accessibility of lawyers; and
- (d) most importantly, ignorance about the risks inherent in the provision of such services.

The argument is made that consumers may be unaware of the dangers of using paralegals who lack full training and liability insurance, and may be ill equipped to compare the fees charged by lawyers and paralegals in given service areas.

While the Task Force accepts that such considerations may influence the perception of need for paralegal services to some degree, it is of the view that these considerations do not provide a full explanation for the existence of the consumer demand. The results of the Strategic Counsel environmental scan support this view.

The Task Force is of the view, however, that even accepting that consumer demand is evidence of some need for paralegal services, an analysis must be done of,

- (a) potential risk of harm to the public that such services may pose, and
- (b) the need, if any, for regulating the service providers, including limiting who may provide the services.

When weighing the costs and benefits of regulatory options, it may be appropriate to consider the extent to which the costs of regulating paralegals are outweighed by the benefit of meeting genuine consumer needs.

The Task Force has analyzed the risk of harm to the public as it applies to 11 areas of practice namely:

- (a) Criminal Code offences representation and judicial interim-release hearings
- (b) Small Claims Court, Highway Traffic Act, and provincial Offences Act
- (c) Administrative Tribunals
- (d) Landlord and Tenant
- (e) Immigration and Federal Tribunals
- (f) Incorporation
- (g) Wills and Estates
- (h) Powers of Attorney
- (i) Family Law
- (j) Personal Injury claims settlement and statutory accident benefits
- (k) Real Estate

Following its analysis the Task Force has made recommendations concerning,

- (a) those service areas or “jurisdictions” in which paralegals should be entitled to provide service without regulation because work in those areas does not constitute the practice of law;
- (b) those service areas or jurisdictions that constitute the practice of law, in which the risk of harm to the public is present if paralegals provide services, but can be managed appropriately through regulation; and
- (c) those service areas or jurisdictions that constitute the practice of law, in which the risk of harm to the public if paralegals provide services is so significant that it cannot be managed through regulation and as such paralegals should be prohibited from providing any service.

The Task Force has further recommended that to be able to assess whether paralegals are involved in activities under (a), (b), or (c), above, it is essential that a definition of the “practice of law” be included in the Law Society Act. This will make it possible to accurately assess the unauthorized practice of law.

VI Regulation

Among all participants surveyed, there is unqualified support for the regulation of paralegals. What does not emerge is any consensus for the model of regulation.

(i) Criteria for Evaluation and Selection

There are a number of criteria or principles by which various regulatory options may be evaluated.

- Does the particular regulatory strategy offer the prospect of reducing the risk of harm to the public to a material degree?
- Is it likely that any enforcement mechanisms that are built into the strategy will be effective?

- What are the financial burdens associated with administration of the scheme and perhaps unintended, negative consequences of establishing the regulatory system?
- What is the impact of a regulatory scheme on interests other than those of the direct consumers?
- Does the expenditure of such resources meet a genuine public need?
- Fairness in the treatment of regulated service providers is also important. To the extent that a regulatory scheme sets standards for performance with the possibility of exclusion for service providers who fail to meet those standards, standards of due process must be met in providing for the investigation and prosecution of non-compliance.

Relying on its analysis of risk of harm and the recommendations regarding jurisdiction, the Task Force has recommended,

- (a) proposed elements that should be contained in whatever regulatory model is adopted; and
- (b) two possible regulatory models, both of which are based on the tribunal accreditation system, but differ with respect to what body is designated as the central accreditation office.

(ii) Tribunal Accreditation

Under the tribunal accreditation model, the various courts or administrative agencies would establish the required qualifications based on the particular kind of knowledge or background necessary for representation by non-lawyers before that tribunal. As such, there would be no need for a “one-size fits all” approach; it would be possible for different courts or tribunals to establish different kinds of accreditation requirements. Indeed, there would be no need for the tribunal to impose any restrictions on the right to representation by non-lawyers if, in the tribunal’s view, the costs of such restrictions outweighed the benefits to be derived from regulation.

Under the tribunal accreditation model, a central organization would administer the regulatory regime. The Law Society would be involved in the central organization. The Task Force’s two models differ with respect to the degree of Law Society involvement. Under the Law Society of Upper Canada-centred tribunal accreditation model, the Law Society has a dominant role in the regulatory regime. Under the Ontario Legal Services Corporation-centred tribunal accreditation model, the Law Society has a minor participatory role.

In order to accommodate this approach, all provincial statutes that provide for representation by agent would be amended to provide for representation by “accredited agent”, with the applicable qualifications to be established by the court or tribunal before whom the agent proposes to practise. Accreditation would be required for any non-lawyer agent who wished to appear, or who wished to file documents, including assisting in the preparation of documents to be filed, with any tribunal that permits the appearance of agents.

Advantages

There are significant advantages to incorporating the idea of tribunal accreditation into any model of paralegal regulation.

These advantages include:

- (a) a significant degree of flexibility that will permit the development of tailored accreditation standards;
- (b) avoidance of a “one size fits all” accreditation;
- (c) avoidance of paralegals incurring the expenses of a more general accreditation;

- (d) requirement of agents to demonstrate that they were properly accredited before filing documents or appearing before tribunals;
- (e) permitting various tribunals to take control of their own processes;
- (f) allowing tribunal adjudicators and judges, who are best placed, to make the difficult value choices involved in paralegal regulation;
- (g) enhances the credibility of those paralegals who are deemed qualified as providers of legal services before the particular tribunal; and
- (h) captures the majority of paralegals currently operating in Ontario.

Possible Disadvantages

The possible disadvantages of the tribunal accreditation model are that it,

- (a) imposes on tribunals and courts the burden of establishing standards and practices;
- (b) like any accreditation model, will have costs to the stakeholders and the administration of justice;
- (c) would not unilaterally resolve the problem of the unauthorized practice of law outside courts and tribunals.

Option 1: LSUC Centred Tribunal Accreditation

Advantages

- (1) The Law Society has a long and established record of effective regulation of those persons qualified to deliver legal services to the public.
- (2) The Law Society has an existing regulatory infrastructure in place to regulate legal service providers.
- (3) Bringing paralegal regulation within the umbrella of the Law Society would preserve the independence of the legal profession.
- (4) Costs of an accreditation system administered by the Law Society would be based on a fee for service to tribunals and to agents who seek accreditation. It should be noted that any costs associated with the tribunal accreditation model should not be borne by members of the Law Society.

Option 2: OLSC Centred Tribunal Accreditation

Advantages

- (1) The central accreditation office located outside of LSUC might make the structure more palatable to paralegals.
- (2) This would permit LSUC to have continued involvement in the regulation of paralegals without the necessity of playing a dominant role in the process.
- (3) The OLSC would be independent of direct Government control so as to preserve, at least to some extent, the independence of paralegals acting as advocates before the relevant tribunals.
- (4) Costs of this accreditation system would be based on a fee for service to tribunals and agents who seek accreditation.

Disadvantages

The principle disadvantage with this regulatory option is the need to establish a new body that, for an initial period at least would require public funding.

(iii) Other Models

The Task Force did consider other regulatory models, but for the reasons set out above is of the view that tribunal accreditation is the most appropriate. The other models considered are briefly summarized below.

Status Quo Model

Advantages and Disadvantages

There are a number of overriding shortcomings with the status quo. Foremost is the fact that paralegals are practising law in areas of high risk to the consumer, and where many are clearly not competent to act. Few disagree that the status quo is unacceptable. The question is not whether to regulate paralegals, but how.

Requiring Paralegals To Practice Under the Supervision Of A Lawyer

Advantages

- This would ensure that non-lawyers receive adequate supervision and training to perform the tasks delegated to them.
- The solicitor-client relationship would be protected by solicitor-client privilege.
- The client would be protected, as well, by all of the other consumer protection features.

Disadvantages

- Since there appears to be consumer demand for unsupervised paralegals, it may be difficult to persuade responsible decision-makers that a reform of this kind is necessary or in the public interest.
- It would be necessary to amend all those statutes, both federal and provincial, that currently permit non-lawyers to appear before various courts and tribunals for fee paying clients. The existence of consumer demand for unsupervised paralegals may make governments reluctant to undertake this measure.

Licensing by the Law Society of Upper Canada

Advantages

- The Law Society has a long and established record of effective regulation.
- The Law Society has an existing regulatory infrastructure in place.
- This would ensure that the Law Society maintains control over the definition of the practice of law.
- This would shelter paralegal practice within the independence of the legal profession.

Disadvantages

- If the Law Society were assigned the primary or dominant role in regulating paralegals, the result may be perceived as having one professional group regulating another.
- There would be a perceived conflict of interest between the interests of the Law Society and that of paralegals.
- It is unlikely that paralegals would regard regulation by the Law Society as legitimate.

Regulation by government ministry

Advantages

- It builds on an existing infrastructure within the Ministry of Consumer and Commercial Relations.
- It has been applied by government successfully in a wide variety of contexts.

Disadvantages

- It assumes that since paralegal services in certain kinds of areas pose a risk to the public and should be regulated, paralegal service providers should all be subject to the same general kind of regulation.

Regulation by Legal Services Corporation

Advantages

- The advantages of regulating paralegals within such a body are related to the legitimacy of the structure as far as the various stakeholders are concerned and accountability to the public.

Disadvantages

- It creates a new corporation to serve as an accreditation, regulatory and disciplinary body, which may require legislative amendments.
- The ongoing cost of maintaining expertise and administrative capacity to carry out the mandate of a legal services corporation may be prohibitive.

Paralegal Self-Regulation

Advantages

A recent paper prepared by the Ministry of Consumer and Commercial Relations outlines the advantages associated with self-management and self-regulation. These advantages includes,

- lower costs from the point of view of government;
- certain industry associations may see self-management as a means of enforcing high standards in their industry and maintaining regulatory efficiency;
- a competitive economy requires flexible governance strategies that do not impede business planning and
- self-management can offer faster, more flexible responses to rapid developments in the market place, such as changing technology.

Disadvantages

The major disadvantages of self-regulation relate to the fact that the paralegal industry displays few, if any, of the characteristics associated with a 'mature' industry, as that term is used by the Ministry of Consumer and Commercial Relations.

VI CONCLUSION

In reaching the recommendations it has the Task Force has considered both the Ontario history of the issue of the delivery of legal services to the public by non-lawyers and the evidence presented by The Strategic Counsel in its environmental scan. The Task Force believes that any plan for the future must take into account both history and current reality.

The Task Force considers the principle of risk of harm to the public to be of paramount importance in developing a plan for the future to deal with the delivery of legal services by non-lawyers. This belief is strongly reflected in the recommendations put forward by the Task Force.

That principle and the recommendations that flow from it have led the Task Force to conclude that a system of tribunal accreditation should form the basis of a future regulatory scheme, with either the Law Society of Upper Canada or the Ontario Legal Services Corporation as the Central Accreditation Office.

OVERVIEW TO THE REPORT AND RECOMMENDATIONS

I Background

Concerns about the delivery of legal services to the public by non-lawyers have existed for over a decade in Ontario and elsewhere. There is a wealth of information concerning the issue both as it relates to the Ontario experience and to other jurisdictions. Central among the concerns raised throughout the discussions and debates on this issue are risk to the public, quality of service, and the erosion of the rule of law.

A number of general considerations underlie the Task Force's report, including:

- (a) The public interest must be central to the discussion of the delivery of legal services by non-lawyers and to any plan for regulating such delivery.
- (b) Appreciation of the history of this issue both in its Ontario context and in other jurisdictions would assist in the development of a plan for the future that would be realistic, fair to those affected by it, effective, and acceptable to the various groups who have an interest in the issue.
- (c) Any possible plan for addressing the delivery of legal services by non-lawyers must be measured against its ability to,
 - (i) minimize risks to the public,
 - (ii) ensure quality service to the public, and
 - (iii) address issues related to the rule of law.
- (d) Action on this issue is long overdue and the momentum created by the provincial government's initiative in this area should not be lost.

II The Report

The report is divided into five parts:

- Part I: outlines the relevance and importance of the principle of the rule of law to any discussion on the delivery of legal services to the public by non-lawyers. This part provides the context within which the balance of the report is situated.
- Part II: provides background information through a summary of the recent history of the paralegal issue in Ontario and an overview to the findings of The Strategic Counsel's environmental scan. The recommendations proposed by the Task Force flow out of its understanding of the history of the issue as well as the available evidence on the public's use of non-lawyers and risk factors related to that use.
- Part III: provides comparative information on regulation of paralegals in other countries and on regulations of other paraprofessionals in Ontario. The Task Force has drawn on the experience that has been gained in other contexts to develop its recommendations.
- Part IV: discusses the two critical topics of jurisdiction and regulation. "Jurisdiction" in this context refers to what type of legal services might be provided to the public by non-lawyers, subject to the imposition of safeguards to minimize the risk to the public. Regulation refers to the monitoring process that could be instituted to provide those safeguards.

The Task Force's recommendations are offered in the context of these two topics.

Part V: contains the Task Force's conclusions.

III Recommendations

The Task Force's recommendations are as follows:

In the matter of jurisdiction:

1. Independent paralegals should be prohibited from practicing in the context of Criminal Code offences and interim judicial release applications.
2. The federal government should modernize the Criminal Code and restrict agents to assisting accused persons on such matters as routine appearances, uncontested adjournments and the like. Agents should be prohibited from representing an accused person in any other capacity under the Criminal Code.
3. Subject to forum specific regulation independent paralegals should be permitted to practice in Highway Traffic Act matters, Provincial Offences Act matters, as hereinafter described, and in Small Claims Court.
4. Independent paralegals should be prohibited from representing persons charged with offences under the Provincial Offences Act where the possible penalty on conviction is,
 - (i) imprisonment; or
 - (ii) a fine greater than the monetary limit that may be claimed in a Small Claims Court proceeding in the jurisdiction in which the POA matter is heard.

In such cases only lawyers should be permitted to provide representation.

5. For other POA offences, the Court should exercise its jurisdiction under section 50(3) of the POA to bar any agent "if the court finds that the person is not competent properly to represent or advise the person for whom he or she appears as agent or does not understand and comply with the duties and responsibilities of an agent."
6. Subject to forum specific regulation, independent paralegals should be permitted to represent the public before administrative tribunals.
7. Subject to forum specific regulation, independent paralegals should be permitted to practice in the area of landlord and tenant matters.
8. To the extent that the Supreme Court of Canada determines that the Immigration Act permits non-lawyers to represent parties, and that the provinces have the constitutional jurisdiction to regulate such representation, Ontario should apply whatever regime is developed for independent paralegal regulation generally to those paralegals acting under the Immigration Act.
9. To the extent that the Supreme Court of Canada determines that the Immigration Act permits non-lawyers to represent parties, and that the provinces do not have the constitutional jurisdiction to regulate such representation, the federal government should implement an appropriate, forum-specific regulatory regime for appearances and other involvements by paralegals and consultants in federal tribunals.
10. The provinces should work together with the federal government to ensure there is an effective scheme of regulation to protect the public interest in this area.
11. Independent paralegals should be prohibited from incorporating businesses and giving legal advice on business matters.
12. Independent paralegals should be prohibited from practising in the area of wills and estates.
13. Independent paralegals should be prohibited from practising in the area of powers of attorney.
14. Independent paralegals should be prohibited from practising in the area of family law.
15. Independent paralegals should be prohibited from practising in the area of personal injury claims settlements and statutory accident benefits.
16. Independent paralegals should be prohibited from practising in this area of real estate law.
17. Independent paralegals should be permitted to do work in the following areas:
 - Criminal pardons;
 - Mediation;
 - Name change applications;
 - Process serving,
 - Commissions of Oaths;
 - Title searching (but not opinions on or certifications of title);
 - Credit counselling; and
 - Debt collections (regulated by the Collection Agencies Act)
18. The Law Society Act should contain a definition of the "practice of law".

19. The definition of the practice of law should include the following activities:

- (h) appearing on behalf of any person in a proceeding in any federal or provincial court or tribunal;
- (i) drawing, revising or settling;
 - (j) a petition, memorandum or articles, application, statement, affidavit, minute, resolution, bylaw or other document relating to the incorporation registration, organization, re-organization, dissolution or winding up of a corporate body pursuant to any federal or provincial statute relating to incorporations,
 - (ii) a document required in a proceeding in a federal or provincial court or tribunal,
 - (iii) a will, deed of settlement, trust deed, power of attorney or a document relating to a probate or letters of administration or the estate of a deceased person, or
 - (iv) an instrument relating to real or personal property that is intended, permitted or required to be registered, recorded or filed in a registry or other public office;
- (j) doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages;
- (k) advising, acting, assisting any person respecting rights to real or personal property;
- (l) giving legal advice or assistance to a party in a family law matter including the drafting and executing of agreements;
- (m) making an offer to anything referred to in paragraphs (a) to (e); and
- (n) making a representation by a person that he or she is qualified or entitled to do anything referred to in paragraphs (a) to (d).

In the matter of regulation:

20. The regulatory scheme for all paralegals must contain the following minimum elements:

- (l) mandatory insurance for paralegals, including a requirement of personal liability as opposed to corporate liability;
- (m) a compensation fund for individuals who suffer loss as a result of unscrupulous or incompetent paralegals;
- (n) appropriate educational and training requirements;
- (o) provision for continuing legal education;
- (p) appropriate ethical standards including rules governing their conduct and a requirement that paralegals be "persons of good character";
- (q) a licensing scheme that permits the efficient identification of qualified paralegals;
- (r) an appeal process;
- (s) sufficient resources for the maintenance of meaningful quality assurance, the disciplining of paralegals violating the Rules of Professional Conduct and the prosecution of those individuals engaged in unauthorized practice as a paralegal;
- (t) a provision for trust accounts;
- (u) a fees assessment process; and
- (v) advertising rules.

In the matter of a regulatory model:

21. Convocation is requested to consider and, if appropriate approve either:

- (c) Law Society of Upper Canada-Centred Tribunal Accreditation; or
- (d) Ontario Legal Services -Centred Tribunal Accreditation.

The Tas Force recommends that the requirement to be duly qualified or accredited in accordance with procedures established by a court or agency should apply to both independent paralegals and law clerks practising under the supervision of a lawyer.

IV CONVOCATION IS REQUESTED TO:

- a) CONSIDER THE Task Force's report and if appropriate approve it for conveyance to the government of Ontario by forwarding it to the Honourable Peter deC. Cory,
- b) consider recommendations 1 to 17 above and, if appropriate, approve them,
- c) consider recommendations 18 and 19 and, if appropriate, approve them,
- d) consider recommendation 20 and 22 and if appropriate, approve them, and
- e) consider options (a) and (b) of recommendation 21 and, if appropriate, approve one.

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

- (1) Part I: Introduction. (pages 35 - 42)
- (2) Part II: History and Context. (pages 44 - 82)
- (3) Part III: The Landscape of Paralegals and Other Para-Professional Regulation (pages 84 - 102)
- (4) Part IV: Approach to Regulation (pages 104 - 205)
- (5) Part V: Conclusion (pages 206)
- (6) Appendix I - Paralegal Submissions (page 207 - 218)
- (7) Appendix II - List of Experts who appeared at the Paralegal Task Force Hearings (page 219)
- (8) Appendix II - Strategic Counsel Research (under separate cover)

Following the presentations the Chair and members of the Task Force took questions from the Bench.

Convocation took a recess at 10:20 a.m. and resumed at 10:45 a.m.

The Treasurer announced the resignation of Mr. Robert Holden as Director of Legal Aid Ontario effective March 31st, 2000. Mr. Holden has been the Director of Legal Aid for the last 17 years and for 16 of those 17 years he has been a devoted public servant and employee of the Law Society. For the last year he has been a devoted public servant and an employee of Legal Aid Ontario.

The Treasurer on behalf of the Benchers thanked Mr. Holden for his great contribution to Legal Aid.

RESUMPTION OF THE REPORT OF THE PARALEGAL TASK FORCE

Amendments by Todd Ducharme

Page 121 of the Report, paragraph 4 of the Recommendations:

- (1) that the words "the possible penalty on conviction is" be deleted and the words "the prosecution indicates that he or she will be seeking a penalty on the conviction of" be inserted. The paragraph would then read:

"Independent paralegals should be *prohibited* from representing persons charged with offences under the *Provincial Offences Act* where the prosecution indicates that it will be seeking a penalty on the conviction of"

Page 121 of the Report, paragraph 5 of the Recommendations:

- (2) that the words "not prohibited by paragraph 4" be inserted after the word "offences" so that the sentence would then read:

"For other POA offences, not prohibited by paragraph 4 the Court should exercise its jurisdiction under section 50(3) of the POA to bar any agent....."

It was moved by Mr. Wilson, seconded by Messrs. Hunter and Simpson that the recommendations on pages 32 and 33 and set out below be approved as amended:

- "a) consider the Task Force's report and if appropriate approve it for conveyance to the government of Ontario by forwarding it to the Honourable Peter deC. Cory,
- b) consider recommendations 1 to 17 and, if appropriate, approve them,
- c) consider recommendations 18, 19 and 20 and, if appropriate approve them,
- d) is deleted
- e) - becomes (d) consider options (a) and (b) of recommendation 21 and, if appropriate, approve one."

The following amendments were accepted by the Chair:

Moved by Mr. MacKenzie, seconded by Mr. Crowe

- (1) Page 30, paragraph 19 (i)(ii) that the word "legal be inserted before the word "document" so that the paragraph would then read:
 - "(ii) a legal document required in a proceeding in a federal or provincial court or tribunal,"
- (2) Page 30 - that sub paragraph (g) be added to include "the providing of legal advice or a legal opinion" in the definition of the practice of law.

Moved by Mr. Millar, seconded by Mr. Marrocco

- (1) Page 11, paragraph 22 and Page 176 (recommendation in box) that the word "both" before "independent paralegals" be deleted and the words "And law clerks practising under the supervision of a lawyer" be deleted so that the paragraph would then read:

"The Task Force recommends that the requirement to be duly qualified or accredited in accordance with procedures established by a court or agency should apply to independent paralegals".

Withdrawn

Moved by Mr. Wright

That the Millar/Marrocco motion be amended by adding the words "and not law clerks practising under the supervision of a lawyer" after the words "independent paralegals".

The amendment was accepted.

- (2) Page 176, paragraph beginning with the words "Law clerks practising.." - that the following sentence be deleted:

"However, when a supervised law clerk appears before a court or tribunal, that law clerk is then not under the direct supervision of a lawyer".

Moved by Mr. Krishna, seconded by Ms. Puccini

Page 8, paragraph 11 and similarly page 29, paragraph 11 and page 128, paragraph 11 - that the words "and legal opinions on tax law" be added. The paragraph would then read:

"Independent paralegals should be *prohibited* from incorporating businesses and giving legal advice on business matters and legal opinions on tax law."

Moved by Mr. Cherniak

Page 10, paragraph 19 (f) - that the word "do" be added to read:

"making an offer to do anything referred to in paragraphs (a) to (e); and"

Moved by Mr. Cherniak, seconded by Mr. Simpson

Page 10, paragraph 19 (c) - that the words "or other legal or equitable relief or accident benefits". The paragraph would then read:

"Doing an act or negotiating in any way for the settlement of, or settling, a claim or demand for damages or other legal or equitable relief or accident benefits".

Moved by Mr. Wright, seconded by Ms. Puccini

Page 9, paragraph 17 - that after "Mediation" the words "excluding the giving of legal advice or opinions on matters being mediated or the drafting of legal documents" be added.

Page 9, paragraph 17 - that after "Commissioners of Oaths" the words "excluding the giving of legal advice on the contents of documents being commissioned" be added.

Moved by Mr. Wright

Page 10, paragraph 20 - that the word "independent" be added before the word "paralegals" so that it would then read:

"The regulatory scheme for all "independent" paralegals must contain the following minimum elements:"

CONVOCATION ADJOURNED FOR LUNCHEON AT 1:00 P.M.

The Treasurer and Benchers had as their guest for luncheon Ms. Heather McGee, a member of the Paralegal Task Force.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Backhouse, Banack, Bindman, Boyd, Braithwaite, Carpenter-Gunn, R. Cass, Cherniak, Coffey, Copeland, Cronk, Crowe, Curtis, DiGiuseppe, E. Ducharme, T. Ducharme, Elliott, Feinstein, Finkelstein, Gottlieb, Harnick, Hunter, Legge, MacKenzie, Manes, Marrocco, Millar, Mulligan, Murray, Porter, Potter, Puccini, Simpson, Swaye, Topp, White, Wilson and Wright.

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IN PUBLIC

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RESUMPTION OF THE REPORT OF THE PARALEGAL TASK FORCE

MOTIONS

It was moved by Mr. Topp, seconded by Mr. Porter that paragraph 3 on page 7 be deleted -

Paragraph 3

"Subject to forum specific regulation independent paralegals should be permitted to practice in *Highway Traffic Act* matters, Provincial Offences Act matter, as hereafter described, and in Small Claims Court."

It was moved by Mr. Wright and accepted by Messrs. Topp and Porter that paragraph 3 be amended by deleting the words "subject to forum specific regulation" and after the word "paralegals" the words "permitted to practice" be deleted and replaced with the words "prohibited from practicing" so that the paragraph would then read:

"Independent paralegals should be prohibited from practicing in *Highway Traffic Act* matters, Provincial Offences Act matters, as hereafter described, and in Small Claims Court."

Lost

ROLL-CALL VOTE

Aaron	Against
Arnup	Against
Backhouse	Against
Banack	For
Bindman	Against
Braithwaite	Against
Carpenter-Gunn	Against
Cherniak	Against
Coffey	Against
Cronk	Against
Crowe	For
Curtis	Abstain
DiGiuseppe	Against
E. Ducharme	Against
T. Ducharme	Against
Elliott	Against
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	Against
Millar	Against
Mulligan	Against
Murray	For
Porter	For
Potter	For
Puccini	Abstain
Simpson	Against
Swaye	For
Topp	For
White	Against
Wilson	Against
Wright	Against

Vote: 26 - Against, 8 - For, 2 Abstentions

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that paragraph 6 on page 7 be deleted -

“Subject to forum specific regulation, independent paralegals should be permitted to represent the public before administrative tribunals.”

It was moved by Mr. Wright and accepted by Messrs. MacKenzie and Crowe that paragraph 6 be amended to read:

“Subject to forum specific regulation, independent paralegals should be prohibited from representing the public before administrative tribunals.”

Withdrawn

It was moved by Mr. MacKenzie, seconded by Mr. Crowe that paragraph 6 on page 7 be amended to read as follows:

“Except as specifically permitted by a tribunal governing statute and subject to forum specific regulation
“Independent paralegals should be prohibited from representing the public before administrative tribunals.”

Lost

It was moved by Mr. Finkelstein, seconded by Mr. Banack that an independent institution other than the Law Society of Upper Canada similar to Legal Aid Ontario be the regulator.

Lost

It was moved by Ms. Curtis, seconded by Mr. Aaron that there be no recommendation as to the regulatory model.

Lost

The Law Society of Upper Canada - Centred Tribunal Accreditation as the regulatory model was voted on and lost.

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Backhouse	Against
Banack	Against
Bindman	Against
Braithwaite	For
Carpenter-Gunn	Against
Cherniak	For
Coffey	Against
Cronk	Against
Crowe	Against
Curtis	Against
DiGiuseppe	For
E. Ducharme	For
T. Ducharme	For

Elliott	For
Feinstein	Against
Finkelstein	Against
Gottlieb	For
Hunter	For
Legge	Against
MacKenzie	Against
Manes	Against
Marrocco	For
Millar	Against
Mulligan	For
Murray	Against
Porter	Against
Potter	Against
Puccini	Against
Simpson	For
Swaye	Against
Topp	Against
White	For
Wilson	For
Wright	Against

Vote: 22 - Against, 14 - For

Ontario Legal Services - Centred Tribunal Accreditation as the regulatory model was voted on and approved.

ROLL-CALL VOTE

Aaron	Against
Arnup	Against
Backhouse	For
Banack	Against
Bindman	For
Braithwaite	Against
Carpenter-Gunn	Against
Cherniak	For
Coffey	Against
Cronk	For
Crowe	Against
Curtis	Against
DiGiuseppe	Against
E. Ducharme	For
T. Ducharme	For
Elliott	For
Feinstein	For
Finkelstein	Against
Gottlieb	Against
Hunter	For
Legge	Against
MacKenzie	Against

Manes	For
Marrocco	For
Millar	For
Mulligan	For
Murray	Against
Porter	For
Potter	For
Puccini	Against
Simpson	For
Swaye	For
Topp	Against
White	Against
Wilson	For
Wright	For

Vote: 19 - For, 17 - Against

It was moved by Mr. Wilson, seconded by Mr. Hunter that the Report as amended be adopted.

Carried

GOVERNMENT RELATIONS & PUBLIC AFFAIRS REPORT

Mr. Marrocco presented the Government Relations & Public Affairs Report for consideration.

Government Relations& Public Affairs
March 23, 2000

Report to Convocation

Purpose of Report: Decision

Prepared by the
Government Relations Department
and the Policy Secretariat

A. INTRODUCTION AND NATURE OF THE ISSUE

1. The approval of Convocation is being sought to join with the Institute of Chartered Accountants of Ontario ("ICAO") in pursuit of amendments to the *Partnerships Act* ("the Act"), specifically, to two provisions in respect of limited liability partnerships ("LLPs").

2. The ICAO has invited the Law Society's support in this initiative. A meeting between the chair of the Government and Public Affairs Committee ("the Committee"), with Law Society staff, and ICAO representatives took place on March 13, 2000, at which the Law Society agreed to seek Convocation's approval to pursue this matter with the ICAO.

B. BACKGROUND

3. Amendments to the *Partnerships Act* in force in July 1998, attached to this report in the form of Bill 6 (1998), permit professions to practice in the form of limited liability partnerships if certain requirements are met. The chartered accountancy and legal professions are currently the only professions to which the limited liability provisions in the *Act* apply¹, as a result of amendments to *The Chartered Accountants Act* in 1998 and the *Law Society Act* in 1999.²
4. Last year, the ICAO corresponded with the Ministry of Consumer and Commercial Relations ("the Ministry") with respect to proposals to have amendments made to two provisions in the *Act*:

- a. Subsection 10(3)

Subsections 10(2) and (3) read:

(2) Subject to subsection (3), a partner in a limited liability partnership is not liable, by means of indemnification, contribution, assessment or otherwise, for debts, obligations and liabilities of the partnership or any partner arising from negligent acts or omissions that another partner or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership.

(3) Subsection (2) does not affect the liability of a partner in a limited liability partnership for the partner's own negligence or the negligence of a person under the partner's direct supervision or control.

The ICAO's proposal is to change the word "or" in the last line of (3) above to "and", to ensure that liability is focussed directly on the supervising or engagement partner and to free from liability partners beyond the supervising or engagement partner in a firm's overall accountability chain.

- b. Subsection 44.1(2)

This subsection reads:

(2) A partnership may be continued as a limited liability partnership that is not an extra-provincial limited liability partnership if all of the partners,

- (i) enter into an agreement that continues the partnership as a limited liability partnership and states that this Act governs the agreement; or
- (j) if there is an existing agreement between the partners that forms the partnership, amend the agreement to designate the partnership as a limited liability partnership and to state that this Act governs the agreement.

¹The ICAO was instrumental in seeing the amendments to the *Act* with respect to limited liability for professions realized.

²Section 61 of the *Law Society Act* states: "Subject to the by-laws, two or more members may form a limited liability partnership or continue a partnership as a limited liability partnership within the meaning of the *Partnerships Act* for the purpose of practising law." In April 1999, Convocation made By-Law 26 on limited liability partnerships. Several law firms have formed as LLPs under the legislation and pursuant to the by-law.

The ICAO's proposal is to have changes made to this subsection to provide that a partnership vote to become an LLP be in accordance with the terms specified in the partnership agreement rather than requiring a vote of all partners. Partnership agreements address how the partnership, among other things, is to make amendments to the agreement. Usually, a decision to amend an agreement is delegated in the agreement to a specific majority of partners.

5. The ICAO copied the Law Society with its initial correspondence with the Ministry and recently invited the Society to join with the ICAO in efforts to pursue the above-noted amendments. The purpose of the March 13, 2000 meeting was to discuss in more detail the proposed amendments and a strategy with respect to communications with the Ministry.
6. The chair is now seeking Convocation's approval to join with the ICAO to pursue these important amendments.

C. DISCUSSION

Policy

7. From a policy perspective, the two amendments that the ICAO wishes to pursue are in keeping with the intent of the legislation to facilitate limited liability partnerships for professions.
8. The proposed amendment to subsection 10(3) will ensure that those directly responsible for a file or engagement are the subject of any liability that may flow from their actions. For partners in a law firm, without the proposed change, it is likely that the executive committee of a law firm could be considered a group of partners to whom the control in the context of this subsection would apply. It may also catch the partner manager of all associates in the firm, for example, even though a particular associate is under the supervision of another partner on a particular file. This would defeat the intent and spirit of the legislation by making partners who have never seen or been involved in a file responsible simply by virtue of their positions of control in the firm's structure. The amendment would provide that a person under the direct supervision and the direct control of the partner responsible for the file or the engagement is the focus of the liability.
9. The proposed amendment to subsection 44.1(2) would simply reflect a common business practice in partnerships. It should be sufficient if the partnership agreement sets out what is required for such an amendment to the partnership agreement, rather than creating another and more onerous level of approval in the partnership for the purposes of continuing as a limited liability partnership.

Strategy

10. The ICAO and the Law Society, if Convocation approves, intend to work with the Red Tape Commission and the Ministry of Consumer and Commercial Relations to include this legislative amendment in the fourth round of red tape reduction legislation. The ICAO and Law Society propose to move quickly to meet the Government's time frame set out for the next Red Tape Bill.

D. DECISION FOR CONVOCATION

11. Convocation is requested to approve the Society's pursuit, through the Committee, of the above-described amendments to the *Partnerships Act* jointly with the ICAO.

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

Copy of Bill 6 - An Act to amend the law with respect to Partnerships.

It was moved by Mr. Marrocco, seconded by Mr. MacKenzie that the Law Society, through the Committee join the Institute of Chartered Accountants to pursue amendments to the Partnerships Act respecting limited liability partnerships.

Carried

REPORT OF THE TECHNOLOGY TASK FORCE

Mr. Banack presented the Report of the Technology Task Force for approval by Convocation.

Technology Task Force
March 23, 2000

Report to Convocation

Purpose of Report: Decision-making

Prepared by the Policy Secretariat

TASK FORCE PROCESS

1. The Technology Task Force met on March 8, 2000 to consider two issues that arose at the annual mid-winter meeting of the Federation of Law Societies, held in Whitehorse, Yukon Territories between February 24 and 26, 2000.
2. The two issues before the Task Force were the creation of a central certifying authority for the Federation of Law Societies of Canada, and a proposal for a Canadian Virtual Law Library.
3. Members of the Library Committee and the Professional Development and Competence Committee were invited to the meeting to review the proposal for the Virtual Law Library.
4. In attendance at the meeting were the following members of the Task Force:
Larry Banack (chair)
Dominic Crolla
Peter Wilson
Ed Ducharme
Abe Feinstein (Conference Call)

Guests from the Professional Development & Competence Committee: Marilyn Pilkington, Susan Elliott, William Simpson and Judith Potter.

Staff Members: John Saso, Gord Lalonde, Janine Miller, Maria Romero, Sophia Sperdakos, and Mary Shena

5. This report contains the Task Force's recommendations on both issues.

CENTRAL CERTIFYING AUTHORITY FOR THE FEDERATION OF LAW SOCIETIES OF CANADA

Background

6. The Federation of Law Societies has established a National Technology Committee. A sub-group of that committee, the PKI (public key infrastructure) Group, reported to the delegates at the Federation's meeting in February on its study of the creation of a nationally coordinated system for certifying the identity and status of lawyers engaged in electronic business. A copy of the report presented to the Federation is attached at TAB A.
7. Following presentation of the report, the following resolution was proposed for adoption:
- a. That the Federation support the formation of a separate entity to establish and manage a nationally coordinated [digital] certification authority for lawyers;
 - b. That the entity should be composed of membership from each law society in Canada;
 - c. That each interested law society appoint a member to a pro tem board of directors no later than March 31, 2000 and that the board undertake,
 - i. to organize the governance structure and business plan including a three year budget for the entity to govern the nationally coordinated certifying authority;
 - ii. that Juricert be examined as a model,
 - iii. that the entity should provide an avenue for current certifying authority initiatives to be suitably merged within the national effort, and
 - iv. that the entity determine the most suitable technology partners and the conditions of their relationship;
 - d. That the board present its organization and business plan to each member law society for approval, no later than June 30, 2000;
 - e. That each participating law society present the board's organization and business plan to their convocation no later than September 30, 2000;
 - f. That until the motion is implemented, the PKI Group should facilitate the establishment of the entity; and
 - g. That members of the PKI group should make themselves available for consultation at the invitation of Law Societies across Canada.

The Issue

8. The resolution was approved by every Law Society except Ontario. The resolution before the Federation was set out in different terms than a motion dealing with the same subject approved by Convocation on January 27, 2000. It was considered prudent by Ontario to seek the approval of Convocation before supporting the resolution.
9. On January 27, 2000, Convocation considered a report of the Technology Task Force, which set out the issue of certifying authorities, and passed the following motion:
- It was moved by Mr. Banack, seconded by Mr. Feinstein that the Technology Task Force should be given the specific mandate of examining the impact of digital certificates on the practice of law and the role of the Law Society and to investigate and create a set of expectations in respect of the certifying authority and report back to Convocation for consideration.
10. Within the next two months, the Federation of Law Societies is going to facilitate a meeting with representatives of all Law Societies who wish to meet to explore the creation of a national certifying authority.

The Task Force's View

11. One of the options the Technology Task Force is going to explore for Convocation is the creation of a national certifying authority for lawyers across the country. In the Task Force's view, the resolution presented to the Federation of Law Societies is consistent with the motion adopted by Convocation on January 27, 2000. The Task Force is of the view that Ontario's participation in the Federation's initiative is vital, and that a representative of the Law Society of Upper Canada ought to attend the meeting being arranged.

Request of Convocation

12. Convocation is asked to review the resolution that was before the Federation of Law Societies and clarify that Ontario is in a position to support it as one of several options that would be explored by the Technology Task Force, in accordance with the mandate given it by Convocation in its motion of January 27, 2000.

CANADIAN VIRTUAL LAW LIBRARY

Background

13. At its meeting, Janine Miller, Director of Libraries presented the Task Force with the concept of a National Virtual Law Library Group, which had previously been presented to the Federation of Law Societies. An Executive Summary outlining the details of the concept is attached at TAB B. The full report will be available on the Federation of Law Societies website at [//www@flsc.ca/](http://www@flsc.ca/)
14. The proposed virtual law library has the following five-point vision:
 - a. The Virtual Law Library should provide one stop access to lawyers and legal professionals to all primary legal materials in Canada, i.e. laws, regulations, judgments etc. Secondary materials are considered the business of private sector publishers.
 - b. The Virtual Law Library should provide a search engine designed for use with legal materials. The database structure and format as well as the associated search engine(s) must permit lawyers and librarians to search across jurisdictions, across time and date, using appropriate fields and keywords, with a seamless search capability.
 - c. The Virtual Law Library should strive to be the authoritative source for legislation and judgments and should permit downloads of these materials by legal professionals.
 - d. The Virtual Law Library should be free of charge to all society members, though they will in fact pay for the Virtual Law Library through the yearly society fees.
 - e. The Virtual Law Library should permit free access to the laws and judgments of Canada by Canadian citizens through some form of public access system such as a component of the Virtual Law Library Internet site or terminals in public libraries.
15. The delegates at the Federation endorsed the concept of a National Virtual Law Library and approved the establishment of a planning team to prepare a business plan to establish the costs of such a project. They approved the following resolution.

That the law societies endorse the five point vision of the VLL, as set out in the "What is the Vision" section of the Report.

That the law societies endorse an institute or not-for-profit organisation for the structure of the virtual law library.

That a planning team be created by the National Virtual Law Library Group to initiate the Virtual Law Library project and undertake the necessary detailed planning tasks to move the project forward.

That if the Law Societies require further approval to adopt funding for the library as set out in the Committee's report, then it is recommended that a special meeting of the delegates be held by conference call in order to assess the financial commitment of the Law Societies.

16. The Technology Task Force, as well as the members of the Library Committee and Professional Development and Competence Committee considered the significant potential value of a virtual law library to the county libraries. The creation of a virtual library will substantially enhance the access of all members to primary legal materials. The Task Force, and the members of the other committees unanimously endorsed the concept of the virtual law library.

The Issue

17. To fund the project, the Federation is seeking is \$2.00 per member from each Law Society. This potential expenditure for the Law Society of Upper Canada has not been included in the 2000 budget.
18. Following the Task Force's consideration of this proposal, Larry Banack, chair of the Task Force, attended before the Finance and Audit Committee on March 9, 2000, to seek approval of the \$50,000 expenditure.
19. The Finance and Audit Committee approved the transfer of \$50,000 from the County Library Fund balance of \$1.6 million at December 31, 1999, to fund the work of the planning team, subject to Convocation's approval of the development of the concept of a virtual law library.

Request of Convocation

20. Convocation is asked to approve the establishment of a planning team to prepare a business plan to establish the costs of the creation of a national virtual law library and to approve of the expenditure of \$50,000 to fund the project.

Creating a Central Certifying Authority
For the Federation of Law Societies of Canada

Prepared by the National PKI Group

For

The National Technology Committee

February 2000

Background

There is widespread agreement that technology is transforming the way the world does business. Within this change is a transformation of social trust relationships that are implicit in commercial interactions. The traditional intermediary role played by lawyers, and the trust placed in them by clients, colleagues, and other members of society, will also change as technology accelerates the pace of which business and affairs are conducted.

Public Key Infrastructure (PKI) is the technology positioned to support this transformation. A PKI, sometimes called a certifying authority, provides digital signatures and encryption systems to ensure electronic business are trustworthy. A PKI is an enabling infrastructure that in and of itself has little value, but provides the necessary framework to certify that participants in the electronic world are whom they claim to be.

Through membership in one of the law societies lawyers are identified and given the status required to practice law. Each of the law societies has developed systems to certify these attributes as required in the public interest.

Because electronic business can eliminate the need for face-to-face interactions (including to transact commercially), "electronic trusted agents" are taking the place of traditional systems to verify the identity, and where necessary, the status of the parties. Status certification has been the business of law societies for more than two centuries. The Law Society of Upper Canada, for example, confirms its members' status, mainly to banks, more than 10,000 times each year. And while identity certification is relatively new, it is gaining in importance.

Features of a PKI

An unfortunate aspect of interacting electronically is that it is easy for "virtual" people - both faceless and nameless - to do business. For example, Chapters only knows web purchasers by their e-mail address and a credit card number. For those electronic transactions requiring a greater degree of trust than a book purchase, more security is needed. Indeed, if electronic commerce is to succeed, at least the same security as is provided in the paper-based world should be provided in the on-line environment. The following elements must exist in order for a "secure" environment to exist:

1. Confidentiality - Information must be protected from unauthorized access when being stored and transmitted. In the paper-based world, this would be similar to sealing sensitive information in an envelope.
2. Access Control - Information can only be accessed by the parties for whom it was intended. In the paper communications world, this would be accomplished by only allowing the desired recipient to open the envelope similar to registered mail.
3. Authentication - The identity of the originator can be validated. In paper-based transactions, this can be accomplished by seeing the originator or their signature.
4. Integrity - Information being stored or transmitted is protected from unauthorized modification. This is more challenging in the paper-based world, but is normally accomplished by insuring that copies match the original.
5. Non-repudiation - The originator is prevented from unreasonably denying participation in the transaction. In the paper-based world, this would be similar to the originator providing identification such as a signed passport when initiating the transaction.

In the electronic world, a public key infrastructure (PKI) provides these capabilities to enable secure e-business transparently. Users do not have to understand that they have keys and certificates and that they are renewed periodically. Day to day operations, such as retrieving certificates, checking revocation status, and verifying digital signatures, are automatic and transparent.

Rationale

Profit making companies have recently recognized the business opportunities in replacing paper-based components of business with computerized ones. These profit opportunities extend to certification and authentication of members of groups and association and make lawyers very attractive targets for private certification systems. Law firms and law societies alike are being courted to sign up for PKI services delivered on a for-profit basis.

The PKI group believes that lawyer's trust is a significant asset which should be carefully guarded. The group articulated the following fundamental reasons for establishing a Law Society based electronic certification system.

- For the clients. Technology is transforming the business world. Large companies will be the first, but not the last to demand that their lawyers do business electronically. Lawyers are already sending undertakings, contracts and other significant documents by electronic mail. Electronic funds transfers are about to become a reality. Electronic certification will become the norm for trusted intermediaries in the business world.
- Well being of the profession. The profession seems committed to charting its own course and is unlikely to want its current systems of certification replaced by fragmented private sector systems of certification. The procedures that lead to members' status changes and the liabilities associated with them are core to the role of law societies and should not be transferred to private sector systems unless directed by members of the public to do so.
- Fragmented systems mean more complicated and expensive procedures. Private sector driven initiatives will fragment certification systems with the potential of increasing Law Society expenses. Law societies are likely to be required to provide files of "members in good standing" to a variety of providers in a variety of formats and on a variety of timetables.
- Reduce duplications. A national approach will help to avoid unnecessary costs of duplicated infrastructures. It will also help to mitigate the costs of connecting to other PKIs. It seems inevitable that multinational corporations will demand a multinational validation system.
- Law societies are in the best position to validate identity and status. As is the case with passports, a sensitive component of certification is making sure the certificate goes to the correct owner. Law societies already do this when they call members to the bar.

Certifying Authority Systems Used in Other Jurisdictions

While it is still early in the development of certifying authorities, there are indications that lawyers wishing to do business in other jurisdictions will require electronic certificates. A nationally coordinated approach to PKI will simplify the efforts required to make e-business possible across jurisdictions. The Law Society of England and Wales are in the preliminary stages of investigating the specifics of PKI systems and the United Kingdom is part of a pan-European effort that will provide certificates to lawyers. PKIs have been established for lawyers in Italy, France and Germany. The American Medical Association has a PKI system in place.

Canadian Context

There are three significant PKI efforts already extant within the legal community in Canada: Notarius, an effort driven by Quebec Notaries' need for identity certification; Teranet, an effort driven by Ontario's electronic land registry system, the integrated justice system and the BAR-eX Internet portal; and Juricert, a corporation set up in British Columbia to provide electronic certification in coordination with their electronic land registry system.

Certification of lawyers as individuals can be easily managed by any of the private certifying authorities. However, if lawyers' status is to be integrated into a certifying authority system then the law societies have an important part to play. Even the "hands-off" proponents outlined in the FLSC 1999 Technology Report, acknowledge that the law societies have a legitimate role to play in the development of PKI.

Momentum for electronic certification is building quickly; the opportunity to undertake a nationally coordinated system is rapidly coming to an end. The PKI group believes that if a nationally coordinated system is not completed this year it will be next to impossible to make the expected individual efforts converge¹.

Law societies are the appropriate organizations to establish a Lawyers' Certifying Authority because they already have the business practices in place. They are trusted entities whose central responsibility is already that of certifying the identity and status of lawyers.

¹Appendix B provides an example of one effort to develop an alternative PKI for lawyers

Options

The PKI group investigated several options that might be pursued by the Federation or by individual law societies. We then made a formal request for information ("RFI") to determine alternate approaches. In the final analysis there are four basic options.

- Do nothing – In this case the law society is a passive provider of data but commits no resources whatsoever to developing a managed PKI structure and lets business run its course.
- Go it alone - Develop an independent PKI system that can be structured, if required, to work in coordination with other law societies.
- In partnership build a PKI. To reduce costs and to ensure compatibility with other law societies form a consortium and develop a PKI by buying the hardware, software and expertise required.
- In partnership subscribe to required PKI services. This follows the same premise as option three, but subscribes to a PKI service as opposed to building one.

Option	Strengths	Weaknesses	Opportunities	Threats
Do Nothing	<ul style="list-style-type: none"> Simplest option and lowest cost. 	<ul style="list-style-type: none"> May miss opportunity to play a coordinating leadership role in establishing itself as a central certifying authority. 	<ul style="list-style-type: none"> None. 	<ul style="list-style-type: none"> Private sector agents are likely to take over primary certifying position that law societies currently hold.
Go it alone	<ul style="list-style-type: none"> Independence to determine own direction. First mover advantages could dictate the market. Could set standards for other professions to follow. 	<ul style="list-style-type: none"> Lacks credibility because no track record of commercial acumen. High risk of failure. Conflict of interest with charter as a nonprofit organization. Would require creation of a new technical infrastructure to support this business. HR infrastructure needs to be developed 	<ul style="list-style-type: none"> Would expand existing services. Brings in additional revenue over and above membership fees. Once established could provide additional related electronic services. 	<ul style="list-style-type: none"> Market will become fragmented with many law societies creating their own PKI. Duplicated efforts Cross certification will bring future difficulties
Build a PKI within a partnership	<ul style="list-style-type: none"> PKI will be compatible among partners Shares financial and technical risk. More data will attract potential partners and cross-certifiers If consortium is large, enough it will give issues a national profile. 	<ul style="list-style-type: none"> Harder to make decisions. Conflict of interest with charter as a nonprofit organization. Even in a consortium most law societies do not currently possess the technical know-how to deliver this service. Technical and HR experience are required 	<ul style="list-style-type: none"> Easier to establish credibility if the key players get together. 	<ul style="list-style-type: none"> Develops disparity with other law societies who are not members of consortium.

Option	Strengths	Weaknesses	Opportunities	Threats
Subscribe to a PKI within a partnership	<ul style="list-style-type: none"> ■ Same strengths as above ■ No need to develop HR or significant Technical expertise. ■ Quicker to market 	<ul style="list-style-type: none"> ■ as above ■ subscription may not match needs exactly 	<ul style="list-style-type: none"> ■ Can leverage connections of provider 	<ul style="list-style-type: none"> ■ Risk of vendor changes and escalating prices

Results of the RFI

Over January 11th and 12th, 2000, the national PKI group heard the responses to the RFI. Two hour presentations were made by Notarius, Teranet, IBM, e-Scotia.com and DMR. The quality and detail of these presentations cannot be encapsulated in this report. However, two overarching issues did surface. Firstly, branding is a significant component of the services offered by the certifying authority. Whatever the final solution, the law societies must retain their position as the visible issuer of certificates. Secondly, the willingness for sharing risk must be a component of any solution in which the law societies take a lead on establishing a PKI, and which some presenters already accommodated.

Notarius

Notarius best fits the "grow your own" description in the table above. Notarius is the technological branch of the Quebec Board of Notaries. In 1996, the technical department of the Quebec Notaries and a Service corporation were merged to: develop and distribute management software for legal firms; develop and distribute technical tools adapted to the needs of notaries in Quebec; and to ensure the management and administration of a PKI for the notarial profession.

Notarius supports about 750 certificates at present. Their immediate growth expectations are driven by the coming Quebec land registry system in which they are a partner. Approximately 80% of their clientele are Notaries and 20% are Lawyers. They have an agreement with the Register of Personal and Movable Real Rights and are expecting that this too will lead to growth.

They required a significant level of seed capital to get started, but they have now developed the expertise required to support the efforts noted above. They are ready to start providing service immediately. They understand the needs of the legal community and are willing to participate in establishing a single national certifying authority or to connecting their existing certifying authority to other provincial systems.

Teranet

Teranet is, interestingly, an example of the "do nothing" approach. However, at the same time, because of a number of close connections with the Law Society of Upper Canada they resemble the "in a partnership and build a PKI" description. Teranet is an electronic commerce company that is focused on service delivery to the legal community. They were established as a partnership between the Ontario government and a private sector consortium.

Teranet is the provider of land registry services in Ontario and has developed a PKI system to support this service. They will become the PKI supplier for Ontario's Integrated Justice project and they are also the suppliers of BAR-eX an Internet Portal for the legal community. They currently have about five thousand certificates in production for the land registry system.

Teranet is a large organization and has significant levels of both technical and functional expertise. They appear to be well financed. They appear to understand the needs of the legal community. Teranet is willing to partner to deliver a single national certifying authority or to support cross-certification with other provincial certification authorities

IBM

IBM falls into the "in a partnership and build a PKI" category. IBM is a very large provider of consulting services, computer hardware and software. They are a complex organization and will provide business solutions that do not necessarily use IBM hardware or software. For example, IBM has its own PKI software, but would willingly provide a solution that uses Entrust software.

IBM is not currently supplying any PKI services in the format requested by the request for information. IBM would use its expertise to help the law societies define their trust models and to build the appropriate solution. IBM does not have a great deal of experience working with the legal community. However, as a large and sophisticated company they can bring commitment and the experience of many projects into the solution development arena.

e-Scotia.com

E-Scotia.com would provide a subscription service to the law societies. E-Scotia.com is a wholly-owned subsidiary of the Scotiabank group and provide security solutions to governments, institutions and companies doing business and electronic transactions across open networks. E-Scotia was formed as a result of the Bank of Nova Scotia's decision to protect their electronic banking services by PKI systems.

E-Scotia has about 130,000 certificates in circulation, not counting the anonymous certificates that are used to support electronic banking. E-Scotia is part of the banking community and can help to facilitate electronic funds transfers for lawyers. E-Scotia is familiar with trust models as they are prevalent in the banking business. Backing by the Bank of Nova Scotia provides the stability of very well established company.

DMR

DMR, like IBM, falls into the "in a partnership and build a PKI" category. DMR is a large provider of consulting services. They have been growing rapidly since 1994 and have gone from two thousand six hundred employees to almost ten thousand. They are currently working on the British Columbia land registry system and are working with the British Columbia Law Society to develop Juricert, a corporation to provide PKI services to the BC membership as well as any other Canadian law society that would like to join in the effort.

DMR is not currently supplying any PKI services in the format set out by the RFI. However, their work with the BC government and their affiliation with Juricert will provide them with considerable experience with the legal community. As well they are already working with several provincial governments and the Quebec Board of Notaries.

A Cost Introduction

All of the participants to the RFI, with the exception of DMR, tried to provide some indication of the cost of developing a PKI infrastructure for lawyers. The results of the cost information is summarized below. Each of the vendors stressed that the cost information set out below was provided on a non-binding, preliminary basis. The chart below is provided only to show the magnitude of the project. It is expected that most costs would be covered by a member subscription fee. :

	Notarius	Teranet	IBM	e-Scotia.com	DMR
Approximate Startup	None	\$430,000	\$1,100,100	\$20,000	none specified
expected member charges	\$35/month	\$35/month	not available	\$24/month	not available

	Notarius	Teranet	IBM	e-Scotia.com	DMR
Approximate Costs for 20,000 users over 5 years	<ul style="list-style-type: none"> ■ Issue Keys \$35 - \$115 each ■ Management \$3.95-19.95/mo ■ Recover/Revoke \$25 - \$85 per occurrence ■ Training \$100 - \$295 if needed ■ Customer support to be determined 	<ul style="list-style-type: none"> ■ Issue Keys \$35 reach ■ Maintenance \$3 per month ■ Client Support \$12.50 per month ■ Hardware \$170,000 ■ Install & Setup \$260,000 	<ul style="list-style-type: none"> ■ Based on 80,000 users over 3 years ■ Design, develop \$1,100,000 ■ Technology and Certs total cost of ownership \$4,250,000 	<ul style="list-style-type: none"> ■ setup \$25,000 ■ Keys \$30 - 90 ■ \$2 per event ■ Corporate server, software \$16,000 ■ Maintenance \$74,420 	not available
It is expected that most costs will be disbursed to participants	Total \$3,895,000	Total \$5,480,000	Total \$5,250,000	Total \$3,411,000	

Recommendation:

Momentum is developing in the private sector and among individual law societies to provide electronic certification. The national PKI group is unanimous in its opinion that a nationally coordinated PKI needs to be established this year if it is established by the law societies.

All members of the national PKI group believe that coordination of regional initiatives can be achieved and that a nationally coordinated PKI is of strategic and significant importance. The single issue most likely to undermine such an initiative is lack of understanding and the subsequent likelihood of failure to act. Further, the members of the national PKI group believe that PKI should not be seen as a technology issue, but rather as a function related to the mandate of law societies in Canada.

PKI is a law society issue for four reasons. First, PKI is a core function because law societies issue and police the credentials of lawyers and in an online communications environment law societies should continue to do so. Second, PKI is an independence issue because in the absence of the law societies creating a national PKI infrastructure, the private sector will, and this, inevitably, will result in a loss of independence. Third, certifying authorities must be trustworthy: law societies are endowed with that public trust by legislation and should maintain that trust relationship in the online environment. Fourth, PKI is a public interest issue because the public is inexorably opting in favour of e-commerce, and clients need the ability to conduct business electronically: it is in the public interest that law societies facilitate clients doing business on line with each other, and with businesses, and governments. In doing so, they should be able to access the services of their counsel securely and with trust. A PKI infrastructure sponsored by lawyers will do this.

The National PKI Group proposes the following motion be adopted by the Federation:

- a. That the Federation support the formation of a separate entity to establish and manage a nationally coordinated certification authority for lawyers;
- b. That the entity should be composed of membership from each law society in Canada;
- c. That each interested law society appoint a member to a pro tem board of directors no later than March 31, 2000 and that the board undertake:
 - i. To organize the governance structure and business plan including a three year budget for the entity to govern the nationally coordinated certifying authority; and
 - ii. That Juricert be examined as a model; and
 - iii. That the entity should provide an avenue for current certifying authority initiatives to be suitably merged within the national effort; and
 - iv. That the entity determine the most suitable technology partners and the conditions of their relationship;
- d. That the board present its organization and business plan to each member law society for approval, no later than June 30, 2000;
- e. That each participating law society present the board's organization and business plan to their convocation no later than September 30, 2000;
- f. That until the motion is implemented, the PKI Group should facilitate the establishment of the entity; and
- g. That members of the PKI group should make themselves available for consultation at the invitation of Law Societies across Canada.

Appendix A

Introduction to Public Key Infrastructures**

Public key infrastructures support the use of applications that encrypt data and that use digital signatures. Public key infrastructures are based on principles associated with public key cryptography.

Public key cryptography encrypts information by using two mathematically related keys: one is kept private; the other is made public. The private key cannot be determined from the public key. An individual who wants, for example, to send a message uses the public key of the recipient to encrypt the message. The recipient uses his or her private key to decrypt the message. The sender therefore knows that only the intended recipient can read the message.

Public key cryptography can also be used to create digital signatures. A digital signature is made when a mathematical function produces a value dependent on the content(s) of a message, which is then attached to the message and encrypted using the sender's private key. The recipient of the message can decrypt the digital signature using the sender's public key. The recipient then passes the message through the same mathematical function to produce a second summary of the message. If the digital signature can be decrypted and the summaries are identical, then the recipient is assured of both the sender's identity and the integrity of the message, i.e., the message was not altered from the moment it was digitally signed. Because the digital signature of a message depends on the private key used to produce it, the sender's ability to repudiate the message is reduced.

A Certification Authority is a third party trusted to associate a public and private key pair with a particular individual or entity. It identifies the individual or entity which is to receive a key pair; issues keys; revokes keys when a private key may have been lost, stolen or otherwise made public; and provides notice as to those key pairs which have been revoked. It is possible that an individual, instead of a Certification Authority, may generate his or her own keys. A public/private key pair is a set of two numbers. The electronic document or record which links the key pair to an individual or entity is a digital certificate issued by a Certification Authority. The digital certificate, which has been digitally signed by the Certification Authority, contains the public key and serves as evidence that the individual identified in the certificate holds the corresponding private key.

The Government of Canada Public Key Infrastructure will operate with certificates at four levels of assurance: rudimentary, basic, medium and high. The greater the assurance required, the greater the degree of effort that is taken by the Certification Authority to confirm the identity of the individual named in a certificate and the greater the security in place to protect the Certification Authority. Departments will operate at the level or levels of assurance based on their business, security and legal requirements.

Two or more Certification Authorities linked together by cross-certification, form a public key infrastructure. A public key infrastructure is relevant to electronic commerce or electronic service delivery in that it can provide security services for electronic communications and the electronic exchange of information between parties, including those who do not have a previously established relationship. Encrypting data or "affixing" a digital signature is a simple process for the user, done automatically by clicking on an icon in Public Key Infrastructure-"enabled" software. The process is transparent to the user but usually the software will allow for the visual inspection of the information in the certificate.

**** From Government of Canada, Policy for Public Key Infrastructure in the Government of Canada**

FLSC Technology Committee - National PKI Group

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NATIONAL VIRTUAL LAW LIBRARY

Executive Summary

This document provides a discussion of the concept of a Canadian Virtual Law Library and how it might come to be. A consultant was engaged by the Federation of Law Societies of Canada (FLSC) to review the current literature, examine examples of digital law libraries in other countries, interview potential stakeholders, and develop a starting business plan for a Canadian Virtual Law Library (hereafter VLL).

For those society members who have not had the occasion to visit another country's virtual law library site the following references provide useful examples:

AustLII – The Australian Legal Information Institute

www.Austlii.edu.au

The Cornell Legal Information Institute

www.law.cornell.edu

For a Canadian fledgling example of a virtual library site members should consult the following:

http://www.droit.umontreal.ca/index_en.html

The objective of the FLSC in undertaking this activity is to assess whether the will exists within its member organizations and beyond to the profession to move ahead with developing plans and funding sources for a Virtual Law Library. This initiative seems an appropriate one for the FLSC as it would involve future cooperation and support from all of the law societies and their members. It is the intention of the FLSC to at some point in the near future to transfer responsibility for the development of the VLL directly to the law societies.

The law societies are first being asked to support the concept of a virtual law library. If the agreement on the vision is forthcoming then the law societies are asked to approve the recommendation for the organizational structure of the VLL. Five options are considered below.

Finally, the societies are being asked to commit sufficient seed funds to provide a team of individuals to prepare a more detailed business plan and budget as well as an operational plan by next August's meeting. The nature of the plan to be provided in August is set out at the end of this summary.

What is the Vision

There are several competing visions across members of the societies but one example provided by a member of the National Virtual Law Library Committee provides a starting point for comparison.

"What is the vision of a VLL for Canada? One vision is that it would be free AND readily accessible to practitioners, researchers, academics, students, and the public. It would contain all the primary legal materials and it would permit, on some graduated cost basis access to a host of other publishers and services. Its organization and search capabilities would be world class and standardized to conform to the practice of law libraries across Canada. It would include indices and fast links to law libraries across Canada and in selected international jurisdictions to be able to find, order, or retrieve selected extracts, copies, or inter-library loans. It would become the primary legal reference and research tool of practitioners, the judiciary, social science researchers and academics generally. With appropriate certification and verification tools, it would also become the preferred reference base of the courts themselves."

Because any virtual law library must be created against a backdrop of the current resources, the current state and flow of digitized legal materials, the existing products of the Canadian publishing industry, and the federal-provincial judicial and executive environments we have in Canada, we propose a modest five point vision for approval by the societies:

1. The Virtual Law Library should provide one stop access to lawyers and legal professionals to all primary legal materials in Canada, i.e. laws, regulations, judgments, etc. Secondary materials are considered the business of private sector publishers.
2. The VLL should provide a search engine designed for use with legal materials. The database structure and format as well as the associated searchengine(s) must permit lawyers and librarians to search across jurisdictions, across time and date, using appropriate fields and keywords, with a seamless search capability.
3. The VLL should strive to be the authoritative source for legislation and judgments and should permit downloads of these materials by legal professionals.
4. The VLL should be free of charge to all society members, though they will in fact pay for the VLL through the yearly society fees.
5. The VLL should permit free access to the laws and judgments of Canada by Canadian citizens through some form of public access system such as a component of the VLL Internet site or terminals in public libraries.

The Motivation for a Virtual Law Library

The demand for a Virtual Law Library stems from a variety of needs that are apparently not being met either within, or external to, the judicial and executive systems of Canada. These needs include providing free and open access to laws, regulations, and judgments/decisions for all citizens, decreasing the cost of primary legal materials to the legal profession, and providing a powerful one-point-of-access for searching and researching Canadian primary materials which embodies law library organizational principles and expertise.

While these arguments carry substantial weight the overarching reason to develop a Virtual Law Library is more likely one that goes back to first principles. The crucial day to day use of the country's primary legal materials is undertaken by law librarians, lawyers, law firms and judges. However, the organization of the data, the mode of access and the character of search capabilities, the guarantee of authenticity, and the completeness of the information are not. The digital information required by the profession to ensure its competence is not truly 'in the digital library'. It is within the control of publishers who provide portions of it at a substantial cost and who make choices about what is important and what is not, and each publisher organizes the information in ways which are advantageous for its business objectives.

The creation and management of a virtual law library, if it is to serve the profession and the public, falls squarely within the purview and competence of law librarians who in turn serve the practitioners, judges, researchers, and other users. The governments and courts as well as librarians and practitioners have lost control over the flow of basic information required to do their jobs or fulfil their mandates. The National Technology Committee suggests that this is the fundamental reason that a Virtual Law Library must be developed and under the auspices of the law societies. This is not to say that publishers do not have a role in creating a strong product line of secondary legal materials.

The VLL initiative is not an attempt to create yet another Internet site for access to legal information. The VLL must be the authoritative site providing authenticated information. It must be complete, and make other sites redundant unless they are serving a niche market. It is time to consolidate, adopt database and search standards, and integrate the primary legal resources of this country. The Federation of Law Societies of Canada is prepared to take the starting leadership role in moving this initiative forward.

To be frank, there is insufficient information as yet to determine whether a Virtual Law Library will cost additional society fee dollars per Canadian lawyer, or whether it will save dollars per Canadian lawyer by reducing costs. In the short run, librarians still have to deal with historical data and to educate users to use the VLL competently. However, even if costs were to rise slightly in terms of annual society fees paid by lawyers, it is likely that amounts spent by individual lawyers and law firms on primary legal materials would fall substantially. If this is true, the Virtual Law Library will indeed pay for itself in short order.

Who Would Use the Virtual Law Library

From discussions with stakeholders and practitioners the users of the VLL appear to fall into four main user groups in the following order of expected frequency:

- a) individual lawyers, judges, and law firms through direct access and through the intermediation of law librarians;
- b) students and professors in social science disciplines, law schools, and courses in universities and community colleges involving legal studies or research on the law;
- c) the public in its many forms – government employees, citizens, businesses, high school students, etc.
- d) the rest of the world, which in its dealings with or interest in Canada must come to grips with its laws and court decisions.

The VLL and the Commercial Publishing Industry

The key objectives of the VLL are not competitive but relate to the freedom of access to information for all legal professionals as well as private citizens. The private sector is the best equipped to concentrate on value added products such as interpretations, annotations, summaries, and specialized software and publications.

There would appear to be a substantial market for secondary legal information and products beyond the legal profession. These markets are unsophisticated and require product development and packaging which is beyond the scope of the VLL. Rather than a competitive swipe at the publishing industry, the VLL initiative would appear to be an open invitation to the future where part of the burden of dealing with the "raw materials" of the law is taken on by the VLL.

As a startup organization the VLL would of necessity concentrate on current materials and not on building an historical database – though this could come over time. The options for bridging this historical data problem would appear to be the following:

1. Develop an agreement or partnership with a commercial publisher for access to the publisher's historical database as a VLL licence;
2. Purchase historical data from one or more commercial publishers (assuming they will sell);
3. Prioritize the historical datasets required and attempt to fund projects that allow the VLL to digitize these on a priority basis;
4. Continue to use the historical data in paper format.
5. Determine if the originators of the judgments and legislation have any component of the historical information which could be recovered over time.

None of these options is particularly satisfying and the final solution may involve some elements of each. The establishment of the historical information is a potential project for law societies/libraries possibly working in concert with interested universities and colleges. Until the necessary historical data is fully digitized, the continued use of paper does not diverge from the approach currently used by many firms and libraries.

The Law Libraries and the University Law School Libraries

The Law Societies and law libraries must be involved in the definition and implementation of the Virtual Library. It is the skills and expertise of the law librarian combined with those of the systems designer that the VLL will need to properly organize its information for retrieval and research.

The VLL provides for law libraries a new and powerful tool which ensures that the libraries can quickly serve information and research requests related to primary materials and be assured that the materials are up-to-date, authentic, and if all goes as planned, citable. While every legal professional does not have access to the Internet in Canada as yet, it is hard to believe that most if not all will be online within the next five to ten years. Thus even the most remote settlement lawyer should be able to access the same information available to a lawyer in the largest Canadian cities. Where they cannot or will not, the network of law librarians should fill that void by offering help services similar to those provided today.

For at least some law libraries there could and should be a direct working relationship with the VLL. Libraries and societies today prepare legal materials for loading to jurisdictional web sites. This practice would likely continue and could even expand. The ultimate destination of the prepared materials would, hopefully be the VLL (in many instances in addition to the jurisdiction's web site). Users might access the legislation and judgments of a particular jurisdiction through the jurisdiction's web site, or even the law society's site. Nonetheless, all laws and judgments would be searchable and retrievable from one access point irrespective of the path taken when browsing.

An additional role for the law libraries will be to provide the necessary training and education for lawyers and other interested users to effectively use the tools of the VLL and to conduct proper research using the included databases. This technology has risen very quickly and many practicing professionals will require direct assistance to use the VLL effectively. This continuing education role goes beyond training individuals how to use the Internet and the search tools, but how to ensure that they have indeed conducted a proper and complete search and that they have the specific and up to date materials required.

Law schools and their associated libraries appear to be primarily, another group of users of the VLL. It is not until they have an academic interest in researching primary materials or law-related information technology that the perspective changes from user to potential partner or associate. The work being carried out by the University of Montreal in the Centre de Recherche en Droit Public, ACJNet, and the Canadian Forum on Civil Justice are examples wherein the digitization and organization of legal information is coupled with the academic research interests in legal information science and technology. These are obvious centres of excellence that might provide existing building blocks and they should not be ignored in the attempt to create the Virtual Law Library.

Options for the Virtual Law Library

Option 1 The Partner with a Publisher Option

A private sector business partnership or joint venture.

Under this option a private sector corporation would be created to hold the contractual agreements with information providers and any intellectual property e.g., software, which belonged to the VLL. The corporation would be owned by the societies. The organization would have a small staff and would negotiate with private sector publishers to develop a partnership or joint venture to bring the VLL into being and to manage it. The commercial publisher's staff would operate the day to day VLL likely using the publisher's Internet site and host software.

There are many options for the nature of the partnership. For example, some small portion of equity in the VLL corporation could pass to the private sector partner for the VLL while the majority of ownership would reside in the law societies and potentially other partners as the societies saw fit. As part of the partnership the VLL would negotiate rights to allow free access to the publisher's historical primary legal materials. Thus as a partnership, the two groups would ensure that all primary materials were organized and mounted within the VLL. Governance of the publisher would be independent of the board governing the VLL. Cross board membership would likely be required. The publisher partner would receive investment dollars from the law societies in return for its VLL related work, and potentially for the rights to its historical data. Should the partnership dissolve, both parties would keep a copy of information held to data and renegotiate with the original information providers. This is an entirely speculative summary and other nuances or variations to this type of relationship could obviously occur. It might also occur that no publisher is interested in a relationship.

Option 2 The Purchase a Publisher Option

Purchasing an existing Canadian publisher.

The law societies would purchase a Canadian publisher of legal materials (providing there is a willing seller). This corporation would then take on the mission of ensuring that all primary legal materials were acquired and loaded on the Internet to permit free access, searches and downloads by all society members. Free read only access would be provided for all citizens of Canada. The corporation would continue to have a profit motive for secondary legal materials and would likely have an advantage in this market because of the positioning afforded the firm by being the one point of access authoritative primary legal materials site.

The newly acquired publishing company would likely need to renegotiate or at least confirm existing agreements with legal information providers because of the change of ownership as well as the free access provision.

Option 3 The Become a Publisher Option

Creating a digital publishing corporation.

The societies would create a new corporation, wholly owned by the societies. The mission of the corporation would be to assemble and publish all primary legal materials in Canada. The corporation would recruit and hire the necessary staff, and contract services as required.

The corporation would be funded by the law societies but could consider seeking revenues from government legislators and the courts by offering a variety of information handling and website-related services.

Option 4 The Not-For-Profit Option

A separate not-for-profit organization responsible for obtaining the services needed for the Virtual Law Library.

This option is one in which there is an independent not-for-profit organization created with a small infrastructure. The organization would purchase or negotiate services from the private sector or from universities and/or law schools, law libraries or law societies. The key difference between this second option and the first option is that the only relationship possible between this organization and the commercial publishers is one wherein the publishers are paid for services or for data. There would be no equity oriented business partnership involved. Furthermore, since this is a clearly established non-profit organization, it has a straightforward mandate to bring the VLL into being irrespective of where it is housed, managed, etc. Governance would be through a board established by the societies with broad membership among relevant stakeholders.

The not-for-profit organization would require advice and guidance from national and professional associates or consultants with respect to technology, standards, database design, search engine performance, etc.

Once again, as in the case of a commercial organization, the VLL not-for-profit would be owned by the law societies and potentially other non-commercial equity partners if the societies found this appropriate.

Option 5 The Institute Option

A university-based legal-information-institute under the governance of the law societies.

This is the model used primarily by the AustLII and Cornell virtual law libraries. To recognize the uniqueness of Canada as well as the need to distribute workload, the VLL would be the focus of not one but potentially 3 law schools within 3 different universities. The societies would seek, e.g., one in Quebec, one in Ontario and one in the West, with the potential for an eastern school to be determined. The governance of the institute would remain in the hands of the law libraries who would appoint a chairman of the board to oversee the institute's adherence to policy and principles set out by the societies. One of the institute chairs would act as the institute director and report to the board through the chairman.

Each school could maintain a specialization related to the VLL or an area of law that would benefit specifically from the existence of the VLL. A chosen university with appropriate staff and technology could house the VLL server(s) and be the operations environment but could generate cross-school work for the other sites to make use of student and faculty resources where desirable. Access by other universities would be seamless and the membership in the institute would be reviewed and evaluated on a regular basis.

To the extent possible and negotiable with the law schools a chair in the particular legal specialization would be established at one or more of these universities. This is to ensure that there is an individual in more than one location who can take on the responsibilities of spearheading the VLL in the event that one or more others leave. Furthermore, a broad based university connection ensures that the VLL is used as a basic teaching tool within major law schools in Canada. In addition, a multiple or even rotating chair structure would ensure a research focus on technology and issues related to new methods of organizing and managing legal information as well as areas of legal specialization such as environment, tax, immigration, etc.

Review of the Options

Option	Advantages	Disadvantages
1. Partner with a Publisher	<ul style="list-style-type: none"> - A publisher would have existing historical data, editors, existing software and procedures, trained staff, an organized Internet presence, existing relationships with federal and provincial legislation providers and the courts. - The publisher may already have the confidence of the legal profession; 	<ul style="list-style-type: none"> - basic conflict between the partner's profit motive and the free access to legal professionals required by the societies; - any partner financial problems likely impact the VLL operations; - failure of the partnership requires complicated agreements to guarantee access to existing and historical data; - management of the partner requires ongoing diligence and resources; - likely identifies the VLL with the publisher and not necessarily the law societies and may not be seen as a law society benefit by many; - major negotiations required which may not succeed; - likely the option with the least control vested in the societies because of the dependence upon a private sector partner;

2. Purchase a Publisher	<ul style="list-style-type: none">- As above;- Brings control of the publisher back to the societies and eliminates worry about partner wandering or dissolving the business relationship;- Brings some potential revenue to assist the development of the VLL;- Likely enables the VLL to become active quickly;	<ul style="list-style-type: none">- The initial outlay is a multi-million dollar one.- The societies would now be responsible for two businesses, the secondary materials business and the primary materials business;- The societies may not be well equipped to take on the running of a full fledged business;
3. Become a Publisher	<ul style="list-style-type: none">- No encumbrance with existing publishers;- Complete control over the nature of the enterprise;- Reduced need for profit if societies are prepared to fund this option, therefore may have a lower cost than purchasing or partnering with a publisher;	<ul style="list-style-type: none">- poor differentiation between the VLL and other publishers;- large startup costs;- long recruiting and business building time frame;- Difficult to compete against existing publishers on their terms given the agreements and revenue streams they may have in place;

4. Not-for-Profit Option	<ul style="list-style-type: none"> - Potential tax advantages (TBD) - Adaptable organization which can use a variety of service providers to bring the VLL into being; - May be able to attract additional research or other dollars because of non profit environment; - May be the least expensive option; 	<ul style="list-style-type: none"> - The exact path to be taken to create the VLL is not laid out clearly for the not-for-profit organization; - The costs of services may well be high because of the need to go to the marketplace and potentially pay commercial rates or close to commercial rates.
5. Institute Option	<ul style="list-style-type: none"> - Institutionalizes the VLL and provides a broad-based support constituency across the country; - Newly trained lawyers will be well exposed to the VLL; - Provides flexibility to change one or more institute member universities over time if need be without damaging the total structure; - Keeps governance in the hands of the societies; - Has the ability to make use of low cost university resources for some tasks; - Could attract research funds because of university association; - Government may find this a more suitable holder of an authoritative version of the text of statutes, etc; - The institute member universities can be added over time and need not be added all at once; 	<ul style="list-style-type: none"> - University based activities are not always directly relevant to the practicing lawyer or priorities may be different; - Requires cooperation of multiple universities with possibly competing agendas; - Law societies and universities may both wish to undertake primary materials handling activities;

Costs

There is insufficient information at this stage in the process to determine what the actual costs of the VLL will be with any confidence. The 'next steps' section below addresses the need to develop an accurate cost model for the VLL activity. Costs in two other cases of virtual law libraries, Cornell and Australia, involved multi-year startup costs of \$500,000 per year or less, and ongoing costs of approximately the same annual amount. However, these institutes are continually seeking new funds and appear to be resource starved.

While both sites provide anecdotal reports of how valuable users find the sites there is a need to evaluate these sites in terms of their actual use by the profession and the true value to the profession. The continued renewal of financial support by the Law Foundation of New South Wales suggests that there is indeed substantial value and benefit. A more detailed analysis of the costs and benefits of these sites will be undertaken by the project team suggested below.

Ultimate funding for the VLL would come from the fees paid to societies for the libraries or from separate fees levied for the virtual library. Government departments and research funding agencies could also be looked to for supporting grants and research funds.

Recommendations

The National Technology Committee of the Federation of Law Societies of Canada submits the following recommendations to the Delegates at the 2000 Mid-Winter Meeting of the Federation of Law Societies of Canada, Whitehorse, Yukon.

Recommendation 1

THAT the law societies endorse the five point vision of the VLL as set out in the 'What is the Vision' section above. This sets out the vision as one in which the VLL provides one stop access for lawyers and legal professionals to all primary legal materials in Canada, i.e. laws, regulations, judgments. Some form of public access will also be provided. Secondary materials are to be considered the business of private sector publishers.

Recommendation 2

That the law societies endorse Option 5 – the Institute Option – for the structure of the Virtual Law Library. This option is believed to be the option which provides the greatest potential for success, the most robust organization because of its institutional nature, and the most cost effective one.

Recommendation 3

THAT a planning team be created by the National Virtual Law Library Group to initiate the VLL project and undertake the necessary detailed planning tasks to move the project forward. (*see project team details below*)

Recommendation 4

THAT the sum of two dollars per society member be dedicated to this project and that these monies be used to fund the planning team including any stipends, contract fees, travel expenses, and presentation costs required, and that these funds be administered by the FLSC.

Recommendation 5

THAT if the Law Societies require further approval to adopt recommendation 4, then it is recommended that a special meeting of the delegates be held by conference call in order to assess the financial commitment of the Law Societies.

Next Steps: Create the Planning Team

The FLSC committee on the Virtual Library believes that a strong and dedicated team is required to move the VLL forward. The initial steps in planning for the Virtual Library and negotiating with each and every jurisdiction will be prolonged and receive short shrift if the society is forced to rely upon volunteer labour. Most society members have a full agenda already.

The proposed planning would consist of numerous individuals with different expertise, abilities, contacts, experience, and status within or related to the law in Canada. Representation would be drawn from members of the law societies, law librarians, professional lawyers and judges, systems experts, law school deans, professional managers and consultants, etc. Where the committee lacked expertise it would contract the appropriate individuals or firms.

The planning team would work under the auspices of the FLSC and would be charged with bringing back to the FLSC and the law societies, a blueprint for the actual structure, costs, and relationships required to make the VLL a reality.

The team would work from approximately March 1 to August 31, i.e. 6 months, and would present its results at the August Annual Meeting of the Federation in Halifax. At that time, it would be expected that the Law Societies would undertake a process to make a go/no go decision on the Virtual Law Library.

The planning team members would include a part time manager who would coordinate the efforts of all involved and would ensure in concert with the FLSC and the law societies that the team was quickly recruited and brought in its work on time and on budget.

The FLSC office in Montreal would provide logistical support to the team and the Executive Director would be an ex-officio member of the team. The dollars contributed by the law societies would be used to provide the following information and plans back to the societies. Where members of the team did not have the expertise required to develop an authoritative response then other external resources would be engaged.

The key tasks of the planning team:

Establish a prototype VLL for testing and demonstration purposes

- (a) Work with existing legal sites and universities to develop a simple prototype which can be put in place quickly and which can be used to inform and educate others about the project as well as provide examples of progress in achieving results.

Detail the Nature and Structure of the VLL Institute

1. Provide a blueprint for the VLL institute which sets out its organizational structure including the skills needed within the institute.
2. Propose a management structure and governance structure (a board) including individual members for the institute.
3. Set out the institute's responsibilities and terms of reference:
4. Determine the requirements needed for a university to become one of the locations of the institute.

5. Work with the universities and the law societies and potential funding sources, e.g. the foundations to determine the costs, viability, and parameters under which a university chair concept could be brought into being.
6. Expand the vision for the VLL to encompass a 5 - 10 year horizon.
7. Generate a detailed budget estimate for a 5 - 10 year time frame for the VLL.
8. Determine how the ownership of the institute will be codified.
9. Define the issues surrounding risk for the VLL – liability related to errors, publishing materials that were provided but were prohibited or excluded from publication; electronic transfer errors; formatting and translation errors; errors of omission or juxtaposition, etc.
10. Work with the law societies, the FLSC and others to determine membership on the governing board as well as the terms of reference for the board and the institute.
11. Propose the funding model for the VLL as blueprinted by the planning team.

Gain Support and Develop Relationships

1. Meet with all law societies, federal and provincial government stakeholders, the CBA, CALL, and others to promote the VLL and to define the roles of all concerned.
2. Negotiate with SOQUIJ or the Quebec information providers to determine if and how access to their materials can be obtained.
3. Determine what partnerships or relationships might be useful to or strengthen the VLL, e.g. ACJNet, the Canadian Forum on Civil Justice, Lexum, etc.
4. Determine, possibly through a combined Request for Information and negotiation process whether vendors are prepared to provide the VLL with historical materials and under what conditions.
5. Meet with the publishers to determine the impact of the VLL and ensure that there is a positive relationship between publishers and the VLL

Propose Solutions/Approaches to Technical/Standards Issues

1. Determine what historical information can be recreated from existing government and court holdings and the cost of doing so.
2. Develop a plan and methodology under which VLL can ensure that its materials will be authentic and authoritative.
3. Propose a standard markup language and procedure to be used within the VLL.

4. Negotiate with the courts to see if they will accept the form of authentication that the VLL can technically provide.

Set out Drafts of Major Operational Procedures

1. Meet with each publishing source for primary materials (each jurisdiction and legislative organization) and determine how information might flow to the VLL from each.
2. Determine how to handle the translation of certain materials.
3. Propose an approach to dealing with citations including the potential for automatic generation of citations within the VLL.
4. Define the detailed specification for the search engine/browser to be used by the VLL. This includes not only the search capabilities but also the display and cross-indexing of information retrieved by the search engine(s).
5. Determine if there is a reasonable methodology and cost for the use of authentication 'watermarks' and digital certification of authenticity.

Concluding Remarks

The seekers of the treasure of Sierra Madre had deserts and mountains to overcome in search of mythical treasure. The difference in the case of the Virtual Law Library is that the treasure of the Virtual Law Library is indeed within our reach. There are ample examples of why a Virtual Law Library is necessary, what it looks like, who might use it and how it might be put together.

The desert and mountains in front of us are far less daunting than those seeking the Sierra's treasure. Law Societies need to make the next step in the journey which should help them secure the long-term resources and commitments they need to move into action. This takes only the will of the law societies and an investment of seed funds to get them to the point where the map to the library 'treasure' is clear.

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Re: Creation of a Central Certifying Authority for the Federation of Law Societies of Canada

It was moved by Mr. Banack, seconded by Mr. Feinstein that the Law Society confirm support of the resolution adopted by the Federation of Law Societies of Canada for the establishment of a nationally co-ordinated digital certification authority for lawyers as one of the options to be explored by the Technology Task Force in accordance with the mandate given it by Convocation in its mandate of January 27, 2000.

Carried

Re: A Proposal for a Canadian Virtual Law Library

It was moved by Mr. Banack that the Technology Task Force be authorized to explore the Federation of Law Societies of Canada's virtual law library initiative as one of several options to be considered by the Task Force.

Not Put

It was moved by Ms. Cronk that the matter be referred to the Professional Development and Competence Committee.

Not Put

It was moved by Mr. Banack, seconded by Ms. Elliott that the virtual library project be approved subject to approval of the Professional Development and Competence Committee and the Library Working Group and that the Treasurer be directed to consult with the President of the Federation of Law Societies on using the surplus to fund the project.

Carried

REPORT FOR INFORMATION

Report of the Equity and Aboriginal Issues Committee

EQUITY AND ABORIGINAL ISSUES COMMITTEE/
COMITÉ SUR L'ÉQUITÉ ET LES AFFAIRES AUTOCHTONES
March 9, 2000

Report to Convocation

Purpose of Report: Information

Prepared by the Equity Initiatives Department

TERMS OF REFERENCE/COMMITTEE PROCESS

The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones met on Thursday, March 9, 2000, from 6 - 7:30 p.m. in Room 213. In attendance were:

Helene Puccini and Heather Ross (co-chairs)

Stephen Bindman
Barbara Laskin
Marshall Crowe
Donald White
Todd Ducharme
Leonard Braithwaite
George Hunter
Susan Opler (non-bencher)
Janet Stewart (non-bencher)

Staff: Charles Smith, Rachel Osborne, Geneva Yee

This report contains information on the First Submission of the Discrimination and Harassment Counsel

SUBMISSION OF THE DISCRIMINATION/HARASSMENT COUNSEL

This is the first submission to the Law Society from Ms Mary Teresa Devlin who was appointed the Law Society's first Discrimination/Harassment Counsel in September 1999. (The program was formally launched to the public and the profession at the end of October, 1999.) Following an executive summary, the report provides an overview of the program, discusses its office set-up, provides its office manual, reviews the program's promotion and provision of direct services. The report also identifies the actions being taken by the Discrimination/Harassment Counsel to further implement the program this year.

The most significant information within this report is the statistical information regarding direct services. This indicates that, since the end of October until the end of December 1999, the Discrimination/Harassment Counsel has handled 96 service requests, with 36 falling within the program's mandate and 10 of these requests as actual complaints. Of the 10 complaints received over a two month period, 5 are on the basis of sexual harassment, 2 are on the basis of disability, 2 are on the basis of race and 1 is on the basis of age. All of the complaints are by women and, of the 96 requests for service, 57 are from women, 31 from men and 8 from representatives of institutions.

The other significant information in the report relates to the expenditures for the program in 1999. Convocation approved \$60,000.00 for the program in 1999 and a total of \$46,150.06 has been spent. The program actuals are as follows:

- a) Administration (including office set-up): \$10,353.10;
- b) Promotion/Publicity: \$24,337.87;
- c) Travel and Accommodation: \$6,834.01; and
- d) Direct Services: \$4,625.08.

Pages 15 and 16 of the report provide information on the out-of-mandate calls handled by the Discrimination/Harassment Counsel. This notes that \$2,000.00 has been spent on referrals of such calls.

Finally, the report identifies actions that will be implemented by the Discrimination/Harassment Counsel to implement the program over the next year, including: selecting alternate(s) to assist in managing the workload; distributing program brochures to lawyers, law firms and public agencies; and promoting the program through regular ads and articles in the Ontario Reports and the Gazette. All of these initiatives will be done within the budget allocated by Convocation for 2000 (\$132,000.00).

DISCRIMINATION & HARASSMENT COUNSEL PROGRAM FIRST REPORT: SEPTEMBER 1, 1999 - DECEMBER 31, 1999

Submitted to
THE LAW SOCIETY OF UPPER CANADA

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EXECUTIVE SUMMARY

The Discrimination & Harassment Counsel (DHC) Program was established by the Law Society of Upper Canada as a part-time pilot project on September 1, 1999. It was created in response to recommendations from the Bicentennial Report on Equity Issues in the Legal Profession and the ADR Systems Review Team Report. The purpose of the Program is to help stop discrimination and harassment by lawyers and within law firms.

In this report I will address the following areas and provide a list of the specific actions required:

Overview of the Program
Office Set Up
Office Manual
Promotion and Publicity
Direct Services

From September 1, 1999 to December 31, 1999 I have received approximately 96 calls, the most intense month being November when I received 64 calls. The number of calls seems to be directly related to the timing of the media interviews and regional information sessions.

Of these 96 calls, 36 were within the mandate of the DHC Program with the caller either requesting information about the Program or wanting to discuss a complaint of discrimination or harassment.

Both within the profession and among the public, more women than men contacted the Program on a 3:1 ratio. Interestingly, all of the complaints that fall within the mandate were from women.

The calls that fall outside the Program's mandate can be broken down into 4 main groups: complaints about lawyers in general, complaints about Legal Aid, complaints about Judges and/or the judicial system, and complaints about the Law Society's internal complaints process.

I estimate that I spent approximately 10 minutes per call outside the mandate. This means that 10 hours of intake time was spent on these calls for a total cost of less than \$2,000.00.

In response to the high number of calls in November, and in an effort to reduce and/or eliminate the time spent on calls outside the mandate, the intake system was modified so that information packages were sent to all callers prior to speaking with the DHC. These packages include the legal definitions of discrimination and harassment and the number to call if the complaint about the lawyer or law firm did not involve discrimination or harassment.

The budget for 1999 was \$60,000.00 allocated as follows:

Office Set Up	\$10,000.00
Promotion and Publicity	\$20,000.00
Travel and Accommodation	\$10,000.00
Direct Services	<u>\$20,000.00</u>
TOTAL	\$60,000.00

These funds have been spent as follows:

Administration (including Office Set Up)	\$10,353.10
Promotion and Publicity	\$24,337.87
Travel and Accommodation	\$ 6,834.01
Direct Services	<u>\$ 4,625.08</u>
TOTAL	\$46,150.06

OVERVIEW

As Discrimination and Harassment Counsel, I provide confidential advice and assistance to people who have been discriminated against. In this capacity I offer the following services:

- Intake: receipt of complaints of discrimination and/or harassment by lawyers or within law firms;
- Support to complainants: including referrals to other resources and assisting with the drafting of complaints; this does not include providing legal services;
- Coordinating workshops and seminars to educate lay persons and members of the legal profession on the nature and effect of discrimination and harassment;
- Mediation: informal resolution of the complaint in appropriate cases where both parties agree.

OFFICE SET UP

I provide the DHC services from my law office in Peterborough, Ontario. In order to assist in the delivery of services, the following equipment has been acquired:

1. Lap-top computer (leased)
2. Hewlett Packard Printer
3. Filing Cabinet
4. Brother Plain Paper Facsimile Machine
5. Office Supplies (including business cards, letterhead, etc.)

As well, a toll free telephone number and facsimile number have been established along with an e-mail address. There was a preliminary installation cost for the telephone lines. Currently, there is only the ongoing service fee paid each month.

All information and files relating to the DHC services are kept separate and apart from my other files and materials.

REQUIRED ACTION:

- Add call forwarding to the telephone number to facilitate the work of Alternate Counsel

OFFICE MANUAL

I have prepared an Office Manual which sets out the office procedures, the intake process, and other information. The purpose of the Manual is to record the office procedures and provide a guide for staff and any alternate Discrimination and Harassment Counsel. In addition, the Office Manual assures the public and outside agencies of procedural transparency, fairness and consistency.

It includes the following information:

- Overview of the Intake and Referral System
- Procedures for Office Management such as telephone, correspondence, courier, e-mail and facsimile transmissions
- File Maintenance System
- Office Hours

REQUIRED ACTION:

- Translate the Office Manual into French, depending on the cost

PROMOTION AND PUBLICITY

To date there has been an intensive and successful effort to reach the public and members of the bar through direct mailings, media interviews, and in-person meetings. To date, I have had 10 interviews with the English media (including radio and newspaper) and 13 interviews with the French media (including radio, newspaper, and television).

Myself, Charles Smith and various benchers were able to conduct public information sessions in Thunder Bay, Sudbury, Ottawa, Windsor, and London. Through these meetings we visited 5 cities and met with 120 people including 55 members of the profession.

Attached is a copy of:

1. the communications strategy (TAB #8)
2. the promotional activities, including a list of media interviews (TAB #9)
3. a sampling of the newspaper articles (TAB #10)

ACTION REQUIRED:

- Place advertisements in the OR's on a regular basis, either monthly or bi-monthly
- Include articles on the Program in each edition of the Gazette
- Prepare standard press releases for the visits to Ontario cities and towns

- Distribute brochures and posters to:
 - a. Lawyers and Law Firms
 - b. County Law Association Libraries
 - c. Bar Admissions Centres
 - d. Law Schools
 - c. Court Houses
 - d. Public Libraries
 - e. Community Colleges, especially those that offer Legal Assistant Courses
- Advertise the Program free of charge on an ongoing basis through the community television and radio stations
- Network with the DHC Programs in British Columbia, Alberta, and Nova Scotia
- Continue to develop media contacts in French and community publications

DIRECT SERVICE

i) Overview

One of my first priorities has been to establish an Intake and Referral System which is outlined in the Office Manual.

To date I have received 96 calls. Of these calls, 36 fall within the mandate of the Program. This figure refers to calls from people with a specific complaint who request direct services and the calls I have received for information about the Program.

Some calls can be dealt with quite quickly, for example requests for information. Other calls require considerable time. Intake is scheduled at fixed times and generally 30 minutes is allotted per call which is sufficient in most cases. However, there are some extreme exceptions: one call lasted 2.5 hours!

The LSUC is only billed for actual time spent on DHC activities, including intake. For example, if intake calls take 40 minutes of a 3 hour intake period, the Law Society is only billed for the 40 minutes of time actually spent, not for the entire intake period.

ii) Statistical Data

Below is an overview of the calls broken down by categories. As you will see, more women have contacted the Program than men. This is in stark contrast to the public information sessions where more men have attended than women.

Total number of calls received:	96
Total number of calls from women:	57
Total number of calls from men:	31
Total number of calls from institutions:	8

Total number of complaints within the Program's mandate: 36
(26 for information; 10 complaints)

Total number of complaints outside the Program's mandate: 60

Total calls from the profession (lawyers, law students)

- | | | |
|----|---|----|
| a. | M | 6 |
| b. | F | 18 |

Total calls from the public

- | | | |
|----|---|----|
| a. | M | 18 |
| b. | F | 54 |

Types of complaints, by gender:

- | | |
|----|-----------------------------|
| a. | sexual harassment |
| | M 0 |
| | F 5 |
| b. | discrimination - disability |
| | M 0 |
| | F 2 |
| c. | discrimination - race |
| | M 0 |
| | F 2 |
| d. | discrimination - age |
| | M 0 |
| | F 1 |

While these numbers only represent a small sampling, there are some interesting trends. For example, the ratio of calls from women and men within the profession is 3:1. This is consistent with the calls from the public where the ratio of calls from women and men is also 3:1.

It is interesting to note that 100% of the complaints within the mandate were from women.

Overall, the callers who have complaints that fall within the DHC mandate are fearful that any action which identifies them will result in either implicit or explicit reprisals. They are not confident that the lawyers and law firms where they have experienced a problem will be responsive to any intervention. Some callers, particularly lawyers, have been surprised that the mandate does not include powers of investigation.

Just over 60% of the calls (62.5%) are outside the mandate. Typically, these calls are from the public who do not clearly understand the mandate of the program. These calls fall into four main categories:

- a. complaints about lawyers in general
- b. complaints about the Legal Aid Plan (typically these are articulated as complaints about lawyers)
- c. complaints about Judges and/or the judicial system
- d. complaints about the Law Society's internal complaints process.

Approximately 10 minutes was spent on each call outside the mandate, for a total of 10 hours of intake time. The total cost to the Program of this time is less than \$2,000.00 or 3.3 percent of the 1999 budget.

In response to the high number of calls in November, and in an effort to reduce and/or eliminate the time spent on calls outside the mandate, the intake system was re-designed so that information packages were sent to all callers including the legal definitions of discrimination and harassment and the number to call if the complaint about the lawyer or law firm did not involve discrimination or harassment.

Although the estimated time spent on these calls is negligible in terms of time and costs, these calls could be reduced by one-third to one half if calls regarding the Law Society's internal complaints process were eliminated.

Also, it is clear that some of the time spent on calls outside the mandate is a necessary component of educating the public and the profession about the Program, which is still quite new. The time spent on these calls also enhances the image of the Law Society and the profession.

CONCLUSIONS

The Discrimination and Harassment Program is an important and significant initiative.

First, it signifies a serious attempt by the Law Society to eradicate discrimination and harassment in the profession. Second, it sends a clear message that the Law Society is serious about meeting the challenges in the Bicentennial Report on Equity Issues in the Legal Profession and the ADR systems Review Team Report.

Third, it offers an innovative resource to lawyers, law students, law office staff, and the public who feel they have been harassed or discriminated against by a lawyer or within a law firm. Fourth, by offering the services to the public, it places the Law Society of Upper Canada as a leader in this area of equity initiatives.

A critical component of the Program is the arm's length relationship with the Law Society. The arm's length relationship is enhanced because the Program operates in Peterborough and is therefore geographically distant from the Law Society.

Many callers asked about confidentiality and were assured that the Program operates completely separate from the Law Society and that any information they provide will be kept in strict confidence and not shared with anyone, including the Law Society.

The Program is off to an excellent start thanks to the hard work of the staff of the Equity Initiatives Department, particularly Charles Smith, Louis Emond and Cara O'Hagan from the French and English Media Relations Department, the Equity and Aboriginal Issues Committee, and individual Benchers who have supported the Program by assisting in the organization of and attending the information sessions in their region.

I am confident that as the Program gains recognition both within the profession and beyond, it will become a key resource for both lawyers and the public.

OVERVIEW OF REQUIRED ACTION

- Add call forwarding to the telephone number to facilitate the work of Alternate Counsel
- Place advertisements in the OR's on a regular basis, either monthly or bi-monthly
- Include articles on the Program in each edition of the Gazette
- Prepare standard press releases for the visits to Ontario cities and towns
- Distribute brochures and posters to:
 - a. Lawyers and Law Firms
 - b. County Law Association Libraries
 - c. Bar Admissions Centres
 - d. Law Schools
 - e. Court Houses
 - f. Public Libraries
 - g. Community Colleges, especially those that offer Legal Assistant Courses
- Advertise the Program free of charge on an ongoing basis through the community television and radio stations
- Network with the DHC Programs in British Columbia, Alberta, and Nova Scotia
- Continue to develop media contacts in French and community publications
- Translate the Office Manual into French, depending on the cost
- Hire other individuals to act as alternative Discrimination and Harassment Counsel to assist with direct services and replace the DHC on an as needed basis.

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

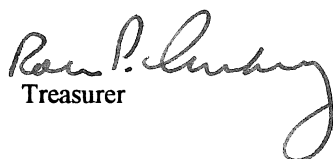
Copy of a memorandum and attachments to Charles Smith, Felecia Smith, Louis Emond and Mary Teresa Devlin from Cara O'Hagan dated September 22, 1999 re: English Communications Plan - Discrimination/Harassment Counsel.
(pages 19 - 36)

REPORTS NOT REACHED

Draft Minutes of Convocation - February 18th, 2000
Report of the Federation of Law Societies Mid-Winter Meeting
Admissions Committee Report
Finance & Audit Committee Report
Professional Regulation Committee Report

CONVOCATION ROSE AT 5:00 P.M.

Confirmed in Convocation this *28* day of *April*, 2000


Treasurer