MINUTES OF CONVOCATION

Thursday, 22nd March, 2001
9:00 a.m.

PRESENT:

The Treasurer (Robert P. Armstrong, Q.C.), Aaron, Arnup, Banack, Bindman, Bobesich, Braithwaite, Carey, Cass, Chahbar, Cherniak, Coffey, Copeland, Cronk, Crowe, Diamond, E. Ducharme, T. Ducharme, Elliott, Epstein, Finkelstein, Gottlieb, Hunter, Jarvis, Krishna, Lalonde, Lamont, Laskin, MacKenzie, Manes, Marrocco, Martin, Millar, Mulligan, Murphy, Murray, O'Brien, Ortved, Pilkington, Porter, Potter, Puccini, Robins, Rodgers, Ross, Simpson, Swaye, Topp, White, Wilson and Wright.

.....

The reporter was sworn.

.....

IN PUBLIC

.....

REPORT OF THE DIRECTOR OF EDUCATION

TO THE BENCHERS OF THE LAW SOCIETY OF UPPER CANADA

IN CONVOCATION ASSEMBLED

The Director of Education asks leave to report:

B.
ADMINISTRATION

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

B.1.1. (a) Bar Admission Course

B.1.2. The following candidates have completed successfully the Bar Admission Course, filed the necessary documents, paid the required fee, and now apply to be called to the Bar and to be granted a Certificate of Fitness at Convocation on Thursday, March 22nd, 2001:

Daniel Richard Bernstein	Bar Admission Course
Shane Heath Brady	Bar Admission Course
Brian Robert Cowie	Bar Admission Course
Nikola Diksic	Bar Admission Course

Kathryn Pinella Goosen	Bar Admission Course
Marin Matthew Granic	Bar Admission Course
Robyn Mary Hawkins	Bar Admission Course
Trevor Roy Hoffmann	Bar Admission Course
Stephen Michael Jarvis	Bar Admission Course
Alexandra Barbara Johnston	Bar Admission Course
Jiang-Nan Kong	Bar Admission Course
Camille Donna Lee	Bar Admission Course
Leslie Alan Liversidge	Bar Admission Course
Lara Malashenko	Bar Admission Course
Jeffrey Paul Neinstein	Bar Admission Course
James Hubert Gabriel Pierlot	Bar Admission Course
Danhoé Reddy-Girard	Bar Admission Course
Melanie Saxe	Bar Admission Course
James Bernard Schneider	Bar Admission Course
Magdalena Maria Victoria Sekula	Bar Admission Course
Taya Talukdar	Bar Admission Course
Hedy Anna Walsh	Bar Admission Course
Wen Cheng Wu	Bar Admission Course

ALL OF WHICH is respectfully submitted

DATED this the 22nd day of March, 2001

Re: Candidates for Call to the Bar

It was moved by Ms. Ross, seconded by Mr. Millar that the Report of the Director of Education be adopted.

Carried

MOTION - DRAFT MINUTES OF CONVOCATION

It was moved by Mr. Wright, seconded by Ms. Ross that the Draft Minutes of Convocation for February 21st, 2001 be approved.

Carried

MOTION - APPOINTMENTS TO LAW SOCIETY MEDAL COMMITTEE

It was moved by Mr. Crowe, seconded by Mr. Porter that the following Benchers be appointed as members to the Law Society Medal Committee:

Leonard Braithwaite
Kim Carpenter-Gunn
Vern Krishna
Gregory Mulligan
Marilyn Pilkington

Carried

MOTION - APPOINTMENT TO ADMISSIONS AND EQUITY AND ABORIGINAL ISSUES COMMITTEES

It was moved by Mr. Crowe, seconded by Ms. Pilkington that Sanda Rodgers be appointed as a member to the Admissions Committee and the Equity and Aboriginal Issues Committee/Comité sur l'equité et les affaires autochtones.

Carried

MOTION - APPOINTMENT TO LAW SOCIETY HEARING PANEL AND APPEAL PANEL

It was moved by Mr. Crowe, seconded by Mr. Porter -

1. THAT in accordance with section 49.29 of the *Law Society Act*, the Hon. Sydney L. Robins, Q.C., LSM be appointed to the Law Society Appeal Panel for a term of two years;

2. THAT in accordance with section 49.30 of the *Law Society Act*, the Hon. Sydney L. Robins, Q.C., LSM be appointed as chair of the Law Society Appeal Panel; and

3. THAT in accordance with section 49.22 of the *Law Society Act*, Larry Banack be appointed as chair of the Law Society Hearing Panel.

Carried

MOTION - AMENDMENT TO GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL

It was moved by Mr. MacKenzie, seconded by Mr. Finkelstein that the Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society, and the Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society of Upper Canada in Professional Regulation Matters be amended to give the Chief Executive Officer the authority to retain and instruct counsel on behalf of the Law Society.

Note: A copy of both sets of Guidelines is attached. The proposed changes are highlighted.

Carried

GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL REPRESENTING THE LAW SOCIETY OF UPPER CANADA IN PROFESSIONAL REGULATION MATTERS

(approved by Convocation May 29, 1998)

I. INTRODUCTION

In recognition of the mandate of the Law Society of Upper Canada (the "LSUC") to govern the legal profession in Ontario in the public interest, and in response to the ever-increasing cost of professional regulation matters including litigation, it is incumbent on the LSUC to communicate to its outside counsel uniform guidelines setting forth its expectations for the effective and cost-efficient handling of regulatory matters, including litigation, on its behalf. The LSUC's primary goal, of course, is to ensure that the LSUC continues to receive excellent legal representation, but it must also request that outside counsel retained on its behalf assist the LSUC in ensuring timely and accountable provision of legal services and in avoiding duplicative or unnecessary expenses.

These Guidelines, therefore, provide guidance as to the LSUC's requirements of outside counsel retained on its behalf on professional regulation matters. These Guidelines apply to all retainers of outside counsel by the LSUC in respect of professional regulation matters and are supplementary to and form part of the attached Agreement for Performance of Legal Services to be entered into by the LSUC and outside counsel retained by it.

II. APPLICATION

Without limiting the generality of the foregoing, these Guidelines apply to counsel retained by the LSUC to provide advice, opinions or assistance on, investigate or prosecute matters or act on or respond to judicial review applications and appeals coming within the jurisdiction of the Professional Regulation Committee of the LSUC (the "PRC").

III. CIRCUMSTANCES IN WHICH OUTSIDE COUNSEL SHALL BE RETAINED

Outside counsel shall be retained pursuant to these Guidelines:

(a) to investigate complaints made against Benchers or members of the LSUC staff save and except where, with the prior written approval of the Chair of the PRC, LSUC staff are authorized to deal with the matter; and

(b) to prosecute complaints of professional misconduct or conduct unbecoming authorized against a Bencher or member of staff of the Law Society.

IV. CIRCUMSTANCES IN WHICH OUTSIDE COUNSEL MAY BE RETAINED

Outside Counsel may be retained pursuant to these Guidelines:

(a) to act on or respond to applications for judicial review or appeals in relation to professional discipline proceedings before the LSUC; or

(b) in such other circumstances as the Chair of the PRC directs.

V. AUTHORITY TO RETAIN OUTSIDE COUNSEL

All outside counsel retained by the LSUC pursuant to these Guidelines will be retained by the Treasurer, Chief Executive Officer or ~~the~~ Secretary of the LSUC in consultation with the Chair of the PRC.

In selecting outside counsel to be retained on behalf of the LSUC, regard will be had to the following:

(a) the qualifications and expertise of outside counsel candidates for the matter at issue, including the experience of outside counsel candidates in matters of a similar nature;

(b) the willingness of outside counsel candidates to adhere to these Guidelines and the terms of the attached Agreement for Performance of Legal Services;

(c) equity and diversity hiring practices and policies of the LSUC as embodied in the LSUC's contract compliance policy from time to time;

(d) the availability of outside counsel candidates within the time frame required by the LSUC; and

(e) the experience of outside counsel candidates with alternative dispute resolution techniques and the willingness of outside counsel candidates to consider and engage in appropriate cases in alternative methods of dispute resolution.

VI. CONDITIONS OF RETAINER

All outside counsel retained by the LSUC pursuant to these Guidelines shall adhere to the provisions of these Guidelines and the terms of the attached Agreement for Performance of Legal Services unless otherwise agreed in writing by the Chief Executive Officer or Secretary of the LSUC or the Chair of the PRC. Without limiting the generality of the foregoing, all outside counsel retained by the LSUC pursuant to these Guidelines:

(a) shall be in compliance with the LSUC's contract compliance policy as in force from time to time;

(b) except where alternate fee arrangements are agreed upon in writing by the Chief Executive Officer or Secretary of the LSUC and approved by the Chair of the PRC, shall be paid a maximum hourly rate in accordance with the hourly rates provisions of the attached Agreement for Performance of Legal Services; and

(c) shall be retained pursuant to the attached Agreement for Performance of Legal Services and shall report to and take instructions from the Treasurer, the Chief Executive Officer or Secretary of the LSUC or the Chair of the PRC as set out in the said Agreement for Performance of Legal Services.

VII. APPROVAL OF ACCOUNTS

All accounts submitted to the LSUC by outside counsel retained pursuant to these Guidelines shall be approved by the Chief Executive Officer or Secretary of the LSUC or the Chair of the PRC. From time to time, the PRC, in consultation with the Litigation Committee of the LSUC, shall undertake or cause to be undertaken audits of accounts submitted to the LSUC by outside counsel retained on its behalf pursuant to these Guidelines. Outside counsel retained by the LSUC pursuant to these Guidelines shall cooperate fully with the LSUC in respect of all such audits. A review of outside accounts will be made where there is a substantial variance from the fees projected.

VIII. COORDINATION OF ACTIVITIES

It is expected that outside counsel retained by the LSUC pursuant to these Guidelines will work with the LSUC in developing an overall case strategy and will keep the LSUC, through the Chief Executive Officer or Secretary of the LSUC, promptly informed of important developments and deadlines in all matters being handled by outside counsel. Outside counsel retained by the LSUC pursuant to these Guidelines must obtain the prior consent of the Treasurer, the Chief Executive Officer or Secretary of the LSUC or the Chair of the PRC before undertaking major expenditures such as investigations, examinations, employment or retainer of experts, filing of motions (except routine matters such as extensions of time), and significant research or preparation of legal memoranda. With respect to particular items:

(a) Legal Research and Memoranda: All significant legal research conducted by or on behalf of outside counsel retained by the LSUC pursuant to these Guidelines must be authorized in advance by the Chief Executive Officer or Secretary of the LSUC. Outside counsel should be aware that, with some exceptions, the LSUC is primarily concerned with their legal conclusions Thus, the preparation of legal memoranda should generally be avoided except for brief summary reports. Moreover, the LSUC should not be charged when such memoranda are edited or re-worked for the purposes of improving an associate's research or writing skills. Outside counsel should also be aware that on professional regulatory matters the LSUC has considerable in-

house expertise. Accordingly, no significant legal research matters should be undertaken by outside counsel without the prior authority of the Chief Executive Officer or Secretary of the LSUC in order to ensure that duplicative or unnecessary legal research is not undertaken. Finally, if the legal research to be undertaken is also applicable to other cases being handled by outside counsel for other clients, the LSUC should be charged only for its proportionate share of the costs incurred with respect to such research;

(b) Provision of Copies of Documents: In order to assist the LSUC in planning case strategy and setting financial reserves, outside counsel should send the Chief Executive Officer or Secretary of the LSUC copies of all pleadings, discovery and examination documents in the form in which they were filed/served, as well as any other significant external or internal writings (including correspondence to or from counsel for other parties). Documents should be delivered or faxed, at the cost of the LSUC, only when time deadlines so require.

(c) Settlement or Negotiated Resolutions: The attached Agreement for Performance of Legal Services requires that outside counsel retained by the LSUC pursuant to these Guidelines provide an initial case analysis, upon assignment of a file, within 30 days of being retained save in urgent circumstances. In initially evaluating the matter, outside counsel should consider such issues as the advisability of exploring early settlement or alternative methods of dispute resolution, the need for and identification of potential expert witnesses and whether any special investigative efforts are needed and whether these can be done by the LSUC in-house.

The LSUC has at times obtained excellent results by exploring settlement at an early stage in professional regulation proceedings including litigation and, in some instances, prior to the initiation of such proceedings. Thus, the LSUC may wish to discuss with outside counsel the advisability of entering into early settlement or other resolution discussions at the outset of a case or proceeding. Outside counsel should not undertake any such discussions with opposing counsel without first obtaining the approval of the Chief Executive Officer or Secretary of the LSUC.

(d) Media Inquiries or Coverage: In order to ensure consistency and uniformity in setting forth the LSUC's position on professional regulation matters, outside counsel retained by the LSUC pursuant to these Guidelines should not respond to any media inquiries, or initiate same, without first consulting with the Chief Executive Officer or Secretary of the LSUC or, in urgent situations and in the absence of the Chief Executive Officer or Secretary, with the Chair of the PRC.

IX. FEES AND BILLING ARRANGEMENTS

As noted above, the fees and billing arrangements applicable to outside counsel retained by the LSUC pursuant to these Guidelines are set out in the attached Agreement for Performance of Legal Services.

Generally, for each matter handled on behalf of the LSUC by outside counsel, the LSUC requests the proposals and suggestions of outside counsel for reducing the costs of the proceeding, including billing methods other than hourly rate billing and alternative dispute resolution opportunities, etc. The LSUC wants the suggestions of its outside counsel in developing a plan, specific to the facts of each case, to contain costs.

No change in staffing, hourly rates or other significant expenses during a retainer may be implemented without the prior approval of the Treasurer, Chief Executive ~~or the~~ Officer or Secretary of the LSUC in consultation with the Chair of the PRC.

X. ACCEPTANCE OF THESE GUIDELINES

The LSUC will consider outside counsel's submission of accounts to the LSUC, after outside counsel's receipt of these Guidelines, as acceptance by outside counsel of these Guidelines and the attached Agreement for Performance of Legal Services.

AGREEMENT FOR PERFORMANCE OF LEGAL SERVICES

I. INTRODUCTION

This Agreement is subject to the attached Guidelines for Retention and Oversight of Outside Counsel Representing the Law Society of Upper Canada in Professional Regulation Matters. The purpose of this Agreement is to establish fees and rules for the provision of all legal services rendered by appointed counsel ("Counsel") to the Law Society of Upper Canada (the "LSUC") in matters coming within the jurisdiction of the Professional Regulation Committee (the "PRC") of the LSUC. This Agreement may be cancelled or amended by thirty (30) days written notice delivered by either party hereto (in the case of cancellation) and signed by both parties hereto (in the case of amendment).

II. FEES AND BILLING PROCEDURES

The maximum hourly rate to be charged by counsel is as follows:

Senior Counsel 12 years since call -	$250.00
Counsel 6 to 12 years since call -	175.00
Counsel 3 to 6 years since call -	120.00
Counsel at Bar less than 3 years -	90.00
Law Clerks/Students -	50.00

Hourly rates charged should include all general overhead and support staff expenses. Time spent by Counsel or his/her law firm with respect to the opening and closing of files, secretarial work, internal messenger services, use of internal data banks and other internal costs are deemed to be included in the hourly rate of Counsel. The LSUC does not expect to be billed by Counsel for routine secretarial work, messenger services, office supplies, or administrative fees for opening a file or billing a file as such expenditures are considered to be part of the normal overhead expenses of Counsel.

Disbursements for overtime and meals should not be charged to the LSUC nor should the LSUC be charged for word processing services; postage; taxi fares for staff who work late; photocopy expenses at more than cost to Counsel; and computer time other than reasonable and authorized computer legal research, and then only at cost.

In addition, unless prior written authorization therefore is obtained from the Chief Executive Officer or Secretary of the LSUC, the LSUC will not pay for:

(a) More than ten (10) docketed hours per day, including per hearing or trial day;

(b) Delivery/filing charges by firm personnel;

(c) As noted above, time spent in preparing or processing accounts to the LSUC or budgets;

(d) Secretarial or clerical tasks performed by any timekeeper including such matters as date stamping, conflict checks, collating, binding, copying, faxing, scanning, calendaring, scheduling, making travel arrangements, opening or closing matters, and managing clerical work;

(e) Organization of Counsel's file or documents;

(f) Significant legal research or the preparation of significant legal memoranda;

(g) Diary maintenance or internal status reviews;

(h) The use of expedited delivery services or messenger services, save in the case of urgency having regard to time deadlines;

(i) Meal expenses within Counsel's local jurisdiction;

(j) Other overhead items including, but not limited to, the use of firm conference rooms, equipment rentals, the use of books or periodicals, attendance at or conduct of seminars, staff overtime and related expenses, secretarial services and word processing;

(k) Fax transmissions. Faxes received may be charged at the rate of $0.15 per page. Long distance connection fees for fax transmissions may be charged;

(l) Time spent in transit by Counsel, in excess of one-half the applicable hourly rate for the involved Counsel. No fees may be charged for time spent in transit unless such travel is necessitated by the demands of the matter being handled for the LSUC. In appropriate circumstances, Counsel should consider the possibility of conducting long distance discussions by conference call instead of travelling. If transit time is spent working for one or more clients in addition to the LSUC, the LSUC should be billed only for its proportionate share of such time spent.

Disbursements incurred by Counsel in relation to travelling on LSUC business shall be approved by the Chief Executive Officer or Secretary of the LSUC. While travelling on LSUC business, Counsel are entitled to stay at comfortable hotels and eat nourishing meals. However, the LSUC should not be billed for first-class or business class airline tickets or hotel accommodations or meals and entertainment not approved by the Chief Executive Officer or Secretary of the LSUC.

III. ACCOUNTS

Accounts will be rendered monthly to the Chief Executive Officer or Secretary of the LSUC and will include, at a minimum, the following information:

- Date of each service rendered;
- Time period covered by account;
- Detailed description of the services rendered;
- Amount of time involved for services rendered;
- Identity of person providing service;
- Hourly rate of person providing service; and
- Number of hours spent by each person providing service.

Computer records in support of accounts will be provided to the Chief Executive Officer or Secretary of the LSUC upon reasonable request therefor.

IV. REPORTING REQUIREMENTS

Upon assignment of a file, except in urgent circumstances, Counsel will report in writing to the Chief Executive Officer or Secretary of the LSUC within 30 days of being retained with an initial assessment of the matter and setting out a proposed course of action:

1. Regarding additional investigation or expert opinions or advice which may be required, together with supporting reasons therefor and an estimate of the projected costs thereof, including fees and disbursements;

2. Including an assessment of the potential for employing alternative dispute resolution techniques in the matter and the suggested nature and timing of same where applicable;

3. Including, in discipline hearings where Counsel is retained as prosecuting counsel, a recommendation as to the penalty that is to be sought at the hearing.

Subsequent written status reports are to be delivered to the Chief Executive Officer or Secretary of the LSUC on a quarterly basis, unless otherwise agreed to by the Chief Executive Officer or Secretary of the LSUC in writing, and more frequently as circumstances require.

V. DELEGATION

(1) Counsel will have carriage of the file and may assign specific portions of the work to associate counsel, other counsel or law clerks within the Counsel's firm only with the prior agreement of the Secretary of the LSUC.

(2) Only one lawyer may attend a hearing or meeting at the cost of the LSUC unless the prior written consent of the Chief Executive Officer or Secretary of the LSUC is first obtained.

VI. INSTRUCTIONS

Counsel will report to and take instructions from the Chief Executive Officer or Secretary of the LSUC and, as occasion requires, in matters concerning complaints, audits, investigations and discipline, the Chair of the PRC.

VII. CONFLICT OF INTEREST

Counsel hereby agrees not to act on behalf of any client in connection with any action or proceeding against the LSUC during the currency of her/his retainer by the LSUC.

DATED at the City of , in the Province of Ontario,
this day of , 19 .

_____
Counsel Retained by LSUC

THE LAW SOCIETY OF UPPER CANADA

Per:

_____
(Name of Counsel retained on behalf of the LSUC, from the Firm of .....)

GUIDELINES FOR RETENTION AND OVERSIGHT OF OUTSIDE COUNSEL REPRESENTING THE LAW SOCIETY

I INTRODUCTION

In recognition of the mandate of the Law Society of Upper Canada (the "LSUC") to govern the legal profession in Ontario in the public interest, and in response to the ever-increasing cost of professional regulation matters including litigation, it is incumbent on the LSUC to communicate to its outside counsel uniform guidelines setting forth its expectations for the effective and cost-efficient handling of litigation matters, on its behalf. The LSUC's primary goal, of course, is to ensure that the LSUC continues to receive excellent legal representation, but it must also request that outside counsel retained on its behalf assist the LSUC in ensuring timely and accountable provision of legal services and in avoiding duplicative or unnecessary expenses.

These Guidelines, therefore, provide guidance as to the LSUC's requirements of outside counsel retained on its behalf. These Guidelines apply to all retainers of outside counsel by the LSUC except with respect to professional regulation, which is the subject of its own policy, and are supplementary to and part of the attached Agreement for Performance of Legal Services to be entered into by the LSUC and outside counsel retained by it.

II APPLICATION

These guidelines apply to counsel retained by the LSUC to provide advice, opinions or assistance on matters, or initiate or respond to judicial review applications and appeals and to conduct litigation.

III AUTHORITY TO RETAIN OUTSIDE COUNSEL

All outside counsel retained by the LSUC pursuant to these guidelines will be retained by the Treasurer, Chief Executive Officer or ~~the~~ Secretary of the LSUC in consultation with the Chair of the Litigation Committee.

In selecting outside counsel to be retained on behalf of the LSUC, every effort will be made to take advantage of the broad experience of the profession subject to the following:

(a) The qualifications and expertise of outside counsel candidates for the matter at issue, including the experience of outside counsel candidates in matters of a similar nature;

(b) The willingness of outside counsel candidates to adhere to these Guidelines and the terms of the attached Agreement for Performance of Legal Services;

(c) Equity and diversity hiring practices and policies of the LSUC as embodied in the LSUC's contract compliance policy from time to time;

(d) The availability of outside counsel candidates within the time frame required by the LSUC;

(e) The experience of outside counsel candidates with alternative dispute resolution techniques and the willingness of outside counsel candidates to consider and engage in appropriate cases in alternative methods of dispute resolution; and

(f) Where a matter involves substantial legal fees or a specialized area of law and where circumstances permit, the Law Society will engage in a tendering process.

IV CONDITIONS OF RETAINER

All outside counsel retained by the LSUC pursuant to these Guidelines shall adhere to the provisions of these Guidelines and the terms of the attached Agreement for Performance of Legal Services unless otherwise agreed in writing by the Chief Executive Officer or Secretary of the LSUC or the Chair of the Litigation Committee. Without limiting the generality of the foregoing, all outside counsel retained by the LSUC pursuant to these Guidelines:

(a) shall be in compliance with the LSUC's contract compliance policy as in force from time to time;

(b) except where alternate fee arrangements are agreed upon in writing by the Chief Executive Officer or Secretary of the LSUC and approved by the Chair of the Litigation Committee, shall be paid a maximum hourly rate in accordance with the hourly rates provisions of the attached Agreement for Performance of Legal Services; and

(c) shall be retained pursuant to the attached Agreement for Performance of Legal Services and shall report to and take instructions from the Treasurer, the Chair of the Litigation Committee, Chief Executive ~~or the~~Officer or Secretary of the LSUC or their delegate as set out in the said Agreement for Performance of Legal Services.

V APPROVAL OF ACCOUNTS

All accounts submitted to the LSUC by outside counsel retained pursuant to these Guidelines shall be approved by the Chief Executive Officer or Secretary of the LSUC or the Chair of the Litigation Committee. From time to time, the Litigation Committee of the LSUC, shall undertake or cause to be undertaken regular audits of accounts submitted to the LSUC by outside counsel retained on its behalf pursuant to these Guidelines. Outside counsel retained by the LSUC pursuant to these Guidelines shall cooperate fully with the LSUC in respect of all such audits. A review of outside accounts will be made where there is a substantial variance from the fee projected.

VI COORDINATION OF ACTIVITIES

It is expected that outside counsel retained by the LSUC pursuant to these Guidelines will work with the LSUC in developing an overall case strategy and will keep the LSUC, through the Chief Executive Officer or Secretary of the LSUC, promptly informed of important developments and deadlines in all matters being handled by outside counsel. Outside counsel retained by the LSUC pursuant to these Guidelines must obtain the prior consent of the Treasurer, the

Chair of the Litigation Committee or the Chief Executive Officer or Secretary of the LSUC or before undertaking major expenditures such as investigations, examinations, employment or retainer of experts, filing of motions (except routine matters such as extensions of time), and significant research or preparation of legal memoranda. With respect to particular items:

(a) Legal Research and Memoranda: All significant legal research conducted by or on behalf of outside counsel retained by the LSUC pursuant to these Guidelines must be authorized in advance by the Chief Executive Officer or Secretary of the LSUC. Outside counsel should be aware that, with some exceptions, the LSUC is

primarily concerned with their legal conclusions Thus, the preparation of legal memoranda should generally be avoided except for brief summary reports. Moreover, the LSUC should not be charged when such memoranda are edited or re-worked for the purposes of improving an associate's research or writing skills. Outside counsel should also be aware that where a matter involves an aspect of professional regulation the LSUC has considerable in-house expertise. No significant legal research matters should be undertaken by outside counsel without the prior written authority of the Chief Executive Officer or Secretary of the LSUC in order to ensure that duplicative or unnecessary legal research is not undertaken. Finally, if the legal research to be undertaken is also applicable to other cases being handled by outside counsel for other clients, the LSUC should be charged only for its proportionate share of the costs incurred with respect to such research;

(b) Provision of Copies of Documents: In order to assist the LSUC in planning case strategy and setting financial reserves, outside counsel should send the Chief Executive Officer or Secretary of the LSUC copies of all pleadings, discovery and examination of documents in the form in which they were filed/served, as well as any other significant external or internal writings (including correspondence to or from counsel for other parties). Documents should be delivered or faxed, at the cost of the LSUC, only when time deadlines so require.

(c) Settlement or Negotiated Resolutions: The attached Agreement for Performance of Legal Services requires that outside counsel retained by the LSUC pursuant to these Guidelines provide an initial case analysis, upon assignment of a file, within 30 days of being retained save in urgent circumstances. In initially evaluating the matter, outside counsel should consider such issues as the advisability of exploring early settlement or alternative methods of dispute resolution, the need for and identification of potential expert witnesses and whether any special investigative efforts are needed and whether these can be done by the LSUC in-house.

The LSUC has at times obtained excellent results by exploring settlement at an early stage in proceedings including litigation and, in some instances, prior to the initiation of such proceedings. Thus, the LSUC may wish to discuss with outside counsel the advisability of entering into early settlement or other resolution discussions at the outset of a case or proceeding. Outside counsel should not undertake any such discussions with opposing counsel without first obtaining the approval of the Chief Executive Officer or Secretary of the LSUC.

(d) Media Inquiries or Coverage: In order to ensure consistency and uniformity in setting forth the LSUC's position on litigation matters, outside counsel retained by the LSUC pursuant to these Guidelines should not respond to any media inquiries, or initiate same, without first consulting with the Chief Executive Officer or Secretary of the LSUC or, in urgent situations and in the absence of the Chief Executive Officer or Secretary, with the Chair of the Litigation Committee.

VII FEES AND BILLING ARRANGEMENTS

As noted above, the fees and billing arrangements applicable to outside counsel retained by the LSUC pursuant to these Guidelines are set out in the attached Agreement for Performance of Legal Services.

Generally, for each matter handled on behalf of the LSUC by outside counsel, the LSUC requests the proposals and suggestions of outside counsel for reducing the costs of the proceeding, including billing methods other than hourly rate billing and alternative dispute resolution opportunities, etc. The LSUC wants the suggestions of its outside counsel in developing a plan, specific to the facts of each case, to contain costs.

No change in staffing, hourly rates or other significant expenses during a retainer may be implemented with the prior approval of the Treasurer, Chief Executive ~~or the~~Officer or Secretary of the LSUC in consultation with the Chair of the Litigation Committee.

VIII ACCEPTANCE OF THESE GUIDELINES

The LSUC will consider outside counsel's submission of accounts to the LSUC, after outside counsel's receipt of these Guidelines, as acceptance by outside counsel of these Guidelines and the attached Agreement for Performance of Legal Services.

AGREEMENT FOR THE PROVISION OF LEGAL SERVICES

I INTRODUCTION

This Agreement is subject to the attached Guidelines for Retention and Oversight of Outside Counsel. The purpose of this Agreement is to establish fees and rules for the provision of all legal services rendered by appointed counsel ("Counsel") to the Law Society of Upper Canada (the "LSUC"). This Agreement may be cancelled or amended by thirty (30) days written notice delivered by either party hereto (in the case of cancellation and signed by both parties hereto (in the case of amendment).

II FEES AND BILLING PROCEDURES

The maximum hourly rate to be charged by counsel is as follows:

Senior Counsel 12 years since call	-	$250.00
Counsel 6 to 12 years since call	-175	
Counsel 3 to 6 years since call	-120	
Counsel at Bar less than 3 years	-90	
Law Clerks/Students	-50	

Hourly rates charged should include all general overhead and support staff expenses. Time spent by Counsel or his/her law firm with respect to the opening and closing of files, secretarial work, internal messenger services, use of internal data banks and other internal costs are deemed to be included in the hourly rate of Counsel. The LSUC does not expect to be billed by outside counsel for routine secretarial work, messenger services, office supplies, or administrative fees for opening a file or billing a file as such expenditures are considered to be part of normal overhead expenses of Counsel.

Disbursements for overtime and meals should not be charged to the LSUC nor should the LSUC be charged for word processing services; postage; taxi fares for staff who work late; photocopy expenses at more than cost to outside counsel; and computer time other than reasonable and authorized computer legal research, and then only at cost.

In addition, unless prior written authorization is obtained from the Chief Executive Officer or Secretary of the LSUC, the LSUC *will not* pay for:

(a) More than ten (10) docketed hours per day, including per hearing or trial day;

(b) Delivery/filing charges by firm personnel;

(c) As noted above, time spent in preparing or processing accounts to the LSUC or budgets;

(d) Secretarial or clerical tasks performed by any timekeeper including such matters as date stamping, conflict checks, collating, binding, copying, faxing, scanning, calendaring, scheduling, making travel arrangements, opening or closing matters, and managing clerical work;

(e) Organization of counsel's file or documents;

(f) Significant legal research or the preparation of significant legal memoranda;

(g) Diary maintenance or internal status reviews;

(h) The use of expedited delivery services or messenger services, save in the case of urgency having regard to time deadlines;

(i) Meal expenses within Counsel's local jurisdiction;

(j) Other overhead including, but not limited to, the use of firm conference rooms, equipment rentals, the use of books or periodicals, attendance at or conduct of seminars, staff overtime and related expenses, secretarial services and word processing;

(k) Fax transmissions. Faxes received may be charged at the rate of $0.15 per page. Long distance connection fees for fax transmissions may be charged;

(l) Time spent in transit by Counsel, in excess of one-half the applicable hourly rate for the involved Counsel. No fees may be charged for time spent in transit unless such travel is necessitated by the demands of the matter being handled for the LSUC. In appropriate circumstances, Counsel should consider the possibility of conducting long distance discussions by conference call instead of travelling. If transit time is spent working for one or more clients in addition to the LSUC, the LSUC should be billed only for its proportionate share of such time spent.

Disbursements incurred by Counsel in relation to travelling on LSUC business shall be approved by the Chief Executive Officer or Secretary of the LSUC. While travelling on LSUC business, outside counsel are entitled reasonable expenses but the LSUC should not be billed for first-class or business class airline tickets or hotel accommodations.

III ACCOUNTS

Accounts will be rendered monthly to the Chief Executive Officer or Secretary of the LSUC and will include, at a minimum, the following information:

- Date of each service rendered;
- Time period covered by account;
- Detailed description of service rendered;
- Amount of time involved for services rendered;
- Identity of person providing service;
- Hourly rate of person providing service; and
- Number of hours spent by each person providing service.

Computer records in support of accounts will be provided to the Chief Executive Officer or Secretary of the LSUC upon reasonable request therefor.

IV REPORTING REQUIREMENTS

Upon assignment of a file, except in urgent circumstances, Counsel will report in writing to the Chief Executive Officer or Secretary of the LSUC within 30 days of being retained with an initial assessment of the matter covering such issues as damages and liability (where applicable) and setting out a proposed course of action:

1. Regarding additional investigation or expert opinions or advice which may be required, together with supporting reasons therefor and an estimate of the projected costs thereof, including fees and disbursements;

2. Including an assessment of the potential for employing alternative dispute resolution techniques in the matter and the suggested nature and timing of same where applicable;

Subsequent written status reports are to be delivered to the Chief Executive Officer or Secretary of the LSUC on a quarterly basis, unless otherwise agreed to by the Chief Executive Officer or Secretary of the LSUC in writing, and more frequently as circumstances require.

V DELEGATION

(1) Counsel will have carriage of the file and may assign specific portions of the work to associate counsel, other counsel or law clerks within the Counsel's firm only with the prior agreement of the Chief Executive Officer or Secretary of the LSUC.

(2) Only one lawyer may attend at a hearing or meeting at the cost of the LSUC unless the prior written consent of the Chief Executive Officer or Secretary of the LSUC is first obtained.

VI INSTRUCTIONS

Counsel will report and take instructions from the Chief Executive Officer or Secretary of the LSUC and, as occasion requires, the Treasurer or the Chair of the Litigation Committee.

VII CONFLICT OF INTEREST

Counsel hereby agrees not to act on behalf of any client in connection with any action or proceeding against the LSUC during the currency of her/his retainer by the LSUC.

DATED at the City of , in the Province of Ontario,

this day of , 19 .

THE LAW SOCIETY OF
UPPER CANADA

_____
Counsel Retained by LSUC

Per:

_____
Name of Counsel retained on behalf of
the LSUC, from the Firm of
_____)

CALL TO THE BAR (Convocation Hall)

The following candidates listed in the Report of the Director of Education were presented to the Treasurer and Convocation and called to the Bar and the degree of Barrister-at-Law was conferred upon each of them. They were then presented by Ms. Elliott to Mr. Justice Gerald F. Day to sign the Rolls and take the necessary oaths.

Daniel Richard Bernstein	Bar Admission Course
Shane Heath Brady	Bar Admission Course
Brian Robert Cowie	Bar Admission Course
Nikola Diksic	Bar Admission Course
Kathryn Pinella Goosen	Bar Admission Course
Marin Matthew Granic	Bar Admission Course
Robyn Mary Hawkins	Bar Admission Course
Trevor Roy Hoffmann	Bar Admission Course
Stephen Michael Jarvis	Bar Admission Course
Alexandra Barbara Johnston	Bar Admission Course
Jiang-Nan Kong	Bar Admission Course
Camille Donna Lee	Bar Admission Course
Leslie Alan Liversidge	Bar Admission Course
Lara Malashenko	Bar Admission Course

Jeffrey Paul Neinstein	Bar Admission Course
James Hubert Gabriel Pierlot	Bar Admission Course
Danhoe Reddy-Girard	Bar Admission Course
Melanie Saxe	Bar Admission Course
James Bernard Schneider	Bar Admission Course
Magdalena Maria Victoria Sekula	Bar Admission Course
Taya Talukdar	Bar Admission Course
Hedy Anna Walsh	Bar Admission Course
Wen Cheng Wu	Bar Admission Course

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IN PUBLIC

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TREASURER'S REMARKS

The Treasurer noted the recent passing of The Hon. G. Arthur Martin one of Canada's eminent criminal lawyers and a judge of the Ontario Appeal Court who died on February 27th, 2001. Mr. Martin played a major role in establishing the Ontario Legal Aid Plan, Parole Reform and disclosure obligations. Mr. Martin was also a Bencher and served as Treasurer of the Law Society in 1970 to 1971. The Treasurer remarked that Mr. Martin was a "giant in the profession".

On behalf of the Benchers the Treasurer extended sympathy and support to Mr. Martin's sister, Eileen Martin.

The Treasurer advised that the Chief Justice Advisory Committee on Professionalism met on March 6th.

The Treasurer visited the University of Windsor Law School and Osgoode Hall Law School to discuss professional issues and responsibilities.

COURTHOUSE TASK FORCE REPORT

Mr. Hunter presented the Courthouse Task Force Report in public which was previously dealt with in camera on February 21st.

Task Force on Courthouse Facilities
February 21, 2001

Report to Convocation

BACKGROUND

1. In response to members' concerns raised during the Treasurer's regional tour in the summer of 1999, Convocation struck a Task Force on October 29, 1999, to consider issues related to courthouse facilities in Ontario, with particular emphasis on space and security. The Task Force is composed of the following members:

   George Hunter, Bencher (Chair)
   Stephen Bindman, Bencher
   Seymour Epstein, Bencher
   Richard Gates, County and District Law Presidents' Association
   George Biggar, Ontario Legal Aid Plan
   Irwin Koziebrocki, Criminal Lawyers' Association
   Robert Nightingale, Advocate's Society
   Judith Potter, Bencher
   N. William C. Ross, Metro Toronto Lawyers' Association
   Anthony William J. Sullivan, Family Lawyers' Association
   Sarah Welch and Tony Loparco, Crown Attorneys' Association
   Bonnie Warkentin, Canadian Bar Association of Ontario

2. The Task Force would like to extend its gratitude to Mary Shena who acted as Secretary to the Task Force.

3. The Task Force has been mandated to consider and analyse the following:

   (i) the current location of courthouse facilities throughout the province and the extent to which the distribution of courthouse facilities meets the communities' needs, including analysis of any gaps in distribution and proposals for addressing those gaps;
   (ii) issues related to heritage courthouses;
   (iii) the extent to which current courthouse facilities have adequate space for the functions that must be carried out in those facilities, including, but not limited to,
   courtrooms
   judges' chambers
   Crown Attorney offices (where applicable)

lawyers' gowning facilities
lawyers' client meeting rooms
library facilities
other administrative office spaces (including filing offices, clerks' offices, victims advisor offices, etc.)
holding facilities
access for the disabled
witness rooms
jury rooms
media rooms
parking
public accessibility
washroom facilities;
female lawyer facilities
housekeeping and maintenance
health and safety issues

(iv) the extent to which courthouses have proper security to protect persons having business in or working in courthouses and property within the courthouses

(v) the ownership and rental arrangements for each facility including the issues that arise as a result of these arrangements and development of strategies to obtain capital commitments for courthouses from non-government sources.

METHODOLOGY

4. To comprehensively address the issues relating to courthouse facilities and fulfill the Terms of Reference approved by Convocation on February 18, 2000 (Appendix A), the Task Force struck a working group to develop a standardized approach to gathering information on courthouse facilities. The working group designed a survey to be completed by every County and District Law Association. The survey has two parts. Part I, a comprehensive questionnaire to be completed for every courthouse in the County or District, was designed to obtain an inventory of the courthouse facility. It included 154 questions relating to such matters as courtrooms, jury facilities, public/witness accommodation, holding cells, lawyers' facilities, judges' chambers, Crown Attorney offices, security, libraries, and health and safety. Part II of the survey was designed to assess the overall situation on a county/district-wide basis and determine whether the current location of courthouse facilities in the province meets the communities' needs. A copy of the survey is attached at Appendix B.

5. The Task Force requested the assistance of the County and District Law Presidents' Association in completing the survey in each county and district. The President of each county and district was asked to ensure that a survey was completed and returned to the Law Society of Upper Canada. The Presidents were encouraged to collaborate with other interested organizations and parties in completing the survey, including senior judges of each court, the Crown Attorney, the Chief of Police responsible for court security, court administrators, and Chairs of lawyer groups using the facility such as Family Lawyers' Association and the Criminal Lawyers' Association. The Task Force felt it important to involve a cross section of users of the court facility in completing the survey to ensure a broad assessment of the facility and obtain the perspectives of various groups.

6. Strategic Communications Inc. was hired to collate and analyse the data and information gathered through the survey and write the report for the Task Force. Strategic Communications is a company that specializes in customized research and consulting services and has extensive experience conducting survey research for non-profit professional organizations. The report comprises two parts: the first is an overall analysis of courthouse facilities in Ontario and the second is the individual reports for every county and district in the province.

7. The province-wide analysis identifies common problems and evaluates issues relating to courthouse facilities, such as space, security, air quality, health and safety, public and disabled access, and maintenance and cleanliness. It also evaluates the adequacy of courthouse facilities by county or district and classifies counties into four groups:

Group 1:	Adequate courthouse facilities. Few and limited problems.
Group 2:	Adequate courthouse facilities. Longer list of specific problems. Solutions available.
Group 3:	Courthouse facilities inadequate in important respects. Systematic solutions required.
Group 4:	Facilities are inadequate to meet current needs. Comprehensive solutions are required.

8. The Task Force felt it important that each county and district have the opportunity to identify its needs and issues. Accordingly, it was necessary to generate a report for each county and district in the province. These reports are narrative summaries of the data and information gathered by the survey. A draft of each county report was sent to the President or his or her delegate to ensure that the assumptions and conclusions were accurate and that the report reflected the current state of courthouse facilities in the county or district. This provided another opportunity to report on any current initiatives or changes to courthouse facilities and correct any information that was not accurate.

SUMMARY OF FINDINGS

9. The summary of findings is drawn directly from Part 1 of the survey results and is only intended to give readers a general idea of the results of the questionnaire. Readers should review the survey results in their entirety.

10. The results of the survey have revealed a variety of problems with respect to courthouse facilities in Ontario. Four counties (4 courthouses) are classified in Group 1 as having few, if any, problems. There are 11 counties (18 courthouses) classified in Group 2 that have a longer but manageable list of specific problems. Twenty counties (52 courthouses) are classified in Group 3 as being inadequate in many respects and have an extensive list of problems. Twelve counties (26 courthouses) are classified in Group 4 as being inadequate to meet current needs and for which comprehensive solutions are required.

11. Counties in Groups 1 and 2, which reported a small list of discrete problems, were optimistic that solutions could be found in the short or medium term and that the necessary resources were available. In contrast, those classified in Groups 3 and 4, where the list of immediate problems was long and the proposed solutions were comprehensive, generally expressed pessimism regarding future prospects.

12. Insufficient/inadequate space affected more than 70% of courthouse facilities. Inadequate space was most frequently reported to be a problem with respect to lawyer-client meeting facilities and public/witness accommodation external to courtrooms. Forty-two percent of courthouses reported insufficient courtroom space. Forty-three percent reported inadequate judges' facilities and 33% of jury equipped courtrooms reported that there was no dedicated jury room. Forty-one percent of courthouses reported inadequate lawyers' lounges and related facilities. A sizeable minority also reported inadequate Crown Attorney facilities, inadequate offices for court administration, duty counsel, Legal Aid and Victim Witness Assistance Program offices. A majority of courthouses with library facilities cited one or more inadequacies with respect to existing facilities.

13. When the survey was circulated, several concerns over air quality and associated health issues were reported. Since the circulation of the questionnaire, separate investigations have identified mould problems at a number of other courthouses throughout the province. The Crown Attorneys' Association provided the Task Force with information that as of October 13, 2000 there have been 15 reports of mould in courthouses in Ontario. Of the 15 reports of mould, all but three have been dealt with. Corrective measures are ongoing in Oshawa, Etobicoke and Newmarket (see Appendix C).

14. Forty-five percent of courthouses reported security concerns with respect to prisoner holding facilities. Thirty-two percent of courthouses reported mishandled security related incidents, and 25% of respondents reported security issues associated with members of the Bar, Crown Attorneys, the judiciary, police, court staff and the public. Thirty-four percent of respondents reported health and safety concerns and 56% of courthouses reported inadequate disabled access to one or more parts of the courthouse facility.

15. In Part II of the questionnaire, respondents were asked questions intended to assess the overall situation of courthouses on a county and district wide basis and determine whether the current location of courthouse facilities meets the needs of the community. Some respondents expressed an opinion while many did not. Consequently, the Task Force was unable to gather enough information or data to determine whether or not the current distribution of courthouse facilities in the province is adequate.

Table 1: Evaluating the Adequacy of Ontario's Courthouses by County/District
Note: the main town or city is listed in italics after the county.

Group 1 Adequate courthouse facilities. Few and limited problems. (4 courthouses)	Group 2 Adequate courthouse facilities. Longer list of specific problems. Solutions available. (18 courthouses)	Group 3 Courthouse facilities are inadequate in important respects. Systematic solutions are required. (52 courthouses)	Group 4 Facilities are inadequate to meet current needs. Comprehensive solutions are required. (26 courthouses)

Lincoln, *St. Catherines* Leeds Grenville, *Brockville* Nipissing, *North Bay* Peel, *Brampton*	Bruce, *Walkerton* Brant, *Brantford* Dufferin, *Orangeville* Hamilton-Wentworth Huron, *Goderich* Muskoka, *Bracebridge* Norfolk, *Simcoe* Prescott-Russell, *L'Original* Temiskaming, *Haileybury* Victoria Haliburton, *Lindsay* Welland	Algoma, *Sault Ste. Marie* Carleton, *Ottawa* Essex, *Windsor* Frontenac, *Kingston* Halton, *Milton* Hastings, *Belleville* Kent, *Chatham* Lambton, *Sarnia* Lanark, Perth Lennox-Addington *Napanee* Middlesex, *London* Northumberland, *Cobourg* Parry Sound Perth, *Stratford* Simcoe, *Barrie* Sudbury Stormont Dundas Glengarry, *Cornwall* Toronto Waterloo, *Kitchener* Wellington, *Guelph*	Cochrane, *Timmins* Durham, *Whitby* Elgin, *St. Thomas* Grey, *Owen Sound* Haldimand, *Cayuga* Kenora Oxford, *Woodstock* Peterborough Rainy River, *Fort Frances* Renfrew, *Pembroke* Thunder Bay York, *Newmarket*

CONCLUSION

16. The survey results clearly identify the inadequate conditions for the administration of justice in the majority of Ontario courthouses. The current situation reflects decades of public neglect. This is not the fault of this or any other government. Historically and collectively, all too often we have ignored the most basic functional requirements of courthouses. Perhaps as importantly, compared to our ancestors who built, for their day, strong and enduring facilities, we have lost touch with the symbolism that a court facility reflects about the value we place on our system of justice.

17. The needs of our courthouses are immense, pressing and costly, and are among a number of priorities that compete for limited public resources.

18. In the view of the Task Force, the courthouse as we currently know the concept, will continue to be the primary venue for the administration of justice for the foreseeable future. The recognition and resolution of the problems facing our courthouses requires a clear commitment from government. Only government is capable of providing comprehensive leadership in this area using its collective resources to support that commitment.

19. Substantial work has already been done to practically address the problems our courthouses face. With the assistance of the judiciary and other stakeholders, the Ministry of the Attorney General has produced detailed architectural design standards for courthouses (see Appendix D, *containing Table of Contents*). The Architectural Design Standards not only set minimum standards for new courthouse facilities, but also provide guidelines for minimum requirements and standards for barrier free accessibility to all government buildings. New courthouse facilities have been completed in Brampton, Cornwall, Hamilton, Welland, and Windsor. Feasibility studies for new courthouse facilities are underway in Durham, Kitchener, Thunder Bay, Toronto, Newmarket, Kingston, Belleville, Sudbury, London, Barrie, St. Thomas and Halton. The Ontario Realty Corporation Mould Management Program, released in September 2000, provides guidelines for air quality management for all Ontario Reality Corporation facilities (see Appendix E). We applaud these efforts.

20. Approximately one-third of courthouse facilities in Ontario are classified as historical/heritage buildings. These buildings are of cultural and historical importance and stand as symbols of justice in communities across the province. The Task Force feels strongly that these buildings should be respected and maintained as justice facilities notwithstanding their limited use, and that any maintenance and repair to such a facility should not compromise the historical integrity of the building.

21. Mindful of the competition for public dollars, the Government of Ontario initiated the SuperBuild project in the summer of 2000. This project seeks Requests for Proposals to develop public-private partnerships for the modernization of justice facilities. While this may not be practical for small communities, it is an innovative and promising concept and should be pursued where appropriate to reduce costs to the public treasury. The fundamental obligation on government to provide appropriate facilities, however, remains.

22. The Task Force believes that the government's commitment must include a systemic eradication of the problems identified in the survey and a prioritization of resources based on most pressing needs. Security, health and safety, particularly air quality and mould, are primary concerns as well as ensuring that courthouses are accessible to all users, regardless of disability, should also be a priority.

APPENDIX A

Task Force on Courthouse Facilities
Proposed Terms of Reference
Approved by Convocation, February 18, 2000

Background

On October 29, 1999 Convocation approved a motion to form a Task Force for the purpose of considering issues related to courthouse facilities in Ontario, with particular emphasis on space and security issues.

Scope of Inquiry

The Treasurer proposes that in the course of its inquiry the Task Force consider and analyse the following:

- the current location of courthouse facilities throughout the province and the extent to which the *distribution* of courthouse facilities meets the communities' needs. This would include an analysis of any "gaps" in distribution and proposals for addressing those gaps while recognizing that courthouses that are currently serving communities, including older historical facilities notwithstanding limited use, should be maintained.

- the extent to which current courthouse facilities have adequate space for the functions that must be carried out in those facilities including, but not limited to,
  - ♦ courtrooms
  - ♦ judges' chambers

- Crown attorney offices (where applicable)
- gowning and washroom facilities for male and female lawyers
- lawyers' client meeting rooms
- library facilities
- other administrative office space (e.g. filing offices, clerks' offices, victims' advisor offices, etc.)
- holding facilities
- access for the disabled
- witness rooms
- jury rooms
- media rooms
- vehicle parking
- public accessibility, including location
- Unified Family Court facilities
- housekeeping and maintenance
- health and safety issues

- the extent to which courthouses and satellite courthouses have proper security to protect persons having business in or working in courthouses and crown attorneys' offices as well as property within the courthouses.

- the ownership and rental arrangements for each facility including the issues that arise as a result of these arrangements and development of strategies to obtain capital commitments for courthouses from non-government sources.

- the need to establish province-wide minimum requirements for courthouse facilities.

APPENDIX C

This information was provided by the Crown Attorneys' Association.

STATUS OF COURTHOUSES WITH MOULD
(As October 13, 2000)

COURT LOCATION	DATE OF MOULD DISCOVERY	STATUS
Newmarket	March 2000	reconstruction ongoing
Oshawa Courthouse 850 King Street West	June 20, 2000	ongoing
Toronto 1000 Finch Avenue West	June 27, 2000	resolved
Toronto 1911 Eglinton Avenue E. Scarborough	July 29, 2000	resolved
Kingston McDonald Cartier Building 279 Wellington	July 28, 2000	resolved

COURT LOCATION	DATE OF MOULD DISCOVERY	STATUS
Toronto 1911 Finch Avenue West Scarborough	August 21, 2000	resolved
St. Thomas 8 Wellington Street	August 25, 2000	resolved
Brampton Courthouse 7765 Hurontario Street	August 25, 2000	resolved
Dryden 479 Government Road Hwy 17	August 28, 2000	resolved
Kingston Frontenac Courthouse 5 Court Street	August 31, 2000	resolved
Hamilton Sopinka Courthouse 45 Main Street East	September 26, 2000	resolved
Sault Ste. Marie	October 2, 2000	resolved
Toronto 311 Jarvis Street	October 5, 2000	resolved
Toronto Keele Street	October 5, 2000	resolved
Toronto 80 The East Mall Etobicoke	October 5, 2000	ongoing

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

(1) Copy of Part I Questionnaire for each Courthouse re: Task Force on Courthouse Facilities. (Appendix B)

(2) Copy of Province of Ontario Architectural Design Standards for Court Houses (Ministry of the Attorney General). (Appendix D)

(3) Copy of OntarioRealty Corporation, Mould Management Program September, 2000. (Appendix E)

Also in Convocation file, copies of:

(1) Copy of the Report of the Task Force on Courthouse Facilities: Overview.

(2) Copies of the Task Force on Courthouse Facilities: County/District Reports, Volume 1 and Volume 2.

Mr. Hunter thanked everyone who participated.

MOTION - Opening of the Mail by Canada Customs Officers

Mr. Millar presented the motion regarding the opening of mail by Canada Customs.

It was moved and accepted that the motion be amended by deleting the word "immigration" after the word "Canadian".

The motion moved by Mr. Millar, seconded by Mr. Hunter was adopted as amended.

THAT The Law Society of Upper Canada, through the Treasurer, express to the Minister of National Revenue its grave concern about recent news reports that Canada Customs officials have been routinely opening letters sent from outside Canada including letters sent by foreign clients to their Canadian lawyers. Such a practice represents a serious invasion of privacy and a breach of the fundamental right of solicitor/client privilege. The Treasurer is, therefore, further directed on behalf of The Law Society to request that such practice cease immediately, and to request that the Government of Canada conduct a review of section 99 of the Customs Act and to make such changes as are necessary to prevent the breach of solicitor/client privilege.

Mr. Bindman abstained from voting.

Convocation took its morning recess at 10:50 a.m. and resumed at 11:15 a.m.

REPORT OF THE SPECIAL COMMITTEE ON LAWYER'S DUTIES WITH RESPECT TO PHYSICAL EVIDENCE RELEVANT TO A CRIME

Mr. MacKenzie presented the Report of the Special Committee for approval.

Special Committee on Lawyer's Duties with Respect to Physical Evidence Relevant to a Crime
March 22, 2001

Report to Convocation

Purpose of Report: Decision

Prepared by the Policy Secretariat

TABLE OF CONTENTS

INTRODUCTION 1

THE COMMITTEE'S PROCESS 2

THE ISSUES 3

SCOPE OF THE RULE 4
Form of the Rule 4
Discussion of Particular Provisions 5
The Rule 5
The Commentary 5

CALL FOR INPUT 11

DECISION FOR CONVOCATION 12

APPENDIX 1 - PROPOSED RULE OF PROFESSIONAL CONDUCT 4.01(10)
AND COMMENTARY 13

INTRODUCTION

1. The Special Committee on Lawyer's Duties with Respect to Physical Evidence Relevant to a Crime (the "Committee"), in accordance with Convocation's mandate, has prepared a proposed rule and commentary on lawyers' ethical duties relating to possession of physical evidence relevant to a crime.

2. The Committee is requesting that Convocation authorize the Committee to make the proposed rule and commentary available for written comments from the public and the profession. After reviewing all comments received, the Committee will prepare a final draft of the rule and commentary for Convocation's approval.

3. The members of the Committee are benchers Gavin MacKenzie (chair), Stephen Bindman, Todd Ducharme, Niels Ortved, The Hon. Sydney Robins, Heather Ross and Clayton Ruby, as well as Alan Gold (president of the Criminal Lawyers Association), Paul Lindsay (Director, Crown Law Office - Criminal, Ministry of the Attorney General) and Tony Loparco (president of the Ontario Crown Attorneys' Association).

4. This report includes

- an explanation of the process followed by the Committee
- discussion of the central issues the Committee identified
- comment on the scope of the rule and commentary and the language of certain provisions
- a proposal for obtaining comment on the rule and commentary prior to Convocation's final review

THE COMMITTEE'S PROCESS

5. The Committee was appointed on November 29, 2000 following the withdrawal of a professional misconduct complaint against lawyer Kenneth Murray of Aurora. The Committee was charged with examining lawyers' ethical duties in connection with physical evidence relevant to a crime and devising a rule to address the relevant professional conduct issues.

6. The Committee has met on seven occasions. Prior to its first meeting, the Committee reviewed extensive material that included existing rules and standards in other jurisdictions and academic writing and case law on the subject. The Committee thanks Austin Cooper Q. C. and Ian Scott, the defence counsel and Crown counsel respectively in *R. v. Murray* (in which a charge of attempting to obstruct justice was dismissed), for making information from their files available for this review.

7. The Committee was fortunate to receive permission from Justice Michel Proulx and David Layton (a criminal lawyer practising in Toronto) to review a chapter on lawyers' duties with respect to incriminating physical evidence from their as yet unpublished book, *Ethics and Canadian Criminal Law*. This material provided a very useful discussion of the subject and was used as the basis for some of the text in the proposed rule and commentary.

8. With respect to other jurisdictions' rules, the Committee found the Law Society of Alberta rule and commentary on the subject of particular interest. Alberta is the only jurisdiction in Canada to adopt a rule on lawyers' duties with respect to physical evidence. The Committee also reviewed the rules of several United States state bar associations and the standards for defence counsel adopted by the American Bar Association.

9. Using this information as a starting point, the Committee began to "scope out" the rule and was assisted in this respect by a detailed list of issues prepared by Alan Gold, which was of great help to the Committee in its efforts to address those issues in a clear and enforceable rule and explanatory commentary.

THE ISSUES

10. The issues that the Committee addressed included the following:

- the role of the lawyer as advocate and the lawyer's duties to the client and the administration of justice;
- the fundamental importance of solicitor and client confidentiality and privilege in the relationship between and a lawyer and client in situations in which the lawyer learns of or is asked to receive physical evidence relevant to a crime;
- the distinction between the lawyer acquiring information about physical evidence and the lawyer acquiring possession of such evidence;
- the possibility that the lawyer's duty may vary depending on whether the evidence is inculpatory, exculpatory, or partially inculpatory and partially exculpatory;
- the possibility that the lawyer's duty may vary depending on the nature of the physical evidence (for example, whether the rule should apply only to the instrumentalities or proceeds of crime, as suggested in some American authorities, or whether it should apply to all physical evidence (including documents) relevant to a crime);
- the possibility that the lawyer's duty may vary depending on whether the crime to which the physical evidence is relevant is the subject of an existing charge, or investigation, or is undetected;
- the circumstances requiring, and the timing and method of, disclosure of physical evidence to law enforcement authorities;
- the necessity and scope of, and the lawyer's method of seeking, advice from senior counsel or the Law Society on issues respecting possession and disclosure of physical evidence.

SCOPE OF THE RULE

Form of the Rule

11. The Committee is attempting to accomplish two purposes in drafting a rule and commentary on the subject of physical evidence of crime. First, the Committee is proposing a mandatory rule that can be enforced through discipline proceedings if breached. Second, the Committee is proposing an extensive commentary to provide guidance to lawyers in the multitude of circumstances in which physical evidence issues may arise. The proposed commentary is designed to draw to the lawyer's attention the many distinctions and factors that should be taken into account, and provide advice on the approach the lawyer should adopt, when confronted with issues relating to physical evidence relevant to a crime. This model would be consistent with the Law Society's current *Rules of Professional Conduct,* which came into force on November 1, 2000.

12. The proposed rule and commentary appear in their entirety at Appendix 1.

13. The Committee wishes to emphasize that the proposed rule and commentary have been drafted for the purpose of promoting focussed discussion on the important and complex issues that are raised when a lawyer is asked to receive or does receive physical evidence relevant to a crime. The Committee recognizes that the approach reflected in the proposed rule and commentary is not the only possible approach; indeed, as discussed in detail below, the two members of the Committee who represent the Ministry of the Attorney General of Ontario and the Ontario Crown Attorney's Association favour a different approach than that proposed by the majority of the Committee in respect of certain issues addressed in the commentary to the proposed rule. Should Convocation authorize the Committee to make the proposed rule and commentary available for written comments from the public and the profession as recommended, the Committee will consider with care all comments received with respect to these and all other issues.

Discussion of Particular Provisions

The Rule

14. The following is the proposed rule on physical evidence relevant to a crime:

Physical evidence relevant to a crime

4.01 (10) A lawyer who is asked to receive or does receive from a client or another person on behalf of a client physical evidence relevant to a crime shall not

(a) counsel or participate in the concealment of the evidence, or

(b) destroy, alter or otherwise deal with the evidence or permit the evidence to be dealt with in a manner which the lawyer reasonably believes

(i) may lead to its destruction or alteration,

(ii) poses a risk of physical harm to any person, or

(iii) may otherwise lead to an obstruction of justice.

15. The rule deals with the lawyer's actual possession of evidence. The lawyer's knowledge of the existence of physical evidence, in the Committee's view, does not usually raise the difficult issues associated with physical possession of the evidence, such as whether the evidence must be turned over to law enforcement authorities. As the commentary makes clear, information communicated to the lawyer by the client about evidence is generally protected by solicitor and client privilege and the lawyer's duty of confidentiality and must not be disclosed.

16. The rule's underlying theme is avoidance of conduct that may amount to an obstruction of justice. In a broader sense, the rule enshrines lawyers' obligations as key players in the proper administration of justice. The commentary, discussed below, recognizes the possible tension between these duties and the lawyer's duties of confidentiality and loyalty to the client.

The Commentary

17. The commentary to the proposed rule is organized into the following sections:

A. Introduction
B. Information Distinct from Possession
C. Types of Evidence
D. The Lawyer's Duties With Respect To Physical Evidence
- Temporary Possession
1. To avoid future harm
2. To prevent the destruction of the evidence
3. To makearrangements to transfer the evidence pursuant to instructions
4. To examine or test the evidence
5. To make effective use of the evidence at trial
- Giving Up Possession
E. Where Disclosure to Authorities is Required
F. Advising the Client
G. Seeking Advice

A. Introduction

18. The Introduction highlights the need for lawyers to fulfill duties of loyalty and confidentiality to the client and also to observe their duties to the administration of justice. Particular mention is made of the general obligation not to obstruct the course of justice.

B. Information Distinct from Possession

19. As noted above, the commentary distinguishes between the lawyer's possession of evidence and information or knowledge about the evidence. The commentary focusses on circumstances in which the lawyer is asked to receive evidence, and the obligations flowing from the lawyer's decisions.

C. Types of Evidence

20. This section confirms that the rule applies to all physical evidence, including original documents.

D. The Lawyer's Duties With Respect To Physical Evidence
E. Where Disclosure to Authorities is Required

21. Section D discusses how lawyers should deal with physical evidence they are asked to receive or do receive from or on behalf of a client. Section E is devoted to the circumstances in which lawyers have duties to disclose physical evidence to law enforcement authorities.

22. Lawyers are not to accept or retain physical evidence except in very limited circumstances and even then only on a temporary basis. The commentary specifies the circumstances in which a lawyer who comes into possession of physical evidence relevant to a crime may return the evidence to the source or original location, and the circumstances in which the lawyer has a duty to disclose the physical evidence to law enforcement authorities. In the latter case, the commentary advises lawyers to retain independent counsel to make the disclosure anonymously to protect the confidentiality of information about the source of the evidence.

23. The commentary also specifies the purposes for which evidence may be retained temporarily and the lawyer's obligations in handling the evidence, including the point at which the lawyer gives up possession. The purposes for which evidence may be retained temporarily are as follows:

- To avoid future harm
- To prevent the destruction of the evidence
- To make arrangements to transfer the evidence to authorities pursuant to instructions
- To examine or test the evidence
- To make effective use of the evidence at trial

24. The Committee discussed at length concerns about the merits of the fourth and fifth of these purposes.

25. The main concern, expressed by the Crown counsel on the Committee, is that the lawyer's possession of the evidence, either for testing or for use at trial, and the timing of the lawyer's disclosure of the evidence, could impinge on the effectiveness of the investigation by the authorities and on the ability of the Crown to prosecute any charges laid that might arise out of the investigation. The circumstances may be aggravated, for example, if the evidence is exculpatory of another accused, but is held by the lawyer until the trial of his or her client. The Crown counsel on the Committee expressed concern that the lawyer's possession of the evidence may inappropriately affect a whole series of investigatory and prosecutorial decisions that are made at various stages of the proceedings up to and at trial, and that public confidence in the administration of justice would not be enhanced by allowing defence counsel to retain possession of physical evidence relevant to a crime for testing or for use in the defence (even temporarily, and even in the narrow circumstances referred to in the proposed commentary).

26. The Crown counsel also suggested that lawyers who receive physical evidence relevant to a crime should never be allowed to return the evidence to its original source or location, but should rather be required to turn over the evidence to law enforcement authorities in every case.

27. The rule and commentary proposed by the Crown counsel (which are based in part on the applicable rule and commentary in the Law Society of Alberta's *Code of Professional Conduct*, and which in the Crown counsels' view are consistent with the law as articulated in the *Murray* case) would read, in their entirety, as follows:

The Lawyer's Duties With Respect to Physical Evidence of Crime
4.01(10)

(1) A lawyer shall not counsel or participate in:

(a) the destruction of physical evidence relevant to an offence, the alteration of such evidence so as to affect its evidentiary value, or the removal of such evidence from a crime scene;

(b) the concealment of physical evidence relevant to an offence;

(c) the possession or concealment of property obtained or derived directly or indirectly from the commission of an offence; or

(d) the disposition, possession or use of such evidence in any other manner which may otherwise lead to an obstruction of justice or the commission of any other offence.

(2) A lawyer shall:

(a) advise the client that it is the lawyer's duty to turn over to the authorities any property within the ambit of Rule 1 that comes into the lawyer's possession;

(b) immediately turn over to the authorities any property within the ambit of Rule 4.01(10)(1) that comes into the lawyer's possession.

Commentary

- This rule is not intended to affect communications or documents which otherwise come within the ambit of solicitor-client privilege.
- This rule is intended to cover all forms of property, including documents, which may have evidentiary value in a criminal or *quasi*-criminal investigation or proceeding, whether commenced or not.
- Paragraph (1)(c) is not intended to interfere with the testing of evidence or the release of court exhibits as authorized by the *Criminal Code* or other federal or provincial statues.
- When turning over evidence coming within this rule to the authorities, the lawyer should nevertheless take appropriate steps to protect the client's confidences and preserve solicitor-client privilege, which may involve the lawyer acting through another lawyer.

28. The majority of the Committee preferred to include in the proposed commentary provisions that would allow a lawyer in certain defined circumstances to retain temporary possession of physical evidence relevant to a crime for the purpose of non-destructive testing or for use in the client's defence, and which would allow the lawyer to return the evidence to its original source or location if the lawyer is satisfied on reasonable grounds that the evidence will not be altered, destroyed or used to cause physical harm to any person. The Committee's view was informed by the following considerations:

(a) The retention of the evidence in some circumstances may be necessary to establish the client's innocence or to raise a reasonable doubt about the client's guilt, for example, by exposing the falsity or frailty of evidence on which the Crown relies;

(b) The permissibility of defence counsel retaining temporary possession for non-destructive testing or for use in the defence is recognized by the American Bar Association Standards for Criminal Justice, which expressly allow counsel to retain physical evidence for a reasonable time where defence counsel "intends to test, examine, inspect or use the item in any way as part of defence counsel's representation of the client.";

(c) The proposed commentary makes it clear that the circumstances in which a lawyer may retain temporary possession of physical evidence for use in the client's defence will be rare, and will be limited to circumstances in which the evidence forms a key part of the client's defence and the value of the evidence would be lost if it were disclosed to law enforcement authorities;

(d) As for whether lawyers should be required to turn physical evidence over to the authorities in every case, the Committee observed that such a requirement may discourage clients from seeking legal advice and make it more likely that they will keep the evidence to themselves in the first place. Allowing lawyers to return the evidence to the client where they harbour no reasonable fear that the evidence will be altered, destroyed or used to cause physical harm to any person makes it no less likely that the evidence will see the light of day and has the advantage of ensuring that the client receives proper legal advice;

(e) The proposed commentary makes it clear that the lawyer has a duty to disclose the evidence to law enforcement authorities not only where the return of the evidence to the source or original location would carry the risk of destruction or alteration of the evidence, but also where possession of the evidence is illegal;

(f) The proposed commentary also specifies that the evidence should be disclosed to law enforcement authorities where the effect of returning it to the source or original location would be to prevent law enforcement authorities from learning of evidence of which they would have had knowledge if the evidence had not been removed.

F. Advising the Client

G. Seeking Advice

29. These two sections deal with the scope of the advice that a lawyer should provide to a client when physical evidence is central to the client's matter. The Commentary advises lawyers to seek the advice of experienced counsel or the Law Society with respect to the handling of the evidence or any other issues connected with it.

30. The Commentary emphasizes that lawyers should keep a written record of the advice.

CALL FOR INPUT

31. The Committee believes that obtaining comments from the profession and the public on the proposed rule and commentary would be beneficial to the work of the Committee and to Convocation's ultimate review.

32. Accordingly, the Committee proposes that

- the proposed rule and commentary (including this report) be made available to the profession and the public for comment; in particular, the Committee suggests that the Society's web site, the *Ontario Reports* and, if timing permits, the *Ontario Lawyers Gazette*, should all be used for this purpose
- selected legal organizations be requested to comment on the proposed rule and commentary (e.g. the Advocates Society and the Canadian Bar Association - Ontario, as well as the Criminal Lawyers Association and the Ontario Crown Attorneys Association, both of whom are represented on the Committee)
- a press release be issued to the media commenting on the mandate of the Committee and the availability of the proposed rule and commentary for public comment

33. The Committee proposes that the call for input extend to May 31, 2001. Thereafter, the Committee will consider all responses and prepare a final report with a proposed rule and commentary for decision by Convocation.

DECISION FOR CONVOCATION

34. Convocation is asked to authorize the Committee to make the proposed rule and commentary available for written comments from the profession and public.

APPENDIX 1

PROPOSED RULE OF PROFESSIONAL CONDUCT 4.01(10) AND COMMENTARY

Rule 4 - Relationship to the Administration of Justice
4.01 THE LAWYER AS ADVOCATE

Physical Evidence Relevant to a Crime

4.01 (10) A lawyer who is asked to receive or does receive from a client or another person on behalf of a client physical evidence relevant to a crime shall not

(a) counsel or participate in the concealment of the evidence, or

(b) destroy, alter or otherwise deal with the evidence or permit the evidence to be dealt with in a manner which the lawyer reasonably believes

(i) may lead to its destruction or alteration,

(ii) poses a risk of physical harm to any person, or

(iii) may otherwise lead to an obstruction of justice.

Commentary

1. Introduction

A lawyer who is asked to receive from a client physical evidence relevant to a crime, or who takes possession of such evidence, becomes involved in an area of difficult ethical issues and choices, and will be faced with problems that implicate potentially competing professional duties. This rule and the accompanying commentary are intended to assist lawyers who, in making decisions in the best interests of their clients, must also balance their duties to the administration of justice.

The lawyer owes duties of loyalty and confidentiality to the client and must in general act in the client's best interests by providing competent and dedicated representation. These duties are fundamental to the administration of justice, and among other things, enable individuals to be completely candid with their legal advisors, thereby obtaining the benefit of the best possible legal advice and representation. The lawyer serves the public good by acting as the client's loyal agent, especially in the criminal law context, where the lawyer has a duty to resolutely represent the client's interests against those of the state in an openly partisan way. The duty of loyalty to the client must be fulfilled in a way that reflects credit on the legal profession, and inspires the confidence, respect and trust of clients and the public. The lawyer also owes duties to the administration of justice which require, at a minimum, that the lawyer not violate the law, actively impede a police investigation, or otherwise obstruct the course of justice. These duties must be observed in the context of our adversarial system of justice, in which the state is constitutionally bound to prove its case against a person and in which the person's lawyer is not allowed, unless the client permits, to assist in proof of that case.

B. Information Distinct from Possession

This rule applies where the lawyer is asked to receive physical evidence relevant to a crime from a client or another person on behalf of a client. It does not apply where the lawyer is merely informed by or on behalf of the client of physical evidence in the possession of the client or another person. In those circumstances the lawyer will ordinarily have a duty to maintain in confidence the information disclosed by or on behalf of the client (see rule 2.03.) Even where the lawyer is asked by or on behalf of the client to receive physical evidence relevant to a crime, such information communicated by or on behalf of the client (as contrasted with the physical evidence itself) will ordinarily be confidential. The duty of confidentiality will ordinarily apply to information communicated orally or in writing by or on behalf of the client (such as the location of the physical evidence) as well as information communicated by the client's actions (such as the fact that the client has possession of physical evidence the lawyer has been asked to receive.)

Where the lawyer refuses to take possession of the physical evidence, the lawyer should be careful not to counsel or participate in the concealment or destruction of the evidence or become a witness to evidence of consciousness of guilt. The lawyer may provide legal advice such as advice on the law concerning obstruction of justice and incriminating evidence of consciousness of guilt to allow the client to make an informed decision on what is in the client's best interests. What to do with the physical evidence is the client's decision, as the client will have to face the consequences of whatever decision the client makes.

If the client leaves with the physical evidence, the lawyer's observations of the evidence and the client's possession of it will be confidential. Nevertheless, the lawyer's knowledge may impinge on his or her ability to continue to act as defense counsel. For example, if the lawyer learns prior to the client's testimony that the client proposes to testify that he or she never had possession of physical evidence that the lawyer has observed, the lawyer could not lead the client's evidence and would have a duty to withdraw from the representation in accordance with rule 2.09(7)(b) if the client persists in such proposed testimony.

The lawyer's actions in viewing the physical evidence, without more, will ordinarily be confidential, as will any advice the lawyer provides to the client with respect to the evidence, as long as the lawyer does not counsel the destruction, alteration or unlawful concealment of the evidence.

C. Types of Evidence

This rule applies to all types of physical evidence relevant to a crime, including original documents, unless they are privileged.

D. The Lawyer's Duties With Respect To Physical Evidence

A lawyer should not accept or retain possession of physical evidence relevant to a crime from a client or another person on behalf of a client, or from a location the lawyer learns of from the client, except in very limited circumstances, and even then only temporarily.

A lawyer who comes into possession of physical evidence relevant of a crime shall in general either return the evidence to the source or original location or disclose the physical evidence to law enforcement authorities in accordance with the following paragraphs of this commentary.

Temporary Possession

The circumstances in which a lawyer may receive or retain temporary possession of physical evidence relevant to a crime are as follows:

1. To avoid future harm

   A lawyer may take or retain temporary possession of physical evidence where the lawyer reasonably believes that to return the item to its source will result in physical harm to any person.

2. To prevent the destruction of the evidence

   A lawyer may take or retain temporary possession of physical evidence in order to prevent reasonably anticipated destruction of the evidence.

3. To make arrangements to transfer the evidence to the authorities pursuant to instructions

A lawyer may take or retain temporary possession of the evidence while promptly arranging for the evidence to be transferred to the authorities in accordance with this commentary, where the physical evidence has been received by the lawyer for that purpose on the client's instructions.

4. To examine or test the evidence

A lawyer may take or retain temporary possession of physical evidence, where possession of the evidence is not in itself illegal, for the limited purpose of examining or testing the evidence in such a way as not to alter or destroy its material characteristics. The lawyer should be satisfied that the person performing the test is reputable, and should keep a record of the testing. Where the testing method will unavoidably result in destruction of the physical evidence, the lawyer should notify the prosecutor and the lawyer and prosecutor should agree on a suitable testing process.

5. To make effective use of the evidence at trial

In the rare circumstances in which the lawyer determines that physical evidence relevant to a crime forms a key part of the evidence in a client's defence on criminal charges and that the value of the evidence would be lost if the evidence were disclosed to law enforcement authorities, the lawyer may retain temporary possession of the evidence for that purpose at trial. The evidence must be disclosed to the prosecution either prior to the close of the Crown's case or immediately after the close of the Crown's case. If the evidence is not disclosed until after the close of the Crown's case, the lawyer should, if necessary, consent to the Crown's case being reopened to allow Crown counsel to call the evidence.

Where the lawyer retains temporary possession in any of these circumstances, the lawyer should safeguard the physical evidence to ensure that it is not altered (for example by deterioration) or destroyed.

Where the lawyer is in possession of physical evidence relevant to a crime and none of the foregoing circumstances apply, the lawyer should make arrangements for the evidence to be returned to the client or other source or transferred to the authorities in accordance with this commentary (see below) as soon as practicable.

Giving Up Possession

The lawyer should transfer possession of the physical evidence as soon as possible after the reason for which the evidence has been retained no longer applies. The lawyer may return the evidence to the client or other source, or to the location from which it was taken, if the lawyer is satisfied on reasonable grounds that the evidence will not be altered, destroyed or used to cause physical harm to any person.

Where the lawyer returns physical evidence to its original location, the lawyer should document the nature of the evidence and its precise location, and retain the documentation in the lawyer's file.

E. Where Disclosure to Authorities is Required

The lawyer should disclose physical evidence relevant to a crime to law enforcement authorities in the following circumstances:

1. Where it is not possible to return the evidence to the source or original location;

2. Where the return of the evidence to the source or original location carries the risk of destruction or alteration of the evidence;

3. Where the return of the evidence to the source or original location carries the risk of physical harm to any person;

4. Where possession of the evidence is illegal, or

5. Where the lawyer is instructed to do so and the evidence has been taken by the lawyer for that purpose.

Also, the lawyer should carefully consider whether returning the physical evidence to its source or original location may have the effect of preventing law enforcement authorities from learning of evidence of which they would have had knowledge if the evidence had not been removed, thereby affecting the proper administration of justice. For example, where a client delivers evidence to a lawyer that the client has taken from a crime scene, and the lawyer returns the evidence after a period of time to its original location at the scene after the authorities' investigation of the scene has been concluded, the opportunity for the authorities to discover the evidence will have been lost. In these circumstances also, the evidence should be disclosed to law enforcement authorities.

When a lawyer discloses physical evidence relevant to a crime to law enforcement authorities, the lawyer must protect the client's confidences and preserve solicitor and client privilege. This may be accomplished by the lawyer retaining independent counsel, who is not informed of the identity of the client and who is instructed to maintain in confidence the identity of the instructing lawyer, to turn over the evidence.

F. Advising the Client

When presented with physical evidence relevant to a crime, a lawyer should attempt to ensure that the client understands the lawyer's ethical duties and legal responsibilities, and how they affect the lawyer's advice to the client and the client's case. At a minimum, the lawyer should advise the client that

1. The lawyer cannot be used as a means of destroying, concealing or altering the physical evidence.
2. Communications made for the purpose of destroying, concealing or altering the physical evidence are not protected by solicitor and client privilege.
3. A lawyer may take possession of physical evidence only in exceptional circumstances, and even then only temporarily, as explained above.

4. The police or Crown can seize the physical evidence by means of a valid search warrant, regardless of whether the evidence is held by the client or the lawyer.
5. If the physical evidence is received by the lawyer, the lawyer may be required to turn over the evidence to the authorities.
6. If the client chooses to keep the physical evidence,

   (i) the client cannot destroy or alter the evidence without committing a criminal offence
   (ii) the lawyer is bound by the knowledge of the client's possession of the evidence and the lawyer cannot lead the client's evidence if the client proposes to testify that he or she never had possession of the evidence that the lawyer has observed,
   (iii) if the client persists in the instructions described in (ii), the lawyer must withdraw as the client's counsel, and
   (iv) any evidence of damage to the physical evidence that can be proved by the Crown will be available as potential incriminating evidence

The lawyer should keep a professional distance to avoid the problems that may arise from personal involvement in the client's case. The lawyer should prepare a written record of all communications and actions taken respecting the physical evidence to be kept in the lawyer's file.

G. Seeking Advice

A lawyer who is asked to receive or does receive physical evidence relevant to a crime should seek the advice of senior counsel or the Law Society. This will serve the interests of the administration of justice and also assist the lawyer, should professional ethics issues arise, through the existence of a record showing that appropriate counsel was sought. The lawyer should document all communications and dealings with respect to the physical evidence for the purposes of the advice, and the lawyer should record any advice obtained from senior counsel or the Law Society.

It was moved by Mr. MacKenzie, seconded by Mr. Robins that Convocation authorize the distribution of the proposed rule and commentary for written comments from the profession and public.

Carried

REPORT OF THE FINANCE AND AUDIT COMMITTEE

Mr. Krishna presented the Report of the Finance and Audit Committee for approval by Convocation.

Finance and Audit Committee
March 8, 2001

Report to Convocation

Purpose of Report: Decision
Information

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

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Finance and Audit Committee ("the Committee") met on February 8, 2001. Committee members in attendance were: Krishna V. (c), Crowe M. (vc), Swaye G. (vc), Chahbar A., Epstein S., Feinstein A., Murphy D., Porter J., Puccini H., Ruby C., White D., Wright B.. Staff in attendance were Heins M., Tysall W., Strom M., Grady F., Cawse A.

2. The Committee is reporting on the following matters:
Decision
- Errors and Omissions Insurance Fund, Authorised Signing Officers;
- Facilities and Information Systems Capital Budget;

Information
- Assessment of Programs;
- Review of Law Society Information Systems;
- Status of Libraryco Inc.;
- Contractual Agreements.

FOR DECISION

ERRORS AND OMISSIONS INSURANCE FUND

BANKING RESOLUTION - CHANGE IN AUTHORISED SIGNING OFFICERS

3. Under the Management Services Agreement between LPIC and the Law Society governing the administration of the E & O Fund, LPIC maintains bank accounts with respect to the self-administered group deductible.

4. LPIC's policy is that any one signing officer can sign cheques under $10,000, with two signatories required for cheques over $10,000. The authorised signing officers need to be changed because of the appointment of Mr. Heins as CEO of the Law Society, and Ms. Strom replacing him as President of LPIC. In addition it is intended that Mr. Craig Allen and Ms. Kathleen Waters be added as signatories to supplement the existing signatories.

5. The Finance and Audit Committee recommends that Convocation approve the proposal that all officers of LPIC and the Controller be approved as signatories on the account as listed below:

Ms. Michelle Strom (President)
Ms. Caron Wishart (Vice President Claims)
Mr. Duncan Gosnell (Vice President Underwriting)
Ms. Kathleen Waters (Vice President TitlePLUS)
Mr. Craig Allen (Vice President and Actuary)
Ms. Iveri Vv Boudville (Controller)

FOR DECISION

2001 INFORMATION SYSTEMS AND FACILITIES CAPITAL BUDGET

6. A table summarising capital budget expenditures for technology and Osgoode Hall projects in 2001 and three subsequent years, as well as supporting descriptions, are attached from page 5. Page 5 also confirms that the balance in the Osgoode Hall Capital Fund is sufficient to finance the proposed capital expenditures in 2001.

7. The Finance and Audit Committee recommends that Convocation approve the 2001 technology and Osgoode Hall capital budget summarised on Page 5 totalling $2,736,000 for the year.

FOR INFORMATION

ASSESSMENT OF PROGRAMS

8. A discussion on the applications for a role similar to the federal Auditor General at the Law Society is attached from page 16. The Committee reviewed the concept and concluded that the role as envisaged was not applicable in the Law Society's current context. The role of the CEO is evolving with the new CEO conducting his own operational reviews, and the CEO participates and speaks at Convocation. The expense of an auditor conducting additional reviews could not be justified at this time.

REVIEW OF LAW SOCIETY INFORMATION SYSTEMS

9. Mr. Heins discussed the Law Society's Information Systems infrastructure improvement plan as detailed in the Capital Budget with the Committee.

STATUS OF LIBRARYCO INC.

10. It was noted that Libraryco Inc.'s corporate status has been finalised with the related changes to Bylaw 30, the company's tax status was at the point of being finalised, and that the Shareholder's Agreement was now satisfactory.

CONTRACT NEGOTIATIONS

11. The Chair confirmed the conclusion of operational contract negotiations, and will provide an in camera oral report to Convocation.

Finance Department
Memorandum

TO: Chair and Members of the Finance and Audit Committee

FROM: Wendy Tysall

DATE: February 28, 2001

RE: Law Society "Auditor-General"

During Convocation Mr. Gottlieb has suggested that the Law Society needs "somebody like an Auditor General that looks into the actual programs that we run, whether they are cost effective, whether they are achieving what they are supposed to achieve."

Role Definition

The Office of the Auditor General of Canada conducts independent audits of federal government operations, and reports directly to Parliament.

The mission statement of the Auditor General of Canada states:

> "We conduct independent audits and examinations that provide objective information, advice and assurance to Parliament. We promote accountability and best practices in government operations."

The 1977 *Auditor General Act* directs the Auditor General to address three main questions:

1. Is the government keeping proper accounts and records and presenting its financial information accurately? The auditor verifies, the accuracy of financial statements.
2. Did the government collect or spend the authorized amount of money and for the purposes intended by Parliament? The auditor asks if the government has complied with Parliament's wishes.
3. Were programs run economically and efficiently? And does the government have the means to measure their effectiveness? The auditor asks whether or not taxpayers received value for their tax dollars.

Applicability to the Law Society

Unlike corporations, the federal government does not utilise independent external auditors. Arthur Andersen, is retained by the Law Society to perform the verification role (#1 above), attesting to the integrity of the Law Society's annual financial statements. The Law Society's external auditor also provides a Management Letter, addressing any concerns they have about internal controls, and meets with the Audit Sub-Committee of the Finance and Audit Committee separate from staff.

There are a number of mechanisms that the Law Society utilises to fulfill the compliance audit (#2 above) role of the Auditor General primarily:

- The federal government does not have the equivalent of a Chief Executive Officer. The CEO has the responsibility for ensuring statutory, regulatory, contractual and policy compliance. Under the Law Society's Governance Processes executive performance can be monitored by any method at any time.

- A byproduct of the work completed by the external auditor such as Arthur Andersen in reviewing transactions is to gain satisfaction that the Law Society conformed to the laws and regulations that govern its operations.

- The CEO, Senior Management, the Finance Department, the Audit Sub-Committee and the Finance & Audit Committee also check variances in the spending authority contained in the annual budgets.

- Executive Limitations, in their old and to-be-revised form, also establish parameters and reporting mechanisms, for example the CEO's periodic report on operations to Convocation.

The Law Society has also carried out a number of value-for-money audits (#3 above) recently, primarily in the form of operational reviews:

- The Griffiths review of the Regulatory Function in 2000.
- Reviews conducted as part of the Strategic Plan initiative.
- The review of the Country and District Library Function conducted over the last two years.
- The Temkin review of the Communication function in 1998.
- The Skolnik / Jones review of the Education Department in 1997, the development work for the new model for the Bar Admission Course, and related reviews as part of the Competence Initiative.
- The review leading to the outsourcing of the Law Society's printing, receiving and mailing functions.
- Operational reviews, such as Project 200, benchmark the Law Society's functions to best practices.

While the depth and complexity of these reviews may vary, they do comprise a continuous check on major Law Society programs.

Logistics

To maintain credibility, an Auditor General for the Law Society would require significant expertise in the auditing, project management or process design fields. The current external audit costs the Law Society $72,000 per year. A prospective Law Society Auditor General would also require considerable time to accumulate institutional knowledge, given the Law Society's mission and diverse functions. The Auditor General would also require significant Law Society staff time to assist in audits and information gathering. It is difficult to completely evaluate the costs and benefits of an Auditor General program.

Conclusion

This memorandum has applied circumstances at the Law Society to the role of the federal Office of the Auditor General. A significant portion of the federal Auditor General's role is carried out by our external auditor and CEO. The remaining role of an Auditor General has been carried out by operational reviews.

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

Copy of the 2001 technology and Osgoode Hall capital budget. (pages 5 to 15)

Re: Errors and Omissions Insurance Fund, Authorized Signing Officers

It was moved by Mr. Krishna, seconded by Mr. Crowe that the proposal that all officers of LPIC and the Controller be approved as signatories on the account as listed below:

Ms. Michelle Strom (President)
Ms. Caron Wishart (Vice President Claims)
Mr. Duncan Gosnell (Vice President Underwriting)
Ms. Kathleen Waters (Vice President TitlePLUS)
Mr. Craig Allen (Vice President and Actuary)
Ms. Iveri Vv Boudville (Controller)

Carried

Re: Facilities and Information Systems Capital Budget

It was moved by Mr. Krishna, seconded by Mr. Crowe that the 2001 technology and Osgoode Hall capital budget of $2,736,000 be approved as summarized on page 5 of the Report.

Carried

REPORT OF THE ADMISSIONS COMMITTEE

Mr. Millar presented the Report of the Admission Committee for approval by Convocation.

Admissions Committee
March 22, 2001

Report to Convocation

Purpose of Report: Decision Making

Prepared by the Policy Secretariat

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

POLICY - FOR DECISION

LEGAL MEMBERS OF THE NATIONAL PAROLE BOARD 2
Issue 2
Discussion 2
The Committee's Deliberations 3
Request of Convocation 4

LIFE MEMBERSHIP: BY-LAW 13 4
Issue 4
Request of Convocation 5

DATES OF CALL TO THE BAR - NEW MODEL OF THE BAC 5
Issue 5
Background 5
Discussion 7
The Committee's Deliberations 10
The Committee's Recommendation 11
Request of Convocation 11

INFORMATION

BAR ADMISSION COURSE GRADUATE PLACEMENT DATA 12

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Admissions Committee ("the Committee") met on March 8, 2001. Committee members in attendance were Derry Millar (Chair), Edward Ducharme (Vice-Chair), John Campion, Pamela Divinsky, Dean Alison Harveson-Young, Donald Lamont, and Stephanie Willson. Bencher, Sanda Rogers, also attended. Staff in attendance were Brenda Albuquerque-Boutlilier, Julia Bass, Bob Bernhardt, Katherine Corrick, Ian Lebane, Susan Lieberman, Elliot Spears, and Roman Woloszczuk.

2. The Committee is reporting on the following matters:

Policy - For Decision
Legal Members of the National Parole Board
Life Membership - By-law 13
Call to the Bar Dates

Information
Bar Admission Course Graduate Placement Data

POLICY - FOR DECISION

LEGAL MEMBERS OF THE NATIONAL PAROLE BOARD

Issue

3. The Law Society has received a request from a member of the National Parole Board asking that the National Parole Board be named as a tribunal to which s. 31(1)(b) of the *Law Society Act* applies.

Discussion

4. Section 31 of the *Law Society Act* reads as follows:

31.(1) The membership of a person is in abeyance while the person holds office, as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section.

5. To be eligible to be named under section 31, a tribunal must therefore have full-time members and have a judicial or quasi-judicial function.

6. While there is no doubt the National Parole Board has full-time members, there is doubt as to whether the board has a judicial or quasi-judicial function. On this issue the committee considered a legal opinion and submissions from the member in question.

7. While a person's membership is held in abeyance, the Law Society's annual fee is not payable by that member.

8. Officials of the National Parole Board have declined to take a position on this matter and have indicated that it is a matter between the Law Society of Upper Canada and its members.

The Committee's Deliberations

9. The committee took note of the fact that naming a tribunal would deprive all legal members of the tribunal of their right to practise law in Ontario and their other rights as members of the Society (e.g. to vote for benchers, to run for bencher, to participate in the annual general meeting).

10. The Society does not have access to a complete list of legal members of the tribunal in question, who may not all take the same position on this issue.

11. If the legal members of the tribunal are not unanimous the Society would not be in a good position to resolve the issue.

12. In the Committee's view, the appropriate approach is to adopt a policy that a tribunal only be considered for naming under section 31 upon request of the chair of the tribunal and after an exchange of correspondence with the chair setting out the consequences of being so named, and that the member in question be so notified.

Request of Convocation

13. Convocation is requested to adopt a policy that a tribunal only be considered for naming under section 31 upon request of the chair of the tribunal and after an exchange of correspondence with the chair setting out the consequences of being so named.

LIFE MEMBERSHIP: BY-LAW 13

Issue

14. In February 2000, the Admissions Committee recommended certain changes to by-law 13 to permit members to become life members even if their practice had been interrupted at some point during the required 50 years.

15. The Committee, in its report to Convocation on February 18, 2000, included a motion setting out the necessary amendments to by-law 13 to bring the recommended policy into effect. That motion is attached at APPENDIX 1.

16. It appears from the transcript of Convocation's proceedings on February 18, 2000 that Convocation was not asked to approve the entire motion, but rather to approve only paragraph 2(2)4., which granted the Committee the discretion to allow periods of suspension other than those due to non-payment of fees or levy to be counted toward the required period of 50 years.

17. Convocation's failure to consider the motion in its entirety seems to have been an oversight.

Request of Convocation

18. Convocation is requested to approve the motion at Appendix 1 so that all sections of the by-law will be consistent with the policy already approved by Convocation.

DATES OF CALL TO THE BAR - NEW MODEL OF THE BAC

Issue

19. The new model of the Bar Admission Course provides both greater flexibility for students with respect to scheduling and a reduced period of time between graduation from law school and call to the bar. These changes require a re-examination of the date of the ceremonial call to the bar, as a February date is no longer appropriate.

20. The issues to be decided are:

a) In future years, should there be a single ceremonial call or should there be two?
b) If there should be two calls, should there be a transitional year in 2002 with a single call because students were not previously advised of the possibility of more than one and might have chosen a different scheduling option had they been notified?
c) Should the date of the ceremonial call(s) be such that students obliged to write supplementals can, if they successfully pass their supplementals, be called to the bar with their class?

Background

21. One of the major goals in the recent reconfiguration of the Bar Admission Course was to reduce the time between graduation from law school and call to the bar. Since 1992, the major ceremonial calls to the bar have been in February, approximately 22 months after completion of the LL.B.

22. Under the previous model of the Bar Admission Course the majority of students began the Bar Admission Course in May or June immediately following completion of third year law school, and completed the Course, including articling, in December of the following year.

23. There has always been pressure on the Law Society to call students to the bar as quickly as possible to allow them to begin practising law and earning an income. There has also been, over the last ten years at least, significant pressure on the Law Society to permit students who have failed examinations during the teaching term to write supplemental examinations as soon as possible so that successful completion will allow them to be called to the bar at the large ceremonial call with the rest of their class.

24. Scheduling the calls in February was introduced in response to the competing pressures of making the call as early as possible, while still providing adequate administrative time to,
(a) communicate examination results to students;
(b) provide a set of supplemental examinations for those who failed;
(c) mark the supplemental examinations; and
(d) process the successful students for inclusion in the call.

25. The production of the call ceremonies is a major event requiring substantial organization and planning. The current mid-to-end of February calls occur two to two and a half months after students complete their final examination in mid-December.

26. The scheduling flexibility built into the new Course will produce different course completion dates for students, as follows:

(a) August completion - students who complete the Skills Phase, article, and then complete the Substantive/Procedural Phase will be eligible for call by the *end of August.*

(b) June completion - students who complete the Skills Phase and Substantive/Procedural Phase, and then article will be eligible for call by the *end of June.* (77% of the students have chosen this option).

27. Although there are calls to the bar in any month in which Convocation sits, (which will continue under the new Course) this report addresses the major ceremonial calls, which accommodate the majority of students.

28. The first calls of students who complete the new Course will take place in 2002.

Discussion

In future years, should there be a single major ceremonial call or should there be two?

29. There are advantages and disadvantages that flow from either option.

a) Two Calls

30. Scheduling two calls reduces the waiting period for call to the bar. The first call could be held in July for those students who complete the Course by the end of June. The second call could be held in October for those students who complete the Course by the end of August.

31. The advantage of this option is that all students would be called to the bar within a relatively similar time frame following completion of the Course, rather than those finishing in June having to wait until October to be called. As a result they will be able to start their careers as lawyers earlier, and will have potential for increased earnings.

32. A potential disadvantage of this approach is the perceived differentiation of lawyers by their month of call. The Bar Admission Course Reform Task Force cautioned against the creation of separate call months, where students who choose the schedule that results in an earlier call are perceived to be of greater worth than those who have chosen a different schedule, resulting in a later call.

33. Multiple call dates in London and Ottawa would lead to increased costs. (Approximately $25,000 each.) In Toronto, if the students were relatively evenly divided between calls, it may not lead to a substantially increased cost if the centre (currently Roy Thompson Hall) was only required for one day in each of July and October.

34. Administratively, the calls draw heavily on the resources of the Registrar's office. The July call will occur at a time when the Course is in session. Increased staffing would likely be required for at least some period leading up to the call.

35. July may prove to be a difficult time to obtain the necessary quorum of Convocation.

b) One Call

36. Similar to the current arrangements, there could be one major ceremonial call in late September.

37. The major advantage of this approach is that most students would be called at the same time, eliminating the concern raised above about a perceived advantage for those called earlier.

38. Another advantage is that it would provide a two month period in which students were not attending the Bar Admission Course or articling at some point between their LLB graduation and their call. Although some students would continue working, many might use the opportunity for some "down-time" before their call to the bar.

39. The elimination of much of the down-time in the old model of the Course was done on the assumption that students would appreciate the quicker route to a call. Although this has proved to be the case, students have also expressed strong opinions to the Department of Education suggesting that it is important that they be left with some period in which they can take an extended vacation/sabbatical.

40. Many students have informed the Department of Education that since the start of their LL.B. they have either been in school or in a law firm. They have stated that they have a strong desire to have one extended period prior to their full-time careers, in which they can travel or pursue an alternate interest. Although the students should arguably be able to negotiate this period with the law firms in which they are being hired, the students have stated that they feel their bargaining position is very weak, and they have expressed a wish for the Law Society's support in maintaining some level of flexibility.

41. One clear disadvantage of the one-call option is that some students will have to wait for their call longer than would otherwise be necessary. There are many students who plan to start their own practices, for whom an earlier call may be of more practical importance than a longer break.

If there should be two calls, should there be a transitional year in 2002 with a single call because students were not previously advised of the possibility of more than one and might have chosen a different scheduling option had they been notified?

42. For the first running of the new model students were not advised of the possibility that there would be two calls when they made their scheduling choices. A memorandum sent to all applicants from the Registrar indicated that the sequence in which the students schedule the Bar Admission Course teaching phases will not affect the date on which they will be called to the bar.

43. There has been no consultation with the law schools or students about the potential negative implications of such an additional shift.

44. Students who have chosen to article between the two teaching phases may be disadvantaged by conditions that are introduced after they made their scheduling choices if there are two call dates in 2002.

Should the date of the ceremonial call(s) be such that students obliged to write supplementals can, if they successfully pass their supplementals, be called to the bar with their class?

45. Whether there are one or two calls, a decision must be made about whether effort should be made to balance the desire for an early call against the desire to permit those writing supplemental examinations to be called to the bar with their class.

46. July and October call dates would permit those students who have failed an examination during the immediately preceding May/June or July/August period to write a supplemental examination prior to call. A September call date would not permit a round of supplemental examinations prior to the call.

The Committee's Deliberations

47. There is a particular problem with the call in 2002, since the students have already chosen their schedules on the basis that it would not affect their call date. This argues in favour of a single call. However, placing the call in October, which would allow time for students to write supplemental examinations, would create too long a wait for the students who will have completed their requirements in June.

48. A single call in September would not allow time for the students writing supplemental examinations after the later offering of the Substantive Phase to be called with their class.

49. For all subsequent years, scheduling ceremonial calls in both July and October would enable students writing supplementals to be called with their peers, and students would be on notice that there will be two separate dates for calls to the bar.

50. Any change in the call to the bar date will require a re-examination of the fee paid by the newly-called members. Currently, students called in February receive preferential fee status. They pay fees as though they started in April.

51. It will be necessary to determine the appropriate fee for students called in July, September, or October.

The Committee's Recommendation

52. There should be two ceremonial calls to the bar, in July and October, starting in 2003.

53. There should be a transitional year in 2002 with one call to the bar in September.

54. The degree of scheduling choice offered students should be re-examined in light of the fact that 77% of students have chosen to consolidate the teaching phases of the Course before articles.

Request of Convocation

Convocation is requested to consider,

(a) whether there should be one or two ceremonial calls to the bar each year;
(b) if two, should there be a transitional year in 2002 with only one; and
(c) whether the call date(s) should be scheduled in such a way that students who successfully complete supplemental examinations may be called to the bar with their class.

56. Convocation is further requested to approve the following motion:

(a) That there should be two ceremonial calls to the bar, in July and October, starting in 2003.
(b) That there should be a transitional year in 2002 with one call to the bar in September.

INFORMATION

BAR ADMISSION COURSE GRADUATE PLACEMENT DATA

57. Appendix 2 contains Bar Admission Course Graduate Placement Data prepared by the Head of Articling, Susan Lieberman.

APPENDIX 1

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 13
[MEMBERS]

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 22, 2001

MOVED BY

SECONDED BY

THAT By-Law 13 [Members], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999 and December 10, 1999, be further amended as follows:

1. Subsection 2 (1) of the By-Law is amended by,

(a) deleting "continuous" in the second line; and

(b) deleting "becomes" in the second line and substituting "is".

2. Subsections 2 (2) and (3) of the By-Law are revoked and the following substituted:

Period of fifty years

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

1. A period of time during which the member's membership is in abeyance under section 31 of the Act.

2. A period of time during which the member's membership is interrupted by war service.

3. Subject to subsection (3), a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for failure to pay a fee or levy.

4. In the absolute discretion of the Admissions Committee, a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for a reason other than failure to pay a fee or levy.

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

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

Period of suspension for non-payment: exception to limit

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

Exercise of powers by Admissions Committee

(5) The performance of any duty, or the exercise of any power, given to the Admissions Committee under this section is not subject to the approval of Convocation.

APPENDIX 2

Bar Admission Course
Graduate Placement Data
Student Employment Survey: February 2001

Preamble:

As shown in Table 1, the rate of employment following the 2001 Call to the Bar was significantly higher than it has been over the past 12 years. It is likely that these new lawyers are profiting from the strong Canadian economy. This year, 4 % of students obtained their positions through the Jobs Website which was established by the Articling and Placement Office in August of 2000.

Table 1: Rate of Employment following the Call to the Bar (1988-2001)

Call Year	% Reply	Hired Back	% Hired Back	Employ Other	% Employ Other	Employed by February of Call Year
2001	63.3%	345	51.3%	206	30.6%	81.9%
2000	59.9%	342	46.7%	169	23.1%	69.7%
1999	55.5%	286	44.5%	125	19.4%	63.9%
1998	56.5%	256	38.7%	188	28.4%	67.2%
1997	60.1%	282	37.5%	198	26.3%	63.7%
1996	77.0%	340	35.3%	296	30.7%	66.0%
1995	54.6%	262	38.4%	197	28.8%	67.2%
1994	40.5%	203	41.6%	90	18.4%	60.0%
1993	28.5%	146	41.2%	61	17.2%	58.5%
1992	42.5%	204	40.0%	85	16.7%	56.7%
1990	31.0%	178	50.1%	90	25.4%	75.5%
1989	34.8%	192	48.5%	78	19.7%	68.2%
1988	37.2%	167	41.1%	96	23.6%	64.8%
Average	49.4%		42.7%		23.7%	66.4%

Notes:

1. Survey was given to students at time of signing the rolls for Call to the Bar (Years 2000 and 2001)

2. Employ Other category includes those who have accepted an offer from another employer, who are starting their own practice, and those not seeking employment as they have other plans, e.g., continuing their education.
(2001: 164 have accepted an offer from another employer; 17 students setting up own practice; 25 students not seeking employment - other plans)

3. Data for 1991 omitted due to poor response rate.

Re: Legal Members of the National Parole Board

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that Convocation adopt a policy that a tribunal only be considered for naming under section 31 upon request of the chair of the tribunal and after an exchange of correspondence with the chair setting out the consequences of being so named.

Carried

By-Law 13 - Life Membership

Copies of the motion to amend By-Law 13, both the English and French versions were distributed to the Benchers.

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that By-Law 13 be amended as follows:

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 13
[MEMBERS]

THAT By-Law 13 [Members], made by Convocation on January 28, 1999 and amended by Convocation on March 26, 1999 and December 10, 1999, be further amended as follows:

1. Subsection 2 (1) of the English version of the By-Law is amended by,

   (a) deleting "continuous" in the second line; and

   (b) deleting "becomes" in the second line and substituting "is".

2. Subsection 2 (1) of the French version of the By-Law is amended by,

   (a) deleting "sans interruption" in the second and third lines; and

   (b) deleting "deviennent" in the third line and substituting "sont".

3. Subsections 2 (2) and (3) of the By-Law are revoked and the following substituted:

Period of fifty years

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

   1. A period of time during which the member's membership is in abeyance under section 31 of the Act.

   2. A period of time during which the member's membership is interrupted by war service.

   3. Subject to subsection (3), a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for failure to pay a fee or levy.

4. In the absolute discretion of the Admissions Committee, a period of time during which the member's entitlement to practise law in Ontario as a barrister, as a solicitor or as a barrister and solicitor is suspended for a reason other than failure to pay a fee or levy.

Période de cinquante ans

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

1. La période d'interruption de la qualité de membre pour cause de nomination à une charge judiciaire visée à l'article 31 de la Loi.

2. La période d'interruption de la qualité de membre pour cause de service militaire.

3. Sous réserve du paragraphe (3), la période de suspension du droit d'exercer le droit en Ontario à titre d'avocat plaidant, de procureur ou d'avocat plaidant et de procureur en raison du non-paiement de cotisations ou de droits.

4. À l'entière discrétion du Comité d'admission, la période de suspension du droit d'exercer le droit en Ontario à titre d'avocat plaidant, de procureur ou d'avocat plaidant et de procureur pour une raison autre que le non-paiement de cotisations ou de droits.

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

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

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

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

Period of suspension for non-payment: exception to limit

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

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

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

Exercise of powers by Admissions Committee

(5) The performance of any duty, or the exercise of any power, given to the Admissions Committee under this section is not subject to the approval of Convocation.

Exercice des pouvoirs du Comité d'admission

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

Carried

Re: Call to the Bar Dates

It was moved by Mr. Millar, seconded by Mr. E. Ducharme that there be one Call to the Bar in 2002 to be held in September and that future Call dates be referred back to the Committee for review.

Carried

CONVOCATION ADJOURNED FOR LUNCHEON AT 12:45 P.M.

The Treasurer and Benchers had as their guests for luncheon, The Hon. David S. Young, Attorney General of Ontario and Mr. Jack Giles a lawyer from British Columbia.

CONVOCATION RECONVENED AT 2:15 P.M.

PRESENT:

The Treasurer, Aaron, Arnup, Banack, Bindman, Bobesich, Carey, Cass, Chahbar, Cherniak, Coffey, Copeland, Cronk, Crowe, Diamond, E. Ducharme, Epstein, Finkelstein, Gottlieb, Hunter, Krishna, Lalonde, Laskin, MacKenzie, Manes, Millar, Mulligan, Murray, Pilkington, Porter, Potter, Puccini, Robins, Rodgers, Ross, Simpson, Swaye, White, Wilson and Wright.

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IN PUBLIC

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REPORT OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE

Re: Competence Mandate

Ms. Cronk presented the Report of the Professional Development and Competence Committee regarding its proposal for implementing the Law Society's Competence Mandate.

Professional Development & Competence Committee
March 22, 2001

Report to Convocation

Purpose of Report: Policy - Decision Making
Information

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

TABLE OF CONTENTS

TERMS OF REFERENCE/COMMITTEE PROCESS 2

POLICY - FOR DECISION

REPORT AND RECOMMENDATIONS OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REGARDING ITS PROPOSAL FOR IMPLEMENTING THE LAW SOCIETY'S COMPETENCE MANDATE 3

MOTION TO AMEND BY-LAW 30 RESPECTING COUNTY LAW LIBRARIES 4
Request to Convocation 5

INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON MARCH 7, 2001 AND APPROVED IN COMMITTEE ON MARCH 8, 2001 5

WRITTEN SUBMISSIONS FROM L'AJEFO CONCERNING THE LAW SOCIETY'S COMPETENCE CONSULTATION DOCUMENT 6

OPINION ON LEGISLATIVE PROVISIONS OF THE *LAW SOCIETY ACT* CONCERNING MANDATORY CONTINUING LEGAL EDUCATION 6

TERMS OF REFERENCE/COMMITTEE PROCESS

1. The Professional Development and Competence Committee ("the Committee") met on March 8, 2001. Committee members in attendance were Eleanore Cronk (Chair), Earl Cherniak (Vice-Chair), Ron Manes (Vice-Chair), Stephen Bindman, Kim Carpenter-Gunn, Ron Cass, Seymour Epstein, Greg Mulligan, Judith Potter, Margaret Ross (non-bencher member), and Bill Simpson. The Treasurer attended a portion of the meeting. Staff in attendance were Bob Bernhardt, Janine Miller, Sophia Sperdakos, Ursula Stojanowicz, and Paul Truster.

2. The Committee is reporting on the following matters:

Policy - For Decision

- The Report and Recommendations of the Committee with regard to its proposal for implementing the Law Society's competence mandate

- Motion to Amend By-Law 30 respecting county law libraries

Information

- Report on Specialist Certification Matters Finalized by the Working Group of the Committee on March 7, 2001 and Approved in Committee on March 8, 2001

- Copy of the l'AJEFO's written submission concerning the Law Society's Consultation Document on implementing the Law Society's Competence Mandate, received February 23, 2001
- Legal Opinion of Elliot Spears considering issues raised by bencher Marshall Crowe in his letter regarding *Law Society Act* provisions on MCLE

POLICY - FOR DECISION

REPORT AND RECOMMENDATIONS OF THE PROFESSIONAL DEVELOPMENT AND COMPETENCE COMMITTEE REGARDING ITS PROPOSAL FOR IMPLEMENTING THE LAW SOCIETY'S COMPETENCE MANDATE

1. 1In March 2000 Convocation approved the distribution to the profession of a document entitled *Implementing the Law Society's Competence Mandate: A Consultation Document* (the "Consultation Document'). Following the approval of the Consultation Document, the Law Society undertook a multi-faceted consultation process with the profession. The process was described in a report to Convocation in January 2001 from the Professional Development and Competence Committee (the "Committee") entitled *Implementing the Law Society's Competence Mandate: Report on the Consultation Process* (the "Information Report"), which outlined the results of each aspect of the consultation process.[1]

2. At Convocation in January 2001 the Committee indicated that it would provide Convocation in March 2001 with a report regarding its recommendations for a possible approach to implementing the Law Society's competence mandate and would seek Convocation's direction to develop the model. The Committee has met, in full day sessions, on December 8, 2000, January 18, 2001, February 8, 2001 and March 8, 2001 to develop the proposed approach for Convocation's consideration.

3. Attached at Appendix "A" is the Committee's Report and Recommendations outlining a suggested framework for implementing the Law Society's competence mandate.

4. The Committee seeks Convocation's approval of the suggested approach to implementing the Law Society's competence mandate outlined in the Report. If Convocation approves the recommended approach, the Committee will seek further input from the profession concerning the proposed design, undertake detailed design of each of the components, and report back to Convocation for Convocation's consideration of the detailed model design, including proposed design priorities.

---

[1]Benchers are requested to bring their copy of the Information Report to Convocation.

5. The detailed model design will address issues related to the specific content of each component of the model as well as issues related to,

   a. cost;

   b. the model's flexibility to address diverse needs and realities of the profession throughout the province;

   c. the accessibility and affordability of each component of the model and the model overall; and

   d. the manner in which development of the model should be prioritized.

MOTION TO AMEND BY-LAW 30 RESPECTING COUNTY LAW LIBRARIES

1. In June 2000 Convocation approved the report on county law libraries, which among other things recommended the creation of LibraryCo, a not-for-profit corporation. Steps toward implementation have been ongoing since June.

2. In order to put in place the shareholders' agreement for LibraryCo a number of amendments are necessary to By-law 30 respecting county libraries. Attached at Appendix "B" a draft motion setting out proposed amendments to By-law 30 and a copy of the original By-law 30 (made June 23, 2000).

3. The Professional Development and Competence Committee has reviewed the draft motion and recommends the amendments in it to Convocation for its consideration. On committee day the Finance and Audit Committee was also provided with a copy of the draft motion for its information.

Request to Convocation

4. Convocation is requested to consider the motion set out at Appendix "B", which contains proposed amendments to By-Law 30, and, if appropriate, approve the motion.

FOR INFORMATION

REPORT ON SPECIALIST CERTIFICATION MATTERS FINALIZED BY THE WORKING GROUP OF THE COMMITTEE ON MARCH 7, 2001 AND APPROVED IN COMMITTEE ON MARCH 8, 2001

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

Civil Litigation	L. Jane Burbage (of Toronto) Peter C. Wardle (of Toronto)
Construction Law	Jack B. Berkow (of Toronto) David I. Bristow, Q.C. (of Toronto) William G. J. Swybrous, Q.C. (of Burlington) Howard M. Wise (of Toronto)

Family Law	Kevin G. Cleghorn (of Thunder Bay)

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

Bankruptcy & Insolvency Law	Lawrence J. Crozier (of Toronto)
Civil Litigation	Kenneth C. Cancellara, Q.C.(of Mississauga) J. Murray Davison, Q.C. (of Toronto) S. Russell Kronick, Q,.C. (of Ottawa) Raymond F. Leach (of London) Peter J. Lingard (of St. Catharines) Dermot P. Nolan (of Hamilton) James A. Scarfone (of Hamilton) Robert M. Zarnett (of Toronto)
Criminal Law	Barry A. Fox (of Scarborough) Robert F. Meagher (of Ottawa)

3. The Committee is pleased to report approval of the appointment of Daniel W. Monteith (of Newmarket) as a member of the Civil Litigation Specialty Committee. The membership on the Civil Litigation Specialty Committee is as follows:

Nancy J. Spies (of Toronto), Chair
James E. Lewis, Q.C. (Of Mississauga)
Edward J. Orzel, Q.C. (of Hamilton)
Ian Stauffer (of Ottawa)
David B. Williams (of London)
Donald H. Jack (of Toronto)
Daniel W. Monteith (of Newmarket)
Owen J. R. Smith, Q.C. (of New Liskeard)
Bonnie A. Tough (of Toronto)

WRITTEN SUBMISSIONS FROM L'AJEFO CONCERNING THE LAW SOCIETY'S COMPETENCE CONSULTATION DOCUMENT

1. As part of the competence consultation process 28 legal organizations were invited to make written submissions by October 2000 concerning the four competence models discussed in the Consultation Document . L'AJEFO requested the opportunity to make submissions after the deadline and was invited to do so. A copy of l'AJEFO's submission is set out at Appendix "C".

OPINION ON LEGISLATIVE PROVISIONS OF THE *LAW SOCIETY ACT* CONCERNING MANDATORY CONTINUING LEGAL EDUCATION

1. Bencher Marshall Crowe sent a letter to the Chair of the Professional Development and Competence Committee, dated September 12, 2000, discussing issues concerning the provisions under the *Law Society Act* relating to mandatory continuing legal education.

2. Attached at Appendix "D" is a copy of a memorandum from Elliot Spears considering issues raised by bencher Marshall Crowe in his letter.

APPENDIX "A"

Professional Development & Competence Committee
March 22, 2001

Implementing the Law Society's Competence Mandate:
Report and Recommendations

Purpose of Report: Decision Making

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

TABLE OF CONTENTS

I. NATURE AND PURPOSE OF THIS REPORT 3

II. BACKGROUND 5
(i) The Law Society's Competence Mandate 5
a) Historical Overview 5
b) Legislative Change 8
c) Task of the Professional Development and Competence Committee 9
(ii) The Challenge of a Province-Wide Approach 9
(iii) Consultation Process 10
a) The Consultation Document 10
b) The Survey 10
c) Regional Meetings 11
d) Focus Groups 11
e) Meetings with and Submissions from Legal Organizations 12
f) Other Consultative Initiatives 12
g) Other Research Activities 13

III. POSSIBLE COMPETENCE MODELS 14

IV. OPERATING PRINCIPLES AND CONSIDERATIONS 15
(i) Operating Principles 15
a) The Need for Quality Assurance *and* Quality Improvement Measures 17
b) The Need for Flexibility, Accessibility, and Relevance 19
c) The Need for Expanded Use of Technological Tools 22
(ii) Additional Considerations 22
a) Resource and Other Economic Considerations 23
b) The Need for Staged Implementation 24
c) Continuing Evaluation of the Model 24

V. PROPOSED APPROACH 25

VI. PRACTICE GUIDELINES 28

VII. REMEDIAL COMPONENTS MANDATED BY STATUTE:
FOCUSED PRACTICE REVIEW AND COMPETENCE HEARINGS 31

VIII. PRACTICE ENHANCEMENT 32
(i) Voluntary Self-Assessment Program 34
(ii) Voluntary Peer Assessment Pilot Project 36

IX. CONTINUING LEGAL EDUCATION 38
(i) Post-Call Education 38
(ii) Requalification 43

X. SPECIALIST DESIGNATION 44

XI. SUMMARY 47

XII. PROPOSED NEXT STEPS AND TIME LINE 48

XIII. REQUEST TO CONVOCATION 48

TABLE 1: OPERATING PRINCIPLES AND CONSIDERATIONS TO GUIDE SELECTION AND DESIGN OF A FUTURE COMPETENCE MODEL 17

TABLE 2: CONTINUUM OF PROFESSIONAL DEVELOPMENT: ESSENTIAL BUILDING BLOCKS26
APPENDIX 1: PROPOSED APPROACH

APPENDIX 2: DEFINITION OF THE COMPETENT LAWYER

APPENDIX 3: SUMMARY OF POSSIBLE COMPETENCE MODELS DESCRIBED IN THE CONSULTATION DOCUMENT

APPENDIX 4: EXCERPTS FROM CONSULTATION DOCUMENT

APPENDIX 5: DISCUSSION OF LIMITED LICENSING MODEL

APPENDIX 6: GENERAL PRINCIPLES AND MINIMUM EXPECTATIONS FOR POST-CALL EDUCATION (1997)

I. NATURE AND PURPOSE OF THIS REPORT

1. In March 2000 Convocation approved the distribution to the profession of a document entitled *Implementing the Law Society's Competence Mandate: A Consultation Document* (the "Consultation Document'). Following the approval of the Consultation Document, the Law Society undertook a multi-faceted consultation process with the profession.[1] The process was described in a report to Convocation in January 2001 from the Professional Development and Competence Committee (the "Committee") entitled *Implementing the Law Society's Competence Mandate: Report on the Consultation Process* (the "Information Report"), which outlined the results of each aspect of the consultation process.

2. At Convocation in January 2001 the Committee indicated that it would provide Convocation in March 2001 with a report regarding its recommendations for a possible approach to implementing the Law Society's competence mandate and would seek Convocation's direction to develop the model. The Committee has met, in full day sessions, on December 8, 2000, January 18, 2001, February 8, 2001 and March 8, 2001 to develop the proposed approach for Convocation's consideration. This Report responds to that commitment to Convocation and outlines a suggested framework for implementing the Law Society's competence mandate. Specifically, it outlines for Convocation's consideration,
   a. the various competence models reviewed by the Committee;
   b. the principles developed by it to shape its work;
   c. its proposed approach for implementing the Law Society's competence mandate in the future; and
   d. a suggested time-line for seeking further input and advice on the competence model to be designed in the months ahead and for developing that design.

3. The broad policy framework presented and discussed in this Report reflects an integrated approach to competence. Each of the framework's components is essential to the overall effectiveness of the approach. The components are inter-related and inter-dependent. In combination, they address both the Law Society's obligation to regulate in the public interest and its commitment to support its members in their efforts to maintain their own competence and provide quality service to the public.

4. The Committee is providing Convocation at this time with a broad policy framework for its consideration, rather than a fully detailed design model, for the following reasons:

   a. In the summer of 1999 the Committee was charged with the task of studying and reporting to Convocation on a suggested approach to implementing the Law Society's competence mandate. The profession was notified of a consultation process in March 2000. The process spanned approximately nine months, during which time the profession was assured that there would be further opportunities for input into the model that would be developed. The Committee is of the view that this further input is essential to the ultimate acceptance of the model by the profession. To design a detailed model for Convocation's consideration, without further input from the profession, would undermine this critical component.

   b. The Committee is aware of the resources, both human and financial, that will be involved in the design process. The Committee is of the view that before such resources are expended it is more appropriate to first seek Convocation's approval of a policy framework.

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[1] As detailed in this Report the consultation process included, among other initiatives, a survey, regional meetings, focus groups, and written comments and oral submissions from legal organizations.

c. The Committee is of the view that Convocation should be in a position to approve the policy approach at an early stage so that the Committee has clear direction on what features the competence model should include.

5. The Committee seeks Convocation's approval of the suggested approach to implementing the Law Society's competence mandate outlined in this Report. Its constituent components are summarized in Table 2.[2] If Convocation approves the recommended approach, the Committee will seek further input from the profession concerning the proposed design, undertake detailed design of each of the components, and report back to Convocation for Convocation's consideration of the detailed model design, including proposed design priorities.

6. The detailed model design will address issues related to the specific content of each component of the model as well as issues related to,

a. cost;

b. the model's flexibility to address diverse needs and realities of the profession throughout the province;

c. the accessibility and affordability of each component of the model and the model overall; and

d. the manner in which development of the model should be prioritized.

7. The Committee's proposed approach and recommendations are set out throughout the body of this Report. For ease of reference they are set out together at Appendix 1.

II. BACKGROUND

(i) The Law Society's Competence Mandate

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

a) Historical Overview

9. In recognition of the fundamental importance of ensuring competent legal services, the Law Society for many years sought to promote competence among lawyers by developing pre-call legal education requirements, establishing standards and criteria for admission to the bar (effected through the Bar Admission Course), developing and assisting in the provision of continuing legal education programs, and instituting a province-wide county library system.[3] In addition, the Law Society addressed member incompetence directly through discipline proceedings initiated when a member's apparent deficiencies arguably constituted professional misconduct. In some circumstances, a member's fitness to practise law was determined through a hearing process designed to evaluate the member's emotional, psychological, and physical ability to engage in practice.

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[2]Table 2 is set out at page 26 and Appendix 1 of this Report.

[3]Much of the historical overview set out in this section is drawn from the Consultation Document.

10. By the late 1980s, there was growing recognition among various regulators that traditional disciplinary processes afforded little opportunity for remedial responses to the needs of professionals. Moreover, they necessarily involved the stigma of punitive measures when, in some circumstances, rehabilitation and remediation were more appropriate goals. For these reasons, among others, for at least the last decade the Law Society has undertaken various initiatives designed to utilize active, preventive, and remedial tools in a system-wide approach to competence. This led, for example, to,

    a. the introduction of a practice advisory service in 1980 to respond to member inquiries concerning practice-related matters, including ethical issues;

    b. the introduction in 1986 of a specialist certification program to accredit as specialists those members who had attained defined levels of expertise in identified practice areas;

    c. the introduction of a voluntary practice review program in 1988 to provide assistance to members with demonstrated practice deficiencies; and

    d. also in 1988, the development of practice checklists to provide practice guidance in specific areas.

11. By the early 1990s, the Law Society had reaffirmed its commitment to defining a contemporary approach to the regulation of competence. The Law Society's Role Statement, adopted in late October 1994, reflects the objective of ensuring that the public is served by competent lawyers. It provides as follows:

> *The Law Society of Upper Canada exists to govern the legal profession in the public interest by,*
> - *ensuring that the people of Ontario are served by lawyers who meet high standards of learning, competence, and professional conduct; and*
> - *upholding the independence, integrity and honour of the legal profession,*
>
> *for the purpose of advancing the cause of justice and the rule of law.*

Commentary 5.3 of the Role Statement confirms that the Law Society has,

> *an obligation to ensure that its members continue to be fit [to practise], qualified, and competent.*

12. Following adoption of the Role Statement, a Task Force on Competence was established in 1997 to develop a definition of the "competent lawyer". The definition was approved by Convocation that year and, in 2000, was introduced as a formal part of the *Rules of Professional Conduct.* [4] A Second Competence Task Force recommended in 1999 specific action steps to be taken by the Law Society to further the development, maintenance, improvement and enforcement of competence in the legal profession. The Report of the Second Competence Task Force, approved by Convocation in 1999, established a principled context for developing and implementing the Law Society's competence mandate. As approved by Convocation, that context included the following elements:

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[4] A copy of the definition is attached as Appendix 2.

- *The need for the Law Society to clarify the competence-related obligations of members under the Law Society Act (Ontario) and, in particular, the competence sections of the Act;*

- *The need for the Law Society to support lawyers in their efforts to meet their responsibility to maintain competence;*

- *Recognition that the Law Society's mandate as regulator of the legal profession includes a responsibility to ensure that the public is served by competent lawyers;*

- *Confirmation that quality of service should be a major element of the Law Society's interest in competence;*

- *The need for the Law Society to adopt a pro-active and wide-ranging approach to its competence mandate;*

- *Recognition that the clear articulation of competence standards or guidelines is essential to fulfilling the Law Society's competence mandate; and*

- *Emphasis on the importance of the definition of the "competent lawyer" as the underpinning to the development of standards or guidelines and competence-related activities.*

13. Thus, by 1999, the work of the Law Society in developing a preliminary approach to its competence mandate was well advanced.

b) Legislative Change

14. These historical developments coincided with significant statutory revisions to the *Law Society Act* (Ontario) (the "*Act*"), proclaimed in February 1999, which had the effect of confirming and expanding the Law Society's legislative authority to regulate competence. The relevant amendments to the *Act* address incompetent performance and identify those circumstances in which a member of the profession fails to meet standards of professional competence for the purposes of the *Act.* The statutory standard, defined by section 41 of the *Act*, stipulates that a member "*fails to meet standards of professional competence*" if,

> *(a) there are deficiencies in,*
> *(i) the member's knowledge, skill or judgment,*
> *(ii) the member's attention to the interests of clients,*
> *(iii) the records, systems or procedures of the member's practice, or*
> *(iv) other aspects of the member's practice and*
>
> *(b) the deficiencies give rise to a reasonable apprehension that the quality of service to clients may be adversely affected.* (emphasis added)

15. Under the statutory scheme established by the 1999 amendments to the *Act*, the Law Society is authorized to require a practice review where there are reasonable grounds for believing that a member may be failing or may have failed to meet the standards of professional competence defined under the *Act*. Moreover, for the first time, the *Act* authorizes the Law Society to conduct formal competence hearings to determine whether a member is failing or has failed to meet defined standards of competence.

16. As appears from section 41 of the *Act*, the standards of professional competence defined by the statute are "client-driven". That is, they focus in material part on the quality of legal services being provided to clients. Only if deficiencies in a member's skills set put the quality of service to clients at risk, can it be said that a lawyer is failing or has failed to meet the "standards of professional competence" envisaged by the *Act*.

17. In the result, the February 1999 amendments to the *Act* effected two important changes to the Law Society's jurisdiction to regulate competence. First, the amendments defined the constituent elements of "standards of professional competence" for lawyers. Secondly, the amendments introduced statutory mechanisms for the enforcement of competence in the form of mandatory practice reviews and competence hearings.

c) Task of the Professional Development and Competence Committee

18. Against this policy and legislative background, the Committee was charged in the summer of 1999 with responsibility to evaluate, and ultimately to report upon to Convocation for its consideration, various approaches by which the Law Society's competence mandate could be implemented in the future. This review by the Committee was to take into account the past work and recommendations of the various Law Society Task Forces on Competence, the ideas and materials generated at the Law Society's 1998 Bencher Symposium on Competence,[5] the Law Society's and other regulators' past experience with competence-related issues, and the impact of the legislative amendments to the *Act* introduced earlier that year.

(ii) The Challenge of a Province-Wide Approach

19. In accepting the task assigned to it, the Committee recognized the challenge of developing an approach that would take into account the diversity of the profession and work-setting realities within the province. The Committee was also aware that the need for various components of a competence model, and the practical ability to implement those components, might vary from region to region within the province.

20. As a result, the Committee has focused its efforts to date on developing broad recommendations concerning the province-wide components of a future competence model, while recognizing that any approach approved by Convocation would subsequently require detailed design work that takes into account legitimate regional and local variations in the practice circumstances of lawyers and the needs of their clients. Thus, the design phase of development of a future competence model will require the involvement and input of lawyers from various regions.

21. Within this context, however, the Committee strongly recommends that the aim of any future competence model should be to preserve and foster public and member confidence in the regulation of the legal profession. Without that confidence the legal profession and the Law Society will be unable to effectively fulfill their roles in contemporary society.

(iii) Consultation Process

22. The consultation process, undertaken to date by the Law Society in relation to its competence mandate, has been multi-faceted. The various elements of the consultation process were described in detail in the Committee's Information Report. Some of the elements of the process are highlighted below.

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[5]This two day symposium, entitled "Let's FACE the Competence Issue: Effective Strategies for Competence", was held in May 1998.

a) The Consultation Document

23. The March 2000 Consultation Document was a key component of the overall consultation process approved by Convocation and undertaken by the Law Society. It was distributed to the profession at large. Its stated purpose was to identify for the profession the competence-related issues and models under review by the Law Society, and to seek input from the profession into the process, at its earliest stage.

b) The Survey

24. A survey was included with the Consultation Document for completion, on a voluntary and anonymous basis, by members of the profession. Over 2,700 responses to the survey were received. In some cases, detailed responses and additional accompanying letters or briefs were received from individual lawyers. All responses received were analyzed by consultants and summarized for Convocation in a separate report provided to Convocation in January 2001.[6]

c) Regional Meetings

25. Regional consultation meetings were held in relation to the Consultation Document in each of 8 regions of the province. An additional session was held with a group of recently-called lawyers whose members meet regularly with the Treasurer of the Law Society. Members of the Committee attended each meeting and sought participants' views on the various issues raised in the Consultation Document. Approximately 180 members of the profession attended the regional consultation meetings and provided useful commentary, suggestions, and advice regarding the contents of the Consultation Document and issues relevant to the development of a competence model. A separate report analyzing the results of the regional meetings was provided to Convocation in January 2001.[7]

d) Focus Groups

26. Consultants were retained by the Law Society to recruit participants for focus groups and to conduct the meetings. The sessions took place in September and October 2000 in Toronto, Sudbury, and Kingston and involved members of the profession from a variety of work settings and firm sizes. Three of the focus groups involved lawyers from government, corporate in-house counsel, or those who worked in other non-private practice settings. The balance involved lawyers in private practice. A separate report analyzing the results of the focus groups was provided to Convocation in January 2001.[8]

e) Meetings with and Submissions from Legal Organizations

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[6]The Information Report, Tab 2, (Quantitative Findings Report).
[7]The Information Report, Tab 4, (Regional Meetings Report).
[8]The Information Report, Tab 5, (Focus Group Report).

27. In addition to the regional and focus group consultations, written submissions regarding the Consultation Document were invited from 28 legal organizations across the province. Various written comments were received by the Law Society and a number of bar organizations requested an opportunity to meet with Committee members to discuss issues relating to implementing the competence model. Various meetings were held in this regard with representatives of the Advocacy Resource Centre for the Handicapped, the Advocates' Society, the Canadian Corporate Counsel Association, the Equity Advisory Group to the Law Society, Rot io' ta'-kier, the Aboriginal Advisory Group to the Law Society, the Medico-Legal Society of Ontario, and the Ontario Trial Lawyers Association. The Law Society also received a resolution from the County and District Law Presidents Association concerning the competence models.[9]

28. The submissions received from these organizations focused primarily on the four models discussed in the Consultation Document as they relate to the mandate or terms of reference of individual organizations. This process resulted in further useful commentary and advice to the Committee and continuing liaison with these bar groups is planned as detailed design and implementation of the Law Society's competence model moves forward.

29. Members of the Committee also met with representatives of Legal Aid Ontario and with the Lawyer's Professional Indemnity Company to discuss quality assurance and quality improvement issues with them.

f) Other Consultative Initiatives

30. In addition to the foregoing efforts, members of the Committee have received unsolicited written submissions from various individual lawyers who wished to comment on the Consultation Document or on the issues raised in it.

31. The Committee also invited comments, if thought advisable or appropriate, on the Consultation Document from the Chief Justices and Associate Chief Justices of the various courts in Ontario.

32. Several other consultation strategies were undertaken in an effort to obtain comprehensive information on competence-related initiatives in other jurisdictions and by other Ontario organizations and to receive advice on possible competence models suitable for the legal profession in Ontario. These efforts included the following:

a. The conduct of a roundtable discussion concerning competence measures with representatives of other professional regulators in Ontario. This roundtable followed on extensive research concerning quality assurance and quality improvement measures employed by other self-regulating professions in Ontario and legal professions in other provinces and countries;

b. Inquiries and meetings with Ontario lawyers having direct experience with the ISO-9000 Series Quality Assurance System; and

c. Consultations on competence-related issues with lawyers in private practice who conduct practice reviews on behalf of the Law Society.

g) Other Research Activities

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[9]The Information Report, Tab 6, (Written Submissions Report).

33. As noted above, the Committee undertook extensive research on quality assurance and quality improvement measures employed in other professions and in the legal profession in other jurisdictions. Summaries of much of this research were included in the Book of Appendices that accompanied the Consultation Document. In addition, the Committee reviewed the Law Society's own complaints and discipline statistics, as one indicator of the volume and suggested nature of competence-related issues within the legal profession in Ontario. The Committee also compiled and had regard to the existing literature in the private and public sectors concerning quality assurance and quality improvement measures and models.

III. POSSIBLE COMPETENCE MODELS

34. The Consultation Document described four possible models for implementing the Law Society's competence mandate. For ease of discussion they were identified in the Consultation Document as,

a. a continuum of professional development;
b. random and focused practice review;
c. limited licensing; and
d. broadly-based specialist certification.

35. The models described in the Consultation Document are now in use, in whole or in part, by various self-regulating professions in Canada and elsewhere. Thus, the identified models were based on existing precedent and the evolving literature relating to quality assurance and quality improvement measures.

36. The models outlined in the Consultation Document are not mutually exclusive. In the course of the Law Society's consultation process, the Committee and participating lawyers and organizations considered ways in which components of the various models might be combined to devise an integrated overall model particularly suitable to the legal profession. The wisdom of such a blended approach was reinforced during the consultation process when the Committee was told by many lawyers that the competence model ultimately approved by Convocation and implemented by the Law Society should afford an array of choices and considerable flexibility to practitioners if it was to be of practical use and capable of province-wide implementation.

37. A summary description of each of the models identified in the Consultation Document is set out in Appendix 3 to this Report.

IV. OPERATING PRINCIPLES AND CONSIDERATIONS

(i) Operating Principles

38. In the introductory section to the Consultation Document, the inter-relationship between the individual lawyer's commitment to, and responsibility for, competence and the Law Society's obligation to regulate competence in the public interest is articulated as follows:

> *The Law Society must now implement its expanded competence mandate. This mandate complements, but does not replace, the primary responsibility of lawyers to maintain and enhance their own competence throughout their careers. That responsibility has always been, and continues to be, one of the hallmarks of a self-regulating profession. Legal education in substantive and procedural law, skills, values, and judgment, and in professional responsibility and ethics is intended to provide members of the profession with the necessary foundation for career-long learning and experiential growth.* [10] (emphasis added.)

39. Committee members and participants in the consultation process discussed this inter-relationship between the responsibility of individual lawyers to maintain and enhance competence throughout their entire careers and the regulatory obligations of the Law Society. In its January 2001 Information Report, the Committee stated,

> *The critical importance of professionals being committed to career-long professional development and competence was not in dispute anywhere in the consultation process. The debate focused, however, on whether such commitment should be left entirely to individual lawyers to pursue, at least until they demonstrate they cannot or will not do so, or whether there should be some systemic component that is designed, mandated, and monitored by the Law Society to complement members' voluntarily chosen approaches.*[11]

40. The Committee strongly affirms, and urges Convocation to affirm, the importance of lawyers being committed, as individuals, to career-long professional development and learning. At the same time, however, it is important to recognize that the Law Society's statutory mandate to regulate the legal profession in the public interest carries with it expectations and, in some instances, requirements that monitoring mechanisms be in place in connection with various aspects of the profession's self-regulation. The *Act*, for example, specifically provides for monitoring in a number of instances including, most recently, in connection with the regulation of competence.[12]

41. The Committee is of the view that one of the ways in which monitoring mechanisms can be effectively integrated with the individual commitment to competence is through the development of tools that not only monitor adherence to acceptable standards, but support members in their efforts to maintain competence in the face of a rapidly changing legal environment. Participants in the consultation process confirmed this view in their support of adoption by the Law Society of a combined quality assurance and quality improvement approach to implementing the Law Society's competence mandate.

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[10]Consultation Document, p.6.

[11]The Information Report, p.17.

[12]The provisions of the *Act* authorizing mandatory practice reviews in specified circumstances, and the conduct of competence hearings, are examples of monitoring mechanisms embodied in the statute.

42. During the consultation process, some participants urged the Law Society to respect members' personal commitment to competence and to refrain from engaging, in the face of that commitment, in what some members termed "over-regulation". As articulated to the Committee, the elements of professional judgment, creativity, strategy, and capacity for adaptive reasoning all militate against a rigid "cookbook" approach to competence regulation. Participants also pointed out the importance of avoiding a "one size fits all" model that assumes that there is only one way to implement the competence mandate. The point was made throughout the meetings that the model chosen should reflect the diverse needs and realities of the profession to which it will apply. The Committee agrees with these comments, which it considers to be not only compatible with, but an essential component of, a competence model that will serve the public and the profession well.

43. In developing a competence model for the future, therefore, it is necessary to recognize both perspectives, that is, elements of individual responsibility and professionalism and the regulator's responsibilities both to monitor adherence to standards and facilitate maintenance of competence. In its work the Committee developed operating principles to shape its assessment of various competence models and its recommendations to Convocation. These are detailed in Table 1 below and are discussed initially under the following headings:

a. The Need for Quality Assurance *and* Quality Improvement Measures
b. The Need for Flexibility, Accessibility, and Relevance
c. The Need for Expanded Use of Technological Tools

TABLE 1:	OPERATING PRINCIPLES AND CONSIDERATIONS TO GUIDE SELECTION AND DESIGN OF A FUTURE COMPETENCE MODEL
As described in Part IV of this Report, the future competence model adopted by Convocation should,	
a)	address the Law Society's statutory mandate;
b)	contain both quality assurance (QA) and quality improvement (QI) components;
c)	address a range of professional needs and responsibilities with respect to competence;
d)	support members' obligations and efforts to maintain their own competence;
e)	be adaptable to the ever-evolving nature of the legal profession in Ontario and to rapidly changing laws and requirements;
f)	maintain flexibility of choice for individual lawyers in the selection of competence-enhancing techniques;
g)	address issues of accessibility and relevance;
h)	be responsive to the evolving needs of the public for competent and accessible legal services;
i)	recognize and support the use of technology;
j)	reflect a long-term commitment to, and view of, competence;
k)	reflect realistic resource and cost factors;
l)	be developed and implemented in appropriate stages; and
m)	be evaluated periodically for effectiveness and improvement.

a) The Need for Quality Assurance *and* Quality Improvement Measures

44. Competence regulation in other professions, both in Canada and elsewhere, usually includes both quality assurance ("QA") and quality improvement ("QI") measures. As set out in the Consultation Document, many professions follow a combination of approaches. QA measures focus on ensuring compliance with established standards. QI measures address both compliance with established standards and, additionally, development of tools designed to facilitate improved practices.[13] Through QI a directed effort is made to provide the tools that assist competent lawyers to keep abreast of changes in an increasingly complex professional environment. A combined QA and QI approach integrates standards of acceptable performance and best practices.

45. Practice review programs and limited licensing measures, for example, are primarily quality assurance tools. The establishment of standards or guidelines for practice, in contrast, serve as a quality improvement measure when directed at voluntary best practices. If the focus of the standards or guidelines is acceptable performance and service expectations, the standards or guidelines are primarily quality assurance measures with a quality improvement component.

46. Attached as Appendix 4 to this Report is an extract from the Consultation Document which provides a glossary describing various QA and QI measures. Also set out at Appendix4 are Charts 1 and 2 from the Consultation Document that indicate the competence regulation approaches used by a number of other professions and legal jurisdictions.

47. Based on its review of the issues, the relevant literature, and the regulatory approaches of other professions, the Committee has concluded that a meaningful contemporary approach to competence regulation for the legal profession should include both QA and QI components. In many ways, the Law Society currently utilizes such an approach. Its focused practice review program, for example, is primarily a quality assurance measure because it is directed towards the professional practices of those members whose conduct or complaints history have identified multiple deficiencies in the provision of client legal services. The Law Society's specialist certification program, on the other hand, is primarily a quality improvement measure in which lawyers voluntarily seek accreditation as specialists in accordance with established standards of practice and expertise.

48. As stated above, respondents to the consultation survey supported adoption by the Law Society of a combined QA and QI approach to implementing the competence mandate. Almost three-quarters (74.1%) of respondents supported a combined approach.[14] This view was supported at the regional consultation meetings.

49. An ideal, fully designed competence model comprised of both QA and QI measures will promote,

a. the identification of members who are incompetent, or whose skills are deficient in accordance with the statutory definition set out in section 41 of the *Act*;

b. the improvement of such members' skills through remedial activities and assistance;

c. the maintenance of all members' competence over time; and

d. the continuing enhancement of the skills and competence of all members.

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[13] Consultation Document, p.12.

[14] The Information Report, Tab 2, p.5.

50. The competence model selected by the Law Society and designed for future use should also,

a. clearly facilitate the discharge by the Law Society of its obligations under the *Act* to regulate competence;

b. provide guidance to members to assist them in complying with statutory and regulatory standards of professional competence; and

c. support members in their personal commitment to maintain and enhance competence.

b) The Need for Flexibility, Accessibility, and Relevance

51. Competence is not a static status. A member's competence upon call to the bar is fundamentally different in character and depth from what it will be following years of practical experience. Thus, competence must be seen as an evolving status that grows and changes with the development of expertise.

52. Without constant nurturing and attention competence can easily be eroded. This erosion may occur both because of the unwillingness or inability of an individual to take the necessary steps to maintain it or because the tools once appropriate for maintaining competence have become less effective as the complexity of the law increases and changes to it occur at a rapid pace. Competence loss may also occur as a result of prolonged absence from the active use of professional and legal skills.

53. For these reasons, the Committee has concluded that the competence model to be adopted by the Law Society should recognize the fluidity of competence and the need to provide monitoring and supportive mechanisms to members to address the changing needs and requirements of lawyers throughout various stages of their careers.

54. The Committee further recognizes, and many lawyers who participated in the consultation process emphasized, that the landscape of legal services in Ontario is a dynamic environment which is constantly changing. This process of change creates the need for a flexible competence model that provides options for professionals at the individual practice and work level. In essence, this concept underscores the need to avoid a formulaic approach to the determination and promotion of competence. It follows that there is a need to avoid inflexible application of the competence model across the province, while at the same time ensuring access to and delivery of competent legal services. In other words, while the model must apply to all lawyers, the details of application may vary from region to region.

55. The Competence model chosen and designed by the Law Society must be sufficiently flexible to permit the exercise of professional judgment by lawyers and their use of accumulated professional experience, the weighing of diverse practice conditions and circumstances and client needs, and the making of informed, appropriate and effective professional decisions. It is of fundamental importance to recognize, in the design of any province-wide competence model, that the practice of law requires the exercise of professional judgment and the application of experience. The model must therefore respond to variations in practice and work settings and client circumstances throughout Ontario. [15]

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[15] Of all the common themes that ran through the consultation process, the issue of differing needs and realities within the profession and among the clients served by the profession was among the most pronounced. See the Information Report, p.20.

56. It is important also to recognize not only that the role and responsibilities of lawyers are in many respects unique in our society but, as well, that they evolve constantly according to the dynamics and needs of society. In response to increasing complexity in the law and in our social and economic relationships, lawyers play a significant public and private role in providing legal services to the public. The practice of law has become more competitive. As well, the characteristics and the make-up of the profession itself have changed and continue to shift.

57. The goal of the competence model is that the public be served by competent lawyers throughout the province. At the same time, however, the model must also be relevant to the needs of the province's lawyers. This means that its features must be meaningful to lawyers in private practice as well as corporate in-house lawyers and government lawyers, lawyers in sole practice settings, wherever located, as well as those in large firms, and lawyers with diverse backgrounds and circumstances.

58. Moreover, the components of the model must be accessible by all lawyers who are subject to it. This is particularly critical because of the province's size and in recognition of the fact that some lawyers practise in geographically isolated areas, while others practise in a variety of urban settings.

59. In the Committee's view, for all the reasons set out above, attention during the selection and design of the Law Society's competence model to the need for flexibility, and to the importance of accessibility and relevance, will allow the competence model to be integrated more effectively into the framework of professional life.

c) The Need for Expanded Use of Technological Tools

60. The Committee has been particularly alert to the significance of advancing technology in the development of the competence model. The Committee is of the view that design and implementation of the competence model must recognize and support the potential of technology as a delivery tool and, more generally, as a mechanism to address issues of flexibility, diversity, accessibility, and relevance, discussed above.

61. In light of these principles, the Committee recommends that the competence model should seek to,

a. address the Law Society's statutory mandate;

b. contain both quality assurance (QA) and quality improvement (QI) components;

c. address a range of professional needs and responsibilities with respect to competence;

d. support members' obligations and efforts to maintain their own competence;

e. be adaptable to the ever-evolving nature of the legal profession in Ontario and to rapidly changing laws and requirements;

f. maintain flexibility of choice for individual lawyers in the selection of competence-enhancing techniques;

g. address issues of accessibility and relevance;

h. be responsive to the evolving needs of the public for competent and accessible legal services;

i. recognize and support the use of technology; and

j. reflect a long-term commitment to, and view of, competence.

(ii) Additional Considerations

62. Certain other significant considerations were also take into account by the Committee in developing a proposed approach to implementing the competence mandate. These are discussed under the following headings:
a. resource and other economic considerations;
b. the need for staged implementation; and
c. continuing evaluation of the model.

a) Resource and Other Economic Considerations

63. The profession must be able to integrate a future competence model into the practice of law in a reasonable and cost-effective manner. This does not mean that implementation of the model will require no effort on the part of individual lawyers. Rather, there must be an objective assessment of economic and timing factors necessarily involved in implementation of the model and of their impact on diverse groups within the profession, including potential impact on members' ability to meet the costs of the model.

64. The requirements of the selected competence model must also be administratively manageable by the Law Society having regard to staff and economic resource limitations. In the view of the Committee, for example, it is unrealistic to propose the development of a competence model that entails greater financial and staff resources than is prudent or practical, or an implementation schedule that is unrealistic, given current or reasonably foreseeable resources.

65. Finally, the Committee considered at length the desirability of recommending partnering or joint venture arrangements with third parties, such as law schools, other legal organizations or government,[16] at the early stages of implementation of the competence model approved by Convocation. The proposed approach detailed in this Report, while not requiring such arrangements at the outset, could contain features that will foster the co-operation and assistance of many existing and future legal organizations to support members of the profession and promote the delivery of quality service to the public.

66. Throughout the consultation process participants raised concerns that the Law Society might design a competence model unilaterally, or impose a model without appreciation for varying practice realities. The Committee is of the view that these concerns can be addressed, in significant part, by inviting the involvement of the profession, through various representative legal organizations, in the design and implementation phases of introduction of the model. Engaging the profession on such issues is both necessary to the design of a practical and effective model and to acceptance of the model by the profession.

67. The Committee is also of the view that co-operation with the profession and consideration of partnering with third parties, should be pursued with respect to professional development tools, such as practice guidelines.

b) The Need for Staged Implementation

[16]For example, although the Law Society would maintain overall responsibility and accountability for implementation of its competence model in the future, some components of the model, or parts thereof, could be delivered by other organizations subject to oversight by and approval of the Law Society.

68. The approach recommended by the Committee anticipates early design of the model with staged implementation. This will allow the Law Society to communicate effectively with the profession concerning the purpose, goals and content of the competence model and, further, to implement the model incrementally, allowing for evaluation of effectiveness over time. Finally, it will encourage integration of the model by members of the profession into their respective professional lives.

c) Continuing Evaluation of the Model

69. Any competence model adopted by the Law Society must involve an evaluation component to assess its effectiveness and monitor implementation issues. Without such an evaluation component, future informed refinement of the model would be precluded. At the design stage, therefore, evaluation tools must also be developed.

70. In light of these considerations the Committee recommends that the competence model should,

a. reflect realistic resource and cost factors;
b. be developed and implemented in appropriate stages; and
c. be evaluated periodically for effectiveness and improvement.

V. PROPOSED APPROACH

71. The Committee proposes the adoption of a Professional Development Model as the future competence model of the Law Society. The recommended Professional Development Model has five components, summarized in Table 2. Each of these components is essential to the model's overall effectiveness. The components are inter-related and inter-dependent. In isolation they cannot be viewed as a fully effective competence model. The five components are:

(a) Practice Guidelines

(b) Remedial Components Mandated by Statute:
  (i) Focused Practice Review
  (ii) Competence Hearings

(c) Practice Enhancement:
  (i) Voluntary Self-Assessment
  (ii) Voluntary Peer Assessment Pilot Project

(d) Continuing Legal Education:
  (i) Post-Call Education
  (ii) Requalification

(e) Reformulated Specialist Designation

TABLE 2: CONTINUUM OF PROFESSIONAL DEVELOPMENT: ESSENTIAL BUILDING BLOCKS

PRACTICE GUIDELINES
specific in nature, flexible in application from "acceptable performance" to "best practices" initial focus on practice management, technology, and client service issues; subsequently on substantive law broad consultation in developing widely published continuously reviewed and updated

PRACTICE ENHANCEMENT
Voluntary Self-Assessment Program self-evaluation guide to practice management approaches, including use of technology and client service issues voluntary utilizes existing tools available electronically and on paper links to assistance where sought Voluntary Peer Assessment Pilot Project voluntary minimum two year term development of a voluntary office visit system to foster quality practice

CONTINUING LEGAL EDUCATION
Post-Call Minimum Educational Expectations articulation of what amount of CLE lawyers are expected to undertake annually reporting of annual CLE on MAR accreditation of CLE programs Requirements for Requalification enhanced program required number of mandatory CLE credits as constituent element of program

SPECIALIST DESIGNATION
combined developmental and experience recognition program expanded areas of specialization including possible "generalist" designation staged levels of specialization mandatory educational component, with enhanced province-wide accessibility

REMEDIAL COMPONENTS
Mandated by Statute (i) Focused Practice Review (ii) Competence Hearings

72. Recognizing that the commitment to competence is a long-term one, both for individual lawyers and for the regulator of the legal profession of Ontario, the approach proposed above represents a framework for development and detailed design work. It balances QA and QI components and spans a continuum of needs and requirements for competence. It also entails a process of staged development, phased-in implementation, on-going assessment of effectiveness and, where warranted, adjustments over time to meet changing needs and priorities of lawyers and clients alike.

73. The proposed approach outlined above incorporates components from three of the models discussed in the Consultation Document, namely, the continuum of professional development model, the random/focused practice review model, and the broadly-based specialist certification model.[17] This blended approach allows for the development of a flexible model that recognizes a variety of ways in which to appropriately address the competence mandate. It is an integrated approach that views competence as part of a continuum of professional development.

74. If Convocation approves the Committee's proposed approach described more fully below, the Committee will engage in detailed design work for each component of the proposed model, including seeking input from the profession, and will return to Convocation in the coming months for further discussion and assessment of the model, including the proposed timing for its staged implementation.

VI. PRACTICE GUIDELINES

75. The Report of the Second Competence Task Force, approved by Convocation in 1999, emphasized that the clear articulation of competence standards or guidelines is essential to fulfilling the Law Society's competence mandate. As noted above, the Report also emphasized the importance of the definition of the "competent lawyer" as the underpinning to the development of such standards or guidelines and, additionally, to competence-related activities. Since consideration of that Report, the definition of the "competent lawyer" has been incorporated into the Rules of Professional Conduct. Individual lawyers' practice skills and delivery of legal services may now be assessed against that definition.

76. The Consultation Document, approved by Convocation in March 2000, stated that whatever approach to competence is adopted it would include the development of practice guidelines. As outlined in the Consultation Document, the general goal of practice guidelines is to,

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[17]The Committee considered the advantages and disadvantages of a limited licensing model having regard particularly, but not exclusively, to the precedent available in the medical profession for streamed accreditation and entry level limited licensing. For numerous reasons, the Committee regards implementation of such a model for the legal profession in Ontario as unrealistic and undesirable at the present time. Attached as Appendix 5 to this Report is a summary of many of the issues engaged in consideration of a limited licensing competence model. While the Committee does not recommend inclusion in the Law Society's future competence model of limited licensing components, it does point out in Appendix 5 some actions that merit further consideration to address the importance of ensuring that lawyers are capable and competent to provide legal services in the practice areas in which they elect to work.

The Committee does have some concern that under the present licensing system for lawyers in Ontario, all lawyers are entitled, following their call to the bar and for the entirety of their careers, to change practice areas without oversight by or approval from the Law Society unless deficiencies in practice skills and services emerge. Unless the future competence model adopted by the Law Society is vigorously communicated and monitored, and adhered to by lawyers on an ongoing basis in their practices, the Law Society may be required to re-examine existing absolute self-election rights for lawyers with respect to practice areas.

a. articulate "acceptable performance" in identified practice areas;

b. articulate "best practices" or recommended performance with a view to enhancing overall levels of performance across the profession including for lawyers who function regularly on a competent basis; or

c. address both "acceptable performance" and "best practices" or recommended performance.

77. By its approval of the Report of the Second Competence Task Force in April 1999 and the Consultation Document in March 2000, Convocation has approved the development of practice guidelines.[18] The provisions of the *Act* provide clear jurisdiction to the Law Society to formulate practice guidelines.

78. This policy direction by Convocation found support during the consultation process. During that process many participants confirmed to the Committee the need for, and benefit of, guideline development, both as a monitoring mechanism and to provide members with guidance as to the validity and reliability of their own approaches to competent performance.[19] Many participants felt that, in view of the existence of section 41 of the *Act* regarding standards of competence, the development of practice guidelines in specified areas would be important to inform members of expectations regarding competent performance.

79. The research conducted by the Committee has revealed that the formulation of practice guidelines is a common competence-enhancing technique employed by many other professions in Ontario. As appears from Appendix 4 to this Report, practice guidelines are utilized by a number of health professions (including the College of Physicians and Surgeons of Ontario, the Royal College of Dental Surgeons of Ontario, and the College of Nurses of Ontario) as well as the Institute of Chartered Accountants of Ontario, the Certified General Accountants of Ontario, the Canadian Institute of Actuaries, the Ontario Association of Architects and the Professional Engineers of Ontario. The use of such guidelines, therefore, must be viewed as a common technique.

80. For all of the foregoing reasons, guidelines development is one of the central features of the Committee's proposed approach to competence. The Committee considers that such guidelines should be regarded as an ongoing and long-term component of the Law Society's and the profession's commitment to achieving and maintaining competence. It is essential to develop, through consultation with the profession, a shared understanding of the knowledge and skills lawyers require in various practice fields.

81. The Committee proposes that,

a. the practice guidelines developed as part of the competence model should be specific in nature and flexible in application;

b. the initial emphasis of guidelines development should be on "acceptable performance" and should work towards the identification of "best practices";

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[18]Competence Task Force: Final Report (April, 1999) In approving the development of guidelines, Convocation approved the following recommendation: *A variety of resources should be used in developing competence guidelines, including consultation with the profession and drawing on what is learned and observed through practice reviews, competence hearings, the complaints and discipline process, and the LPIC experience.*

[19]In the consultation survey, 73.5% of respondents supported the development of best practices guidelines. See *Information Report*, p. 22 and Tab 2, p.6. Acceptable performance guidelines were also supported if they were to be developed in consultation with those to be affected by them.

c. initially, guidelines should be directed at practice management, including technology and client service issues. More particularly, the first guidelines should focus on what is meant by *"the member's attention to the interests of clients"*, *"the records, systems, or procedures of the member's practice"* and *"other aspects of the member's practice"*, as set out in section 41 of the *Act*;

d. guidelines should be developed to provide guidance to lawyers on what they should know and apply in specific areas of substantive law;

e. the guidelines development process should be undertaken as a consultative process with the profession and draw on what is learned and observed through practice reviews, competence hearings, the complaints and conduct processes, and the experience of LPIC;

f. guidelines should be widely published in order that, by reference to them, members are able to monitor their own skills, enhancing them where necessary; and

g. guidelines should be reviewed and updated on an ongoing basis to ensure that they continue to be relevant and appropriate.

82. The design process in connection with practice guidelines would include consideration of, among other issues,

a. the appropriate approach to guidelines content having regard for the need to take into account different practice approaches and client needs in recognition of the individuality of some aspects of practice;

b. the precise nature of the collaborative approach to designing guidelines;

c. the direction to be given to those designing guidelines so that guidelines follow a consistent approach;

d. the applicability and usefulness of guidelines to those members not in private practice;

e. the cost of developing guidelines and the proposed prioritization of resources; and

f. the system for measuring the appropriateness of the guidelines and their effectiveness, and for updating them on a regular basis.

VII. REMEDIAL COMPONENTS MANDATED BY STATUTE: FOCUSED PRACTICE REVIEW AND COMPETENCE HEARINGS

83. As noted in this Report, the February 1999 amendments to the *Act* expressly authorized focused practice reviews, on a mandatory basis, in certain circumstances, as well as formal competence hearings. The Law Society's Rules of Practice and Procedure make provision for procedures relevant to competence hearings.

84. Focused practice reviews, as currently structured, apply only to those members of the profession whose conduct or complaints history has identified competence-related deficiencies. Thus, only a small percentage of the membership has been or is likely in the future to be subject to focused practice review. It is anticipated that an even smaller percentage will be the subject of competence hearings. The experience of those members of the Committee who serve or have served on the Proceedings Authorization Committee, however, suggests that there continue to be cases where competence hearings may be more appropriate and responsive to the needs of some practitioners than formal discipline proceedings.

85. The statutory requirement for the existing focused practice review program is already in place, as is the program itself. Convocation, accordingly, is not required to approve this aspect of the proposed competence model.

86. The statutory authority for competence hearings already exists, as do the facilitating Rules of Practice and Procedure. Convocation, accordingly, is not required to approve this aspect of the proposed competence model.

87. During the design phase of the development of the competence model, however, various issues will arise with respect to the focused practice review program. These include, among other matters,

a. issues related to future resource allocation for the focused practice review program;

b. on a prospective basis, the process for selection of practice reviewers, taking into consideration experience, geographic location, and the diversity of the roster of reviewers having regard to the profession at large;

c. evaluation of training programs for reviewers;

d. evaluation of current review procedures;

e. appropriate time-lines for entry into and completion of a practice review; and

f. measurement and feedback tools.

88. Many, although not all, of the same design issues will arise with respect to competence hearings. Some of the formal "design" issues have already been addressed in the Rules of Practice and Procedure relating to competence hearings. However, in the months to come during the design of the competence model, consideration should be given to,

a. future resource allocation to competence hearings;

b. provision of appropriate training for lawyers who are to conduct competence, as opposed to conduct, hearings; and

c. post-hearing assessment of issues particular to the conduct of competence hearings.

VIII. PRACTICE ENHANCEMENT

89. As discussed above, competence is not a static status. It must be nurtured and maintained throughout a lawyer's career in order that the lawyer continues to be competent to provide quality service and meet professional obligations, in the public interest. Programs such as focused practice review, for example, are designed to assist those who have fallen below acceptable competence to improve. But such programs are limited in scope and effect because they are directed at a small minority of the profession. The Committee, therefore, spent considerable time considering what components of the competence model should be directed at facilitating the enhancement of the practices of those competent lawyers who make up the vast majority of the profession. In the course of this analysis it also considered the extent to which monitoring of practice and work settings on a random basis should form part of the competence mandate.

90. Protection of the public is the fundamental goal of any monitoring system introduced by the Law Society, as well as systems in place to financially protect the public. The public in Ontario is financially protected by the fact that lawyers must be insured to practise law. A further measure of financial protection is afforded to the public through the Client Fund for Compensation, which is funded by the legal profession itself. In addition, the Law Society operates a random spot audit program directed at the examination of members' books and records, including client trust funds. The existence of such a program promotes general adherence to standards. It also assists audited lawyers to rectify problems and, as well, informs the profession at large of identified areas for improvement. In this sense, the concept of random review is not foreign to Ontario lawyers.

91. Many professions in Ontario and elsewhere have adopted random practice review as part of, or the central element of, their quality assurance programs.[20] The College of Physicians and Surgeons of Ontario, for example, has a long-standing peer assessment program that was recently expanded to substantially increase the number of practices assessed each year. The Royal College of Dental Surgeons of Ontario will shortly have in place a statutory regulation authorizing the conduct of random peer assessments. The Institute of Charted Accountants, on an annual basis, conducts random practice inspection of one-quarter of accountants in public practice. The Barreau of Quebec has a long-standing random practice inspection program.

92. In the case of all these professions and regulators, random reviews were not instituted because of evidence of significant incompetence within the profession but, rather, as part of an overall quality assurance approach to competence that includes preventive as well as remedial components. The decision to institute such a program, therefore, should not be seen as a response to wide-scale competence deficiencies but, rather, as a tool to enhance competence and monitor it in the public interest. There is a case to be made that if designed so as to be flexible, cognizant of the diversity of the profession, and reasonable in scope, random practice reviews could play a significant role in enhancing the competence of lawyers in Ontario.

93. After careful discussion of the random practice review approach and having regard to,

a. the financial provisions already in place to monitor and insure lawyers;
b. the existence of a spot audit program with respect to lawyers' books and records; and
c. the wide range of competence components being proposed by the Committee in this Report;

the Committee is recommending that, at this time, the practice enhancement component of the proposed approach consist of a voluntary self-assessment program and a voluntary peer assessment project.

94. In the future, the effectiveness of the proposed practice enhancement component of the model, and the model overall, will need to be regularly evaluated to assess whether a random practice review program is necessary or desirable to complement and augment the provisions already in place to protect the public.

(i) Voluntary Self-Assessment Program

95. Many participants in the consultation process noted the importance of improving and expanding the tools available to allow members, on a voluntary basis, to assess their own competence and improve their individual approaches to professional development. It is self- evident that lawyers in Ontario will benefit if the professional development tools that modern, up-to-date research and practice experience afford can be made available to them.

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[20]The medical profession refers to such programs as "peer assessment", while the accountants refer to them as "practice inspection".

96. During the consultation process including, in particular, during the regional and bar organization consultation meetings, members of the Committee sought to obtain specific examples of the ways in which individual practitioners maintain their own competence on an on-going basis. Many diverse methods of self-learning were identified by lawyers across the province. Some of these involved the usual techniques of attending organized continuing legal education programs. Others concentrated on electronically available programming material and information through new and emerging technologies.

97. The Committee is of the view that self-assessment and continual self-learning are important professional endeavors which should both be encouraged and promoted by any future competence model. The Committee reviewed with interest the self-reflective learning programs introduced by various other regulators as part of their quality assurance programs (as, for example, the self-reflective learning components of the quality assurance program of the College of Nurses of Ontario).

98. The Committee proposes the development of self-evaluation guides, as part of the practice enhancement component of the Law Society's future competence model, that would,

a. to the extent possible, be made available across the province in electronic and paper format for members to assess their practice management approaches, including use of technology and client service issues, and other practice or work-related systems;

b. where applicable, utilize existing guides, at least in the preliminary stages of implementation. For example, the existing guides used by practice reviewers may be capable of adaptation and refinement to address a wide range of issues. These types of guides, once revised, could then be made available directly to practitioners to assist them in self-evaluating their own compliance with the guides. The development of formal practice guidelines, urged as another component of the competence model, would also complement this approach; and

c. be voluntary. The self-evaluation guides could be designed to have "links" that would enable an individual member who is dissatisfied with the results of the self-assessment to access guidance on suggestions for improvement. Such "links" might be introduced, subject to design considerations, through electronic links to other information bases, through contact with the Practice Advisory Service of the Law Society, or through contact with a service-provider independent of, but accredited by, the Law Society.

99. The design process in connection with the proposed voluntary self-assessment program would include consideration of, among other issues,

a. the scope and detail of the self-evaluation tools including, in particular, whether they should be limited to practice management issues or include substantive law;

b. the type of work and practice settings to which the self-evaluation tools could be directed;

c. the potential use of incentives to promote the use of the self-evaluation tools; and

d. the estimated cost of developing the tools and providing them on an on-going basis to members.

(ii) Voluntary Peer Assessment Pilot Project

100. The Committee considered in detail the current peer assessment programs available to members of other professions in Ontario. Regard was had, in particular, to the peer assessment programs offered by the College of Physicians and Surgeons of Ontario both to family practitioners and specialist physicians. In some instances, peer assessment is undertaken on a voluntary basis in the medical profession. In other instances, mandatory forms of peer assessment are required pursuant to the College's quality assurance program or discipline processes. These peer assessment programs address both practice management and substantive medical issues.

101. The regulators of some professions in Ontario have required, in one form or another, peer assessment for many years. In some instances, the peer assessment programs offered by other professions are sophisticated and mature. Under some of these programs the participating practitioner bears the cost of participation. This "user-pay" approach is utilized by some regulators even where participation is mandatory as a result of compulsory quality assurance requirements or directions of discipline committee panels.

102. The Committee is of the view that, in addition to the self-evaluation component urged as part of a future competence model, a program designed to afford lawyers the opportunity to have a qualified peer conduct an assessment of their work or practice setting, should be seriously investigated. This approach has been adopted on a voluntary basis by the College of Nurses of Ontario as part of its "Practice Setting Consultation Program". The information available to the Committee suggests that the "take-up" rate to date experienced by that College is encouraging. Similarly, the ISO-9000 Quality Assurance Registration System entails assessment of office practices and procedures.

103. There is little doubt that a quality work setting contributes to the quality of service provided. There are key attributes that contribute to the creation and maintenance of such a setting. The Law Society's complaints statistics and LPIC's data both confirm that most of the major causes of complaints and claims against lawyers are related not to errors in knowledge, skill or application of substantive law but, rather, to practice management issues and client service inadequacies.

104. As earlier noted, the focused practice review program of the Law Society, as currently structured, is directed at those members who have already demonstrated competence-related deficiencies. This program is to be distinguished from the voluntary peer assessment pilot project recommended as part of a future competence model. The latter project would be designed to provide, on a voluntary basis, peer assessment as a mechanism through which competent lawyers, without demonstrated competence-related deficiencies, can seek to validate the standards of their practice and benefit from suggestions for improvement.

105. The Committee proposes that,

a. a voluntary peer assessment pilot project be developed;

b. if cost effective, the content of assessments should include both practice management, including technology and client service issues, and substantive law "best practices" issues;

c. the term of the pilot project be at least two years to allow for proper design, implementation, and evaluation;

d. volunteers be sought from among members of the profession in different geographic locations, work and practice settings, and circumstances to form part of a roster of lawyers prepared to conduct, on a *pro-bono* basis, confidential peer assessments and prepared to have their practices or work settings assessed; and

e. during the term of the pilot project there be no cost to the participants. Following the completion of the pilot project, and evaluation of its effectiveness and "take-up" by members of the profession, continuation of the program would be contingent on some degree of cost recovery, to be established at the time of approval for continuation.

106. The design process in connection with the proposed voluntary peer assessment pilot project would include consideration of, among other issues,

a. the attributes that define a quality work setting for lawyers, recognizing the legitimate variations that occur in settings across the province;

b. development of appropriate content for peer assessment;

c. the potential use of incentives to promote the program and its use by lawyers; and

d. the projected costs of the program, including potential cost recovery strategies.

IX. CONTINUING LEGAL EDUCATION

(i) Post-Call Education

107. Professional development is multi-layered and involves self-study, learning through experience, discussion with colleagues, research undertaken on a case-by-case basis, attendance at continuing legal education programs, use of audio, print and electronic materials that accompany or constitute continuing legal education programs, teaching, and a variety of other methodologies. Both the individual lawyer and the profession as a whole have an interest in members of the legal profession keeping current and abreast of new issues and emerging legal requirements, as well as client-servicing techniques.

108. It is noteworthy that in considering the models discussed in the Consultation Document, many lawyers across the province appeared to support one or more forms of mandatory continuing post-call education as part of the continuum of professional development model. While some lawyers in the province supported such a mandatory approach when it was last considered by Convocation, the results of the consultation process suggest growing support for one or more elements of mandatory continuing post-call education.[21]

109. There was little dispute during the consultation process, or indeed in any discussions on the subject, that continuing legal education is a foundational aspect of continuing competence in the legal profession. This statement of principle was recognized by Convocation during its consideration of the 1997 Report of the MCLE Sub-committee, entitled "*Post-Call Learning for Lawyers*" and by Convocation's approval of the Statement of General Principles and Minimum Expectations for Post-Call Education, which formed part of that Report. A copy of that Statement is attached as Appendix 6.

110. As appears from the Statement of General Principles and Minimum Expectations for Post-Call Education, the Law Society has recognized an obligation "*to encourage and monitor professional development and education, and to foster the creation and development of learning supports both in the public and the profession's interest*". In addition, the General Principles accepted by Convocation emphasized that the professional development and education undertaken by members of the profession "*should include both informal education through self-study, reading and research, and more formal education through participation in continuing education programs*".[22]

111. The Committee is not recommending that Convocation re-visit at this time the issue of whether continuing legal education should be mandatory. It is strongly of the view, however, that there should be a minimum expectation of continuing legal education for all lawyers in Ontario beyond case preparation and the reading of law reports.[23]

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[21]In the survey that accompanied the Consultation Document, in response to a question about whether there should be some mandatory requirements related to professional development, a narrow majority (54.3%) responded that there should be mandatory requirements, while 38.3% responded that there should not be such requirements. 67.3% of respondents agreed that there should be mandatory professional development requirements for those "with previously demonstrated competence-related deficiencies." Information Report, Tab 2, pp. 8 and 9.

In addition to the survey, members were canvassed during the regional consultation meetings concerning their views regarding one or more mandatory elements of post-call education. Many participants at these meetings indicated their support for such an approach.

The qualitative survey results support the view that Model One(Continuum of Professional Development) is the most acceptable to members. Seventy percent of respondents to the open-ended questions endorsed the model as the most effective for implementing the Law Society's competence mandate. Of the 940 explanations given in the survey for endorsing the model, only 10% did so because other models were unacceptable:

a) 46% of the endorsements were associated with the structure of the model;
b) 36% of the endorsements referred to content or substantive curriculum that could be presented under this model; and
c) 8% of the endorsements flowed from the sense that this model would receive a positive reception from the public and/or members of the Law Society. (Information Report, Tab 3, pp.4 and 5.)

[22]See Appendix 6.

[23]It was of considerable interest to the Committee to learn that, in a recent speech delivered to the CBAO 2001 Annual Institute of Continuing Legal Education the Chief Justice of Ontario, the Honourable Roy McMurtry stated, "Lawyers and judges must commit themselves to a lifetime of learning," and pointed out the importance of continuing legal education for the public interest.

112. While there can be no legitimate debate, in the view of the Committee, that primary responsibility for maintaining continuing competence through professional development properly rests with the individual lawyer, it is also incumbent upon the Law Society, as regulator of the legal profession, to clearly articulate its expectations concerning continuing legal education and to emphasize the importance that such education plays in assuring competence. For this reason, the Committee recommends the clear articulation of such expectations by the Law Society and, further, that all members should report their educational activities to the Law Society on an annual basis.

113. Coupled with this approach, however, is the imperative that affordable, accessible, and relevant continuing legal education for lawyers be expanded in order that they may satisfy the minimum expectations articulated by the Law Society at an affordable cost and by readily accessible means. While technological advances increasingly are available to address geographic and economic barriers to post-call learning, it is nonetheless essential that greater efforts be made to increase continuing legal education offerings for the profession.

114. It is also critical that continuing post-call legal education,

a. be relevant to a wide range of practice and work circumstances;

b. be provided by a broad range of providers who can address the varying needs of the profession;

c. address both substantive legal issues that are relevant to lawyers in their work as well as client services, practice management and ethical issues that are also fundamental components of quality service; and

d. afford a range of options to lawyers so as to create a climate that fosters a desire to participate in continuing legal education opportunities.

115. If, as the Committee believes, continuing legal education should constitute an essential component of the competence model, then the Law Society should evaluate whether programs are available that, by their design and content, are competence-enhancing.

116. Although there are strongly held views, as described above, that a need exists for more continuing legal education programming, few participants in the consultation process disputed that there exist at present quality providers of continuing legal education who do deliver educational tools across a wide spectrum of subject areas. Ranging from the larger providers (such as the Law Society, the CBAO, and the professional development programs of the law schools), to more specialized providers (such as The Advocates' Society, the Criminal Lawyers' Association, the Indigenous Bar Association, and many others), to those county law associations that hold continuing legal education programs and informal educational meetings, a rich foundation of current programming exists that is, and will continue to be, essential to the delivery of the continuing legal education component of the competence model.

117. The Committee is of the view that there should be some mechanism in place for ensuring quality, breadth, and consistency of continuing legal education programs. During the consultation process the Committee learned that a number of bar organizations are interested in exploring opportunities with the Law Society to provide continuing legal education programs on a program accreditation basis in the future. The Committee has received specific proposals from some bar organizations as to the means by which competence-enhancing programs could be afforded to members of the profession on a province-wide delivery basis.

118. Program accreditation has a number of goals, the broadest of which is to ensure consistency, breadth, and quality of continuing legal education programs. It could also be directed to more specific quality improvement or assurance objectives. For example, programs could be accredited for the purpose of meeting specialist designation or requalification requirements. As practice guidelines are developed, accreditation could be used to inform the profession as to which programs address the kinds of practice issues relevant to the competent lawyer. The Law Society would set the standards for what constitutes a competence-enhancing program. Once these standards are set, the entity that carries out accreditation evaluation need not be the Law Society itself. Thus, the identification of the appropriate accreditation process and the development of accreditation standards, are both matters to be addressed during the design of the competence model.

119. The Committee proposes that,

a. in addition to the 1997 Statement of General Principles and Minimum Expectations for Post-Call Education already approved by Convocation, the Law Society articulate the amount of continuing legal education it expects the competent lawyer to undertake on an annual basis;

b. members of the Law Society be required to report in their Members' Annual Report (the "MAR") the amount of continuing legal education that they in fact undertake on an annual basis. Under this approach, members would not be required by the Law Society to undertake a stipulated amount of continuing legal education but, rather, would be obliged to report in their MAR whatever continuing legal education they do elect to take, whether accredited or unaccredited. The requirement for accurate reporting would be the same as applies for all other sections of the MAR; and

c. in the future, continuing legal education programs should be accredited with a view to ensuring the consistency, breadth, and quality of continuing legal education offerings and, in addition, identifying for lawyers those programs that, by their design and content are regarded by the Law Society as competence-enhancing programs.

120. The design process in connection with the formulation of post-call educational expectations would include consideration of, among other issues,

a. determination of the amount of continuing legal education that the competent lawyer, as defined by the Rules of Professional Conduct, may reasonably be expected to undertake on an annual basis to maintain and enhance competence;

b. the types of educational activities and programs that would be regarded as offering competence-enhancing opportunities;

c. additional steps to be undertaken to enhance delivery of continuing legal education programs throughout the province, taking into account the on-going work of the Continuing Legal Education Working Group of the Committee and ongoing efforts to facilitate improved development and delivery of continuing legal education programs;

d. whether a system of incentives and disincentives should be introduced in connection with this component of the proposed competence model;

e. the method of accreditation to be introduced with respect to continuing legal education programs offered by various providers in the future, and the manner in which such accreditation will be designed so as to,

i. be flexible enough to accommodate a broad range of offerings;

ii. contain reasonable requirements;

iii. evaluate the quality of programs in a meaningful, but reasonable fashion.

f. the type of monitoring and evaluation of continuing legal education programs to be undertaken in the future to support continued accreditation or re-accreditation;

g. the administrative and delivery costs connected with this component of the proposed competence model; and

h. programming by the Law Society under the new competence model.

(ii) Requalification

121. The Law Society's requalification program is currently under review to assess whether the definition of those subject to the program should be changed, and how the current course, designed as a transitional program, can be enhanced. Currently members subject to requalification are required to fulfil a continuing legal education component. This is a mandatory requirement that would continue under any enhanced requalification program designed as part of a future competence model.

122. It should also be noted that a member who participates in focused practice review under the mandatory provisions of the *Act,* or who is subject to a mandatory competence hearing pursuant to the *Act,* may be required as a condition of completion of practice review or as a result of the direction of a competence hearing panel to complete, on a mandatory basis, identified continuing legal education programs.

X. SPECIALIST DESIGNATION

123. A specialist certification program already exists as one of the Law Society's current competence-related activities. In its current form it is a "recognition" program, that is, it assesses and recognizes those applicant lawyers who, by experience and training have become *de facto* specialists. At present, it is not a "developmental" program, that is, a program that both recognizes those with expertise and also provides pathways or supports for the development of specialists. To date, with little promotion, it has attracted limited but growing interest among members of the profession.

124. The Committee had the benefit during the course of its work of a detailed and comprehensive report from the Specialist Certification Working Group of the Committee, Chaired by Marilyn Pilkington. That report urged, and the Committee accepted, the view that a broadly-based, developmental specialist designation program is a critical component of a QI program and should play a role in the Law Society's overall competence model. This is to be contrasted with the current specialist certification program, which has functioned to date as a stand-alone initiative, unconnected to an integrated approach to the regulation of competence.

125. A broadly-based specialist designation program would function as a QI component of the Law Society's competence model. As a voluntary developmental program, it could be designed as a staged process in which members continue to self-elect to pursue the designation of "specialist", advancing along a continuum of requirements with increasing levels of required expertise, until all requirements are met to gain the final specialist designation credential. This approach could encourage lawyers, at an early stage of their careers, to seek to develop expertise in identified areas of the law in a systematic way by pursuing relevant accredited continuing legal education designed to promote "best practices" in legal work settings.

126. A broadly-based specialist designation program of the type proposed above, would also have links both to developing practice guidelines and articulated expectations for continuing legal education. For example, representatives of each specialty area could develop best practices guidelines to which members seeking specialist designation would aspire along the developmental track. Similarly, what is identified in the future as a minimum expectation for continuing legal education among members of the bar-at-large could be designed and identified as a required component of the specialization continuum. The requirement that educational programs be accredited in the future would apply to specialist designation- stream continuing legal education to ensure that such programs address appropriate levels of learning and content with increasing rigour and complexity.

127. As with the proposed voluntary peer assessment pilot project, a broadly-based specialist designation component of the proposed competence model will function to provide members who wish to enhance their standards and competence with the tools to do so. This will have a direct beneficial effect for members of the profession, and for the beneficiaries of their services, members of the public.

128. The envisioned specialist designation program represents a fresh approach to the issue of specialization. In the Committee's view, such an approach plays an important part in the continuum of professional development envisioned as the proposed competence model. Like other components, it has the dual purpose of seeking to benefit the public and, as well, members of the profession who choose to pursue it.

129. The Committee proposes that,

a. there be a reformulated specialist designation program offered by the Law Society as part of the competence model;

b. the practice categories identified as eligible for designation should be increased;[24]

c. serious consideration should be given to developing a specialist designation for "generalists" and, if adopted, to the content of a specialist program leading to such a designation;

d. the specialist designation program offered by the Law Society in the future should be designed as a continuum with identified, staged requirements intended to promote the increasing accumulation of expertise and knowledge and leading, ultimately, to a specialist designation; and

e. design costs for the reformulated specialist designation program should be borne by the Law Society.

130. The design process in connection with a reformulated specialist designation program would include consideration of, among other issues,

a. what combination of education and experience would lead to the various stages of specialist designation;

b. what appropriate level of involvement in a practice area should be required to qualify for the various stages of specialist designation;

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[24]The American Bar Association has identified fields appropriate for specialist certification. As well, the Committee recently received a submission from l'AJEFO that proposes a specialist designation stream to enable lawyers to be designated as bilingual specialists. In l'AJEFO's view, the public interest would be greatly served by such a designation. Although the submission was directed to a French language designation, it is possible to envisage such a designation for other languages.

c. what methods will be used to assess candidates for various stages of specialist designation;

d. how much continuing legal education would be required at the various stages of specialization;

e. what types of educational activities would qualify as specialist designation-stream continuing legal education;

f. what steps could be undertaken to enhance delivery of specialist designation-stream continuing legal education throughout the province, and at what cost;

g. whether development of "best practices" guidelines should form part of the developmental process for the specialist designation program and, if so, what links, if any, such guidelines should have to the development of "acceptable performance" guidelines;

h. whether a system of incentives or disincentives should be connected to this component of the proposed competence model, including the nature of the "designation" to be granted to those who have met the requirements; [25]

i. how the benefits of the new program should be communicated to the profession and the public;

j. the impact of the reformulated program on those currently designated as specialists;

k. whether other "best practice" approaches, such as the ISO-9000 designation, should be encouraged within or integrated into this component of the proposed competence model; and

l. the costs of this component of the proposed competence model.

XI. SUMMARY

131. Table 2 to this Report[26] summarizes the constituent components of the suggested future approach to implementing the Law Society's competence mandate. In essence, the approach reflects a continuum of professional development with five integrated elements consisting of practice guidelines, practice enhancement (voluntary self-assessment and voluntary peer assessment on a pilot project basis), continuing legal education (post-call educational expectations and requalification requirements), specialist designation, and remedial components mandated by statute (focused practice review and competence hearings).

XII. PROPOSED NEXT STEPS AND TIME LINE

132. If Convocation approves the Committee's proposed approach outlined above, the proposed next steps in the process are as follows:

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[25]It has been suggested that the recognition afforded specialists could be similar to the kind of designation attached to the names of physicians who are Fellows of the Royal College of Physicians and Surgeons of Canada (FRCS(C)).

[26]See page 26 and Appendix 1.

a. making this report available to legal organizations, the profession, and groups representing the public for comment;[27]

b. retaining a design consultant, experienced in the development of QA and QI programs, to advise the Law Society in designing and costing the components of its proposed model;

c. developing a proposal for guidelines development, including costing, and seeking Convocation's approval in the near future to commence guidelines development along the lines to be proposed; and

d. developing, for Convocation's consideration in the fall of 2001, a design time-line.

XIII. REQUEST TO CONVOCATION

133. Convocation is requested to consider this Report and, if appropriate, approve,

a. the Report; and

b. the Committee's proposed approach for implementing the competence mandate in particular as set out in Appendix 1.

134. Convocation is further requested to consider the proposed next steps and time-line set out in paragraph 132 above, and if appropriate, approve it.

APPENDIX 1:PROPOSED APPROACH

CONTINUUM OF PROFESSIONAL DEVELOPMENT: ESSENTIAL BUILDING BLOCKS

PRACTICE GUIDELINES
specific in nature, flexible in application from "acceptable performance" to "best practices" initial focus on practice management, technology, and client service issues; subsequently on substantive law broad consultation in developing widely published continuously reviewed and updated

[27]It is anticipated this would consist of Notices in the Ontario Reports and the Ontario Lawyers' Gazette, in French and English, advising members of the report and its availability on the web-site and by request, and inviting comments. It would also involve: sending the report to bar organizations seeking input and advice; sending the report to groups representing the public for input; and further meetings, on request, with interested bar organizations and legal groups.

PRACTICE ENHANCEMENT
Voluntary Self-Assessment Program self-evaluation guide to practice management approaches, including use of technology and client service issues voluntary utilizes existing tools available electronically and on paper links to assistance where sought Voluntary Peer Assessment Pilot Project voluntary minimum two year term development of a voluntary office visit system to foster quality practice

CONTINUING LEGAL EDUCATION
Post-Call Minimum Educational Expectations articulation of what amount of CLE lawyers are expected to undertake annually reporting of annual CLE on MAR accreditation of CLE programs Requirements for Requalification enhanced program required number of mandatory CLE credits as constituent element of program

SPECIALIST DESIGNATION
combined developmental and experience recognition program expanded areas of specialization including possible "generalist" designation staged levels of specialization mandatory educational component, with enhanced province-wide accessibility

REMEDIAL COMPONENTS
Mandated by Statute (i) Focused Practice Review (ii) Competence Hearings

RECOMMENDATIONS

1. The Committee strongly recommends that the aim of any future competence model should be to preserve and foster public and member confidence in the regulation of the legal profession. Without that confidence the legal profession and the Law Society will be unable to effectively fulfill their roles in contemporary society.

2. In light of the operating principles and considerations identified in this Report, the future competence model adopted by Convocation should,

a) address the Law Society's statutory mandate;
b) contain both quality assurance (QA) and quality improvement (QI) components;
c) address a range of professional needs and responsibilities with respect to competence;
d) support members' obligations and efforts to maintain their own competence;
e) be adaptable to the ever-evolving nature of the legal profession in Ontario and to rapidly changing laws and requirements;
f) maintain flexibility of choice for individual lawyers in the selection of competence-enhancing techniques;
g) address issues of accessibility and relevance;
h) be responsive to the evolving needs of the public for competent and accessible legal services;
i) recognize and support the use of technology;
j) reflect a long-term commitment to, and view of, competence;
k) reflect realistic resource and cost factors;
l) be developed and implemented in appropriate stages; and
m) be evaluated periodically for effectiveness and improvement.

3. With these principles and considerations in mind, the Committee proposes the adoption of a Professional Development Model as the future competence model of the Law Society. The recommended Professional Development Model has five components, summarized in Table 2. Each of these components is essential to the model's overall effectiveness. The components are inter-related and inter-dependent. In isolation they cannot be viewed as a fully effective competence model. The five components are:

(a) Practice Guidelines

(b) Remedial Components Mandated by Statute:
  (i) Focused Practice Review
  (ii) Competence Hearings

(c) Practice Enhancement:
  (i) Voluntary Self-Assessment
  (ii) Voluntary Peer Assessment Pilot Project

(d) Continuing Legal Education:
  (i) Post-Call Education
  (ii) Requalification

(e) Reformulated Specialist Designation

I. PRACTICE GUIDELINES

4. The Committee proposes that,

a. the practice guidelines developed as part of the competence model should be specific in nature and flexible in application;

b. the initial emphasis of guidelines development should be on "acceptable performance" and should work towards the identification of "best practices";

c. initially, guidelines should be directed at practice management, including technology and client service issues. More particularly, the first guidelines should focus on what is meant by *"the member's attention to the interests of clients"*, *"the records, systems, or procedures of the member's practice"* and *"other aspects of the member's practice"*, as set out in section 41 of the *Act*;

d. guidelines should be developed to provide guidance to lawyers on what they should know and apply in specific areas of substantive law;

e. the guidelines development process should be undertaken as a consultative process with the profession and draw on what is learned and observed through practice reviews, competence hearings, the complaints and conduct processes, and the experience of LPIC;

f. guidelines should be widely published in order that, by reference to them, members are able to monitor their own skills, enhancing them where necessary; and

g. guidelines should be reviewed and updated on an ongoing basis to ensure that they continue to be relevant and appropriate.

II. PRACTICE ENHANCEMENT

5. The Committee proposes the development of self-evaluation guides, as part of the practice enhancement component of the Law Society's future competence model, that would,

a. to the extent possible, be made available across the province in electronic and paper format for members to assess their practice management approaches, including use of technology and client service issues, and other practice or work-related systems;

b. where applicable, utilize existing guides, at least in the preliminary stages of implementation. For example, the existing guides used by practice reviewers may be capable of adaptation and refinement to address a wide range of issues. These types of guides, once revised, could then be made available directly to practitioners to assist them in self-evaluating their own compliance with the guides. The development of formal practice guidelines, urged as another component of the competence model, would also complement this approach; and

c. be voluntary. The self-evaluation guides could be designed to have "links" that would enable an individual member who is dissatisfied with the results of the self-assessment to access guidance on suggestions for improvement. Such "links" might be introduced, subject to design considerations, through electronic links to other information bases, through contact with the Practice Advisory Service of the Law Society, or through contact with a service-provider independent of, but accredited by, the Law Society.

6. The Committee proposes that,

a. a voluntary peer assessment pilot project be developed;

b. if cost effective, the content of assessments should include both practice management, including technology and client service issues, and substantive law "best practices" issues;

c. the term of the pilot project be at least two years to allow for proper design, implementation, and evaluation;

d. volunteers be sought from among members of the profession in different geographic locations, work and practice settings, and circumstances to form part of a roster of lawyers prepared to conduct, on a *pro-bono* basis, confidential peer assessments and prepared to have their practices or work settings assessed; and

e. during the term of the pilot project there be no cost to the participants. Following the completion of the pilot project, and evaluation of its effectiveness and "take-up" by members of the profession, continuation of the program would be contingent on some degree of cost recovery, to be established at the time of approval for continuation.

III. CONTINUING LEGAL EDUCATION

7. The Committee proposes that,

a. in addition to the 1997 Statement of General Principles and Minimum Expectations for Post-Call Education already approved by Convocation, the Law Society articulate the amount of continuing legal education it expects the competent lawyer to undertake on an annual basis;

b. members of the Law Society be required to report in their Members' Annual Report (the "MAR") the amount of continuing legal education that they in fact undertake on an annual basis. Under this approach, members would not be required by the Law Society to undertake a stipulated amount of continuing legal education but, rather, would be obliged to report in their MAR whatever continuing legal education they do elect to take, whether accredited or unaccredited. The requirement for accurate reporting would be the same as applies for all other sections of the MAR; and

c. in the future, continuing legal education programs should be accredited with a view to ensuring the consistency, breadth, and quality of continuing legal education offerings and, in addition, identifying for lawyers those programs that, by their design and content are regarded by the Law Society as competence-enhancing programs.

IV. SPECIALIST DESIGNATION

8. The Committee proposes that,

a. there be a reformulated specialist designation program offered by the Law Society as part of the competence model;

b. the practice categories identified as eligible for designation should be increased;

c. serious consideration should be given to developing a specialist designation for "generalists" and, if adopted, to the content of a specialist program leading to such a designation;

d. the specialist designation program offered by the Law Society in the future should be designed as a continuum with identified, staged requirements intended to promote the increasing accumulation of expertise and knowledge and leading, ultimately, to a specialist designation; and

e. design costs for the reformulated specialist designation program should be borne by the Law Society.

V. REMEDIAL COMPONENTS MANDATED BY STATUTE

9. As focused practice review and the conduct of competence hearings are both required or authorized by law in specified circumstances, the approval of Convocation to these aspects of the proposed competence model is not required.

APPENDIX 2: DEFINITION OF THE COMPETENT LAWYER*

A competent lawyer has and applies relevant skills, attributes, and values in a manner appropriate to each matter undertaken on behalf of a client. These include:

i. knowing general legal principles and procedures, and the substantive law and procedure for the areas of law in which the lawyer practices;
ii. investigating facts, identifying issues, ascertaining client objectives, considering possible options, and developing and advising the client as to appropriate course(s) of action;
iii. implementing the chosen course of action through the application of appropriate skills including:

   (a) legal research,
   (b) analysis,
   (c) application of the law to the relevant facts,
   (d) writing, and drafting,
   (e) negotiation,
   (f) alternative dispute resolution,
   (g) advocacy, and
   (h) problem solving ability

   as each matter requires;
iv. communicating in a timely and effective manner at all stages of the matter;
v. performing all functions conscientiously, diligently, and in a timely and cost effective manner;
vi. applying intellectual capacity, judgment, and deliberation to all functions;
vii. complying in letter and in spirit with the Rules of Professional Conduct;
viii. recognizing limitations in one's ability to handle a matter, or some aspect of it, and taking steps accordingly to ensure the client is appropriately served;
ix. managing one's practice effectively;
x. pursuing appropriate professional development to maintain and enhance legal knowledge and skills; and
xi. adapting to changing professional requirements, standards, techniques, and practices.

* The definition is now contained in Rule 2.01 of the Rules of Professional Conduct.

APPENDIX 3: SUMMARY OF POSSIBLE COMPETENCE MODELS DESCRIBED IN THE CONSULTATION DOCUMENT

Model One: Continuum of Professional Development

1. A continuum of professional development model would focus on ensuring a systematic approach to professional development that is progressive and relevant to the various stages of a lawyer's career. Such a model could include,
   a. tools that will allow members to engage in professional development throughout their careers (quality improvement); and
   b. mechanisms for monitoring whether such professional development is taking place (quality assurance).

2. The development of such a model would include an analysis of the appropriateness of a voluntary or mandatory approach to professional development, or some combination thereof.

3. The model would recognize that the nature of members' professional development requirements change as they move through their careers. It would focus on how post-call professional development could be broadly designed and used for supportive, remedial, and monitoring purposes

Model Two: Random/Focused Practice Review

4. The Law Society is required by the *Law Society Act* to conduct a practice review where there are reasonable grounds to believe that a member may have failed or may be failing to meet standards of professional competence. Accordingly, any competence model the Law Society implements must include practice review.

5. Focused practice review is premised on the belief that members encountering multiple practice problems cannot benefit solely, if at all, from passive learning tools. They must be directly observed, provided with tools specific to their needs, given specific instructions on steps for improvement, monitored and, where possible, re-evaluated. The program is separate from the Law Society's conduct processes, its focus being on assisting members to improve their competence.[1]

6. The value of practice review depends, in part, upon the nature of the resources available to assist, the attitude toward the review of the individual being assisted, and the extent to which the program has targets and a reasonable point of completion.

7. Random practice review has a preventive focus. Its broad goal is to monitor member adherence to articulated standards of practice. An ancillary goal is to raise the quality of service across the profession. Such programs apply to all members, randomly, and are not directed only to those who have demonstrated problems with competence or who have experienced multiple client complaints.

8. A model that combines focused and random practice review is primarily a quality assurance measure with some modest features of quality improvement. The quality improvement features emerge essentially from three areas:

   a. Prior to the random review members prepare by addressing aspects of their practices they may have overlooked and seek to improve them before the review takes place.

   b. Members institute changes to their practices to reflect problems identified.

   c. Members of the profession at large are informed of the areas of deficiency observed in reviews conducted by the regulator, so that they can consider whether to make improvements in their own work environments and practices.

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[1]Currently nothing learned in a practice review is used to initiate or continue a conduct proceeding with the exception of information learned that comes within Rule 6.01(3) and Commentary of the Rules of Professional Conduct. This confidentiality does not apply where the practice review is ordered in the course of a conduct proceeding. In some provinces, practice reviews are not part of a separate program, but only arise in the course of a discipline proceeding.

Model Three: Limited Licensing

9. Upon their call to the bar, lawyers in Ontario receive a general credential entitling them to practise as barristers and solicitors. The system is premised on the view that law school and the bar admission course equip a lawyer to take on any legal work, subject to the lawyer's self-assessment of competence as set out in the Rules of Professional Conduct.

10. The argument has been made that in a rapidly changing and complex legal environment, by attempting to equip every new lawyer to practise in any area, the legal education system undermines the ability to develop and maintain the competence of members of the bar. This is because there is no mandatory requirement in Ontario that lawyers limit their fields of practice upon call to the bar. One of the substantive competence models reviewed by the Professional Development and Competence Committee involves elements of limited licensing.

11. A limited licensing model seeks to integrate the importance of quality service into how lawyers develop their work from the outset of their professional lives and throughout their careers.

Model Four: Broadly-Based Specialist Certification

12. Specialist certification is a quality improvement program. Lawyers voluntarily choose to seek accreditation for having met established standards of practice and expertise. Their eligibility for accreditation is assessed against set, uniform, pre-determined criteria. In its current form the Law Society's program does not preclude certified specialists from practising in other areas.

13. To be effective a broadly-based specialist certification model would be based on standards that are perceived to be objective, rigorous, and fair. Under this type of program it would be possible for lawyers throughout the province to satisfy knowledge and skills-based requirements for specialist certification through study, as well as experience. In contrast, the Law Society's current specialist certification program requires that a candidate concentrate his or her practice, and establish broad experience, in the field in which he or she seeks certification. This requirement excludes many lawyers from eligibility for specialist certification.

14. A broadly-based specialist certification model would identify a process consisting of educational opportunities and indicia of experience that could lead a junior member of the bar on a path toward specialization. The model could also be developed to enable lawyers in general practice to be recognized as specialist "generalists", akin to a family practice specialty in the medical field.

APPENDIX 4: EXCERPT FROM CONSULTATION DOCUMENT

(see Convocation file)

APPENDIX 5: DISCUSSION OF LIMITED LICENSING MODEL

1. In assessing the limited licensing model the Professional Development and Competence Committee (the "Committee") considered the perception that substantive law has become too complex to allow a general credential to continue, on the basis that it is impossible for a lawyer to keep abreast of changes in an unlimited number of areas. The Committee agrees that it is unrealistic to suggest that a generalist credential means that a lawyer is competent to handle every area of practice or work at every level of complexity. There is little evidence, however, that lawyers in Ontario actually attempt to do so.

2. In considering the limited licensing model the Committee heard anecdotal evidence about "dabblers" who stray into areas in which they have no expertise. There were stories about advocates in court who do not know the rules of evidence or the appropriate way to handle a case, corporate lawyers in large firms who take on a minor criminal matter for a corporate client with poor results, and criminal barristers who dabble in family or real estate law. At the same time, however, the Committee was aware of recent LPIC statistics that suggest that in the litigation area it is "specialists", not dabblers, who cause the most claims.[1]

3. The largest percentage of LPIC claims and Law Society complaints are not based on alleged errors of substantive law, but on issues related to the failure of the lawyer/client relationship and practice management weaknesses. This suggests that lawyers are not straying into unfamiliar areas in significant numbers. This is supported somewhat by the results of the consultation survey in which 93% of respondents in private practice responded that they limit the number of substantive areas in which they practice.[2] Even those lawyers who consider themselves general practitioners appear to limit their scope to three or four areas and, within those areas, limit the nature of the work they will accept.

4. The unlimited licence to practice law reflects a belief that those called to the bar have qualifications that span a broad range of attributes, functions, skills, and attitudes that can be adapted to any specific area of law. Lawyers are trained in the ethics of law and the judgment, analytical tools, professional responsibility, and technical skills required to serve client needs. They are taught what it means to "think like a lawyer".This is not a meaningless concept. At its highest it suggests that society attributes a value to there being a group of its citizens who are trained to consider, in a broad framework, the issues and problems that affect individuals and facilitate the resolution of those issues in accordance with the goals and values of society. The Committee is of the view that the loss of this flexibility would not benefit the public.

5. This is not to suggest that the general credential allows lawyers complete freedom to take on anything they choose. Rule 2.01(2) of the Rules of Professional Conduct requires that a lawyer shall perform any legal services undertaken on a client's behalf to the standard of a competent lawyer. The onus is on the lawyer to take whatever steps are necessary to ensure that he or she is equipped to undertake the work for which he or she is retained. The Committee is unaware of evidence suggesting that this rule is ignored by significant numbers of lawyers such that mandatory limiting of areas of work is necessary.

6. The Committee is also of the view that the limited licensing model has the potential to undermine access to justice in communities around the province. A large percentage of the bar in Ontario practises in communities in which the size of the population and the nature of their needs are such that there is insufficient call for lawyers who specialize in one area. There is the serious potential that a licensing system that requires lawyers to specialize may result in lawyers finding it difficult to work in smaller communities. The impact of this could be that the public is obliged to travel long distances for assistance with their legal problems. Recent experience within the medical profession illustrates that this is more than speculation, as small communities around the country find it difficult to attract and retain medical specialists.

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[1] *Special Report from LPIC*, Summer 2000, p.5. "43 per cent of lawyers say they spend between 41 and 100 per cent of their time in litigation practice. However this same group of lawyers generates 76 per cent of the litigation claims reported and 77 per cent of the claims costs. At the other extreme the 42 per cent of lawyers who say they spend 10 per cent or less of their time in litigation-related practice account for only 10 per cent of litigation claims reported and claims costs."

[2] Report on Survey Results, p. 15.

7. The argument is made that lawyers could be licensed as general practitioners, along the lines of family practitioners in the medical model. The Committee is of the view that equating the two is not as easy as it may appear. Family medicine is a well-defined discipline of its own with a set of principles, diagnostic tools, and a defined area of inquiry. General practice in law is as varied as the specific areas in which a practitioner concentrates. Although the Committee does not suggest it would be impossible to define a limited licence in general practice, it is of the view that it would be a large undertaking without which the balance of the limited licensing model could not properly proceed.

8. The Consultation Document also discussed time limitations on licensing (eg. a requirement that a newly called lawyer work as an employee first, before being entitled to establish a sole practice) and situation limitations on licensing (eg. completing a trial advocacy course before being entitled to practise in the courts). The Committee is of the view that before undertaking such an approach there should be evidence that this kind of targeted limitation is justified by a demonstrable need for such limits. LPIC's claims history experience would not appear to justify the need for such limitations.

9. There are additional practical considerations that significantly complicate development of a limited licensing model, including,

   a) the likely impact on law school education that would require a willingness on the part of law schools to change and stream pre-call education, and substantial time and co-operation to effect;

   b) costs; and

   c) the difficulty of adopting such a model retroactively. If adopted prospectively, the model has the potential to create rifts among members of the profession, because there will be different classes of members and barriers to working for newly-called lawyers that will not exist for those called at an earlier date.

10. For the reasons discussed above, the Committee recommends against the introduction of a limited licensing model. The Committee does believe, however, that there are ways in which to address the issue of some members of the bar agreeing to take on work for which they are not qualified:

    a) The Committee heard a number of concerns that some members who appear in the courts do not know the law of evidence. The Committee did not investigate that claim. To the extent that lack of education or training is the issue, the Committee notes that evidence is not a mandatory course in either law school or the Bar Admission Course. Discussions are currently ongoing between the law schools and the Law Society on the issue of the appropriate core curriculum for law schools and whether there should be adjustments to the mandatory subjects that were established in the 1960s. The Committee encourages the continuation of these discussions.

    b) The Committee also questions whether the Law Society and Ontario law schools should do more to encourage law students to focus their studies. There may be considerable merit to encouraging students to reflect at an earlier stage on the impact that the increasing complexity of law will have on the direction of their careers.

    c) The insurance consequences of negligently performing work that a member is not qualified to perform should continue to be costly.

    d) The development of guidelines for practice and the statutory competence mandate may, in the future, act as a further disincentive to undertaking work for which a member is not qualified.

e) Continuing education courses should include entry level programs for specified areas of law, such as advocacy courses for aspiring litigators. People desiring to practise in these areas could be urged to take them, with consideration of possible incentives for doing so.

APPENDIX 6: GENERAL PRINCIPLES AND MINIMUM EXPECTATIONS FOR POST-CALL EDUCATION (1997)

- Professional competence is maintained and enhanced by ongoing professional development and education.
- The Law Society has an obligation to encourage and monitor professional development and education, and to foster the creation and development of learning supports both in the public and the profession's interest.
- Membership in the legal profession requires a conscious commitment by all members of the profession to ongoing professional development and education and to self-assessment of educational need.
- Fulfilment of such a commitment enhances the ability of all members to meet their obligation to the public to provide effective and competent service, to adapt to and function in a changing and challenging environment, and to maintain and enhance their expertise and overall competence.
- While members of the profession have individual responsibility for and direction over the conduct of their professional development and education, all members of the profession have a collective interest in this responsibility being fulfilled.
- The professional development and education members of the profession undertake should include both informal education through self-study, reading, and research, and more formal education through participation in continuing education programs.
- The Law Society, the Canadian Bar Association - Ontario, the law schools, county and district law associations, other continuing legal education providers, the County and District Law Presidents' Association, providers of library resources and facilities, and the members of the profession should collaborate to ensure that the development of educational policies, opportunities, and programs becomes a priority.

APPENDIX "B"

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 30
[COUNTY LAW LIBRARIES]

made under the
LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MARCH 22, 20001

MOVED BY

SECONDED BY

THAT By-Law 30 [County Law Libraries], made by Convocation on June 23, 2000, be amended as follows:

1. Paragraph 2 of subsection 3 (2) of the By-Law is amended by adding "Law" before "Presidents'".

1. Subsection 6 (2) of the By-Law is amended by adding "Subject to subsection (3)" at the beginning.

2. Section 6 of the By-Law is amended by deleting subsections (3) and (4) and substituting the following:

Same

(3) Library materials acquired by an association for its county law library after the day on which the Corporation is established shall be held by the trustees of the association in trust for the Corporation.

Return of library materials to Society

(4) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Society to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Society to the Society, subject to any other directions from the Society.

Return of library materials to Corporation

(5) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Corporation to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Corporation to the Corporation, subject to any other directions from the Corporation.

Failure to return library materials

(6) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (3), or to the Corporation, as required under subsection (3.1), the Society or the Corporation, as the case may be, may take such steps as it considers advisable to obtain the library materials that were required to be returned to it, and the association shall reimburse the Society or the Corporation for any expense incurred by it in so doing.

BY-LAW 30

Made: June 23, 2000

COUNTY LAW LIBRARIES

INTERPRETATION

Definitions

1. In this By-Law

"association" means a county or district law association formed under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it;

"Corporation" means the corporation established as required under section 3;

"county law library" means a law library established by an association;

"trustees", where an association is incorporated, means the directors of the corporation.

Interpretation: "county law library funded by the Corporation"

2. In this By-Law, "county law library funded by the Corporation" means a county law library established under Regulation 708 of the Revised Regulations of Ontario, 1990 or any predecessor of it and in existence on the day on which this By-Law comes into force or a county law library established with the approval of the Corporation after the day on which this By-Law comes into force.

LIBRARY CORPORATION

Corporation to be established

3. (1) The Society shall cause a corporation to be established in accordance with this section for the purposes of,

(a) establishing and administering a system for the provision of law library services and programs by county law libraries funded by the Corporation;

(b) establishing policies and priorities for the provision of law library services and programs by county law libraries funded by the Corporation based on the financial resources available to the Corporation;

(c) providing to associations funding to pay for the operation of county law libraries funded by the Corporation;

(d) monitoring and supervising the provision of law library services and programs by county law libraries funded by the Corporation, including establishing guidelines and standards for the organization and operation of county law libraries funded by the Corporation and for the provision of law library services and programs by county law libraries funded by the Corporation; and

(e) advising Convocation on all aspects of the provision of law library services and programs by county law libraries funded by the Corporation, including anything that affects or may affect the demand for or quality of law library services and programs.

Classes of shares

(2) The Corporation shall have two classes of shares as follows:

1. A class of shares to be issued to the Society.

2. A class of shares to be issued to the County and District Presidents' Association giving the Association the exclusive right to elect one director.

Directors

(3) The Corporation shall consist of fifteen directors.

COUNTY LAW LIBRARIES

Application to establish county law library

4. (1) An association that wishes to establish a county law library to be operated by the association and funded by the Corporation shall apply to the Corporation for its approval to establish the county law library.

Same

(2) An application under subsection (1) shall contain the information required by the Corporation.

Operation of county law library

5. (1) A county law library funded by the Corporation shall be operated by the association in accordance with any guidelines and standards established by the Corporation.

Provision of law library services and programs

(2) A county law library funded by the Corporation shall provide library services and programs in accordance with any guidelines, standards, policies and priorities established by the Corporation.

Library materials

6. (1) The trustees of an association shall continue to hold in trust for the Society all library materials of its county law library that the trustees held in trust for the Society before the day on which this By-Law comes into force.

Same

(2) The trustees of an association shall hold the library materials of its county law library in trust for the Society.

Return of library materials

(3) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from Corporation to return the library materials of an association's county law library to the Society, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library to the Society, subject to any contrary directions from the Society.

Same

(4) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (3), the Society may take such steps as it considers advisable to obtain the library materials, and any expense incurred in so doing shall be paid by the association to the Society.

Access to law library services and programs

7. A county law library funded by the Corporation shall give access to its law library services and programs to,

(a) every member of the Society, regardless of whether a member is also a member of an Association;

(b) judges of Ontario courts;

(c) Ontario justices of the peace; and

(d) members of boards, commissions or other tribunals established or provided for under Acts of Parliament or the Legislature in Ontario.

FINANCING

Provision of funds by Society

8. The money paid to the Corporation for its purposes shall be paid out of such money as is appropriated therefor by Convocation

Suspension, reduction of funding

9. (1) Convocation may, in its absolute discretion, in respect of a fiscal year, suspend or reduce funding of the Corporation.

Notice to Corporation

(2) Before taking action under subsection (1), Convocation shall give the board of directors of the Corporation notice of its intent and a reasonable opportunity to comply with the relevant provisions of this By-Law or to provide the required information.

Budget

10. (1) The Corporation shall submit its annual budget for the next fiscal year to the Finance and Audit Committee by such date as may be specified by the Chair of the Finance and Audit Committee.

Same

(2) The Corporation's annual budget shall be in such form as may be specified by the Chair of the Finance and Audit Committee.

Financial statements

11. (1) For the purposes of clause 12 (2) (a), the Corporation shall prepare annual financial statements for each fiscal year in accordance with generally accepted accounting principles.

Audit

(2) For the purposes of clause 12 (2) (a), the financial statements of the Corporation shall be audited by a public accountant.

Annual report

12. (1) The Corporation shall submit an annual report to Convocation within four months after the end of its fiscal year.

Contents

(2) The annual report shall contain,

(a) the audited financial statements of the Corporation;

(b) a report on the affairs of the Corporation; and

(c) such other information as Convocation may request.

Other reports

13. Convocation may at any time require the Corporation to report to it on any aspect of its affairs or to provide information on its activities, operations and financial affairs as Convocation may request.

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

(1) Copy of a letter from Mr. Peter Annis of l'AJEFO dated February 20th, 2001 together with enclosures. (Appendix "C")

(2) Copy of a memorandum from Ms. Elliot Spears to Mr. Richard Tinsley dated March 5, 2001 re: Authority to Impose Continuing Legal Education Requirements by By-Law and copy of a letter from Mr. Marshall A. Crowe to Ms. Eleanore A. Cronk dated September 12, 2000 re: Mandatory Aspects of Law Society Regulatory Authority in Relation to Competence. (Appendix "D")

A debate followed.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

Consideration of the Report of the Professional Development and Competence Committee be adjourned pending an application by the Law Society of Upper Canada on notice to the profession for a judicial determination of the Society's statutory authority to implement the competence recommendations.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Cherniak	Against
Copeland	Against
Cronk	Against
Crowe	Against
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Rodgers	Against
Simpson	Against
Swaye	Against
White	Against
Wilson	Against
Wright	Against

Vote: 27 - Against, 2 - For

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

The Law Society of Upper Canada retain outside counsel to opine on the Society's statutory authority to implement Mandatory Continuing Legal Education and resolve the discrepancy between Mr. Crowe's opinion and that of the staff of the Law Society.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Cherniak	Against
Copeland	Against
Cronk	Against
Crowe	Abstain
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Rodgers	Against
Simpson	Against
Swaye	Against
White	Against
Wilson	Against
Wright	Against

Vote: 26 - Against, 2 - For, 1 Abstention

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

The Professional Development and Competence Committee report be sent back to the Committee to consider whether it can assure the profession that the Committee will not seek to implement minimum or Mandatory Continuing Legal Education or Compulsory peer reviews.

The motion was ruled out of order by the Treasurer.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

The Professional Development and Competence Committee Report be sent back to the Committee pending its assurance to Convocation that it will not ask Convocation to seek an amendment to the Law Society Act to mandate compulsory continuing legal education.

The motion was ruled out of order by the Treasurer.

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

The recommendations of the Professional Development and Competence Committee Report be submitted to the profession by way of plebiscite.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Cherniak	Against
Copeland	Abstain
Cronk	Against
Crowe	Against
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Rodgers	Against
Simpson	Against
Swaye	Against
White	Against
Wilson	Against
Wright	Against

Vote: 26 - Against, 2 - For, 1 Abstention

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

The Report of the Professional Development and Competence Committee be referred back to the Committee to bring back to Convocation evidence that the current advisory, discipline, practice review, library, education and insurance programs are not adequate in fulfilling the Law Society's competence mandate without spending $1million over the next three years on a new competence mandate.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Cherniak	Against
Cronk	Against
Crowe	Against
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Potter	Against
Puccini	Against
Rodgers	Against
Simpson	Against
Swaye	Against
Wilson	Against
Wright	Against

Vote: 24 - Against, 2 - For

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

Convocation approves the formation of a subcommittee to consider and report on whether the Society's existing programs satisfy the statutory competence mandate.

Withdrawn

It was moved by Mr. Aaron, seconded by Mr. Gottlieb that:

In that event that the Professional Development and Competence Report is passed that the Report be distributed to each member of the profession.

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against

Cherniak	Against
Cronk	Against
Crowe	Against
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Porter	Against
Potter	Against
Puccini	Against
Rodgers	Against
Simpson	Against
Swaye	Against
White	Against
Wilson	Against
Wright	Against

Vote: 26 - Against, 2 - For

It was moved by Mr. Wright, seconded by Mr. Crowe that approval of the Professional Development and Competence Committee Report be deferred pending a Report from the CEO and the Finance and Audit Committee as to the costs and logistics of implementation.

An amendment was accepted by Messrs. Wright and Crowe that the words "and the Finance and Audit Committee" be deleted and the words "Professional Development and Competence Committee" be substituted.

Wright/Crowe motion as amended

"Moved that approval of the Professional Development and Competence Committee Report be deferred pending a report from the CEO and the Professional Development and Competence Committee as to costs and logistics of implementation."

Lost

ROLL-CALL VOTE

Aaron	For
Arnup	Against
Banack	Against
Cherniak	Against
Copeland	Against
Cronk	Against

Crowe	For
Diamond	Against
E. Ducharme	Against
Finkelstein	Against
Gottlieb	For
Hunter	Against
Krishna	Against
Lalonde	Against
MacKenzie	Against
Manes	Against
Millar	Against
Mulligan	Against
Murray	Against
Pilkington	Against
Porter	For
Potter	Against
Puccini	For
Rodgers	Against
Simpson	Against
Swaye	For
White	For
Wilson	Against
Wright	For

Vote: 21 - Against, 8 - For

It was moved by Ms. Cronk, seconded by Messrs. Manes and Cherniak that the Professional Development & Competence Committee Report re: Implementing the Law Society's Competence Mandate: Report and Recommendations and the Committee's proposed approach for implementing the competence mandate as set out in Appendix 1 of the Report be approved together with the proposed next steps and time-line as set out below:

a. making the report available to legal organizations, the profession, and groups representing the public for comment;

b. retaining a design consultant, experienced in the development of Quality Assurance and Quality Improvement programs, to advise the Law Society in designing and costing the components of its proposed model;

c. developing a proposal for guidelines development, including costing, and seeking Convocation's approval in the near future to commence guidelines development along the lines to be proposed; and

d. developing, for Convocation's consideration in the fall of 2001, a design time-line.

Carried

ROLL-CALL VOTE

Aaron	Against
Arnup	For
Banack	For
Cherniak	For
Copeland	For
Cronk	For
Crowe	For
Diamond	For
E. Ducharme	For
Finkelstein	For
Gottlieb	Against
Hunter	For
Krishna	For
Lalonde	For
MacKenzie	For
Manes	For
Millar	For
Mulligan	For
Murray	For
Pilkington	For
Porter	Against
Potter	For
Puccini	For
Rodgers	For
Simpson	For
Swaye	For
White	For
Wilson	For
Wright	For

Vote: 26 - For, 3 - Against

Re: Amendment to By-Law 30 Re: Libraryco. Inc.

It was moved by Ms. Cronk, seconded by Messrs. Manes and Cherniak that the following proposed amendments to By-Law 30 be approved.

THE LAW SOCIETY OF UPPER CANADA

BY-LAW 30
[COUNTY LAW LIBRARIES]

made under the
LAW SOCIETY ACT

THAT By-Law 30 [County Law Libraries], made by Convocation on June 23, 2000, be amended as follows:

1. Paragraph 2 of subsection 3 (2) of the By-Law is amended by adding "Law" before "Presidents'".

1. Subsection 6 (2) of the By-Law is amended by adding "Subject to subsection (3)" at the beginning.

2. Section 6 of the By-Law is amended by deleting subsections (3) and (4) and substituting the following:

Same

(3) Library materials acquired by an association for its county law library after the day on which the Corporation is established shall be held by the trustees of the association in trust for the Corporation.

Return of library materials to Society

(4) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Society to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Society to the Society, subject to any other directions from the Society.

Return of library materials to Corporation

(5) In case of the dissolution or winding-up of an association, the disposal of the property of an association or a direction from the Corporation to return to it the library materials of an association's county law library that are held in trust for it, the trustees of the association shall, at the expense of the association, return all library materials of the association's county law library that are held in trust for the Corporation to the Corporation, subject to any other directions from the Corporation.

Failure to return library materials

(6) If the trustees of an association do not return the library materials of the association's county law library to the Society, as required under subsection (3), or to the Corporation, as required under subsection (3.1), the Society or the Corporation, as the case may be, may take such steps as it considers advisable to obtain the library materials that were required to be returned to it, and the association shall reimburse the Society or the Corporation for any expense incurred by it in so doing.

Carried

REPORTS DEFERRED

The following Reports were deferred:

Report of the Professional Regulation Committee
Report on the Federation of Law Societies' Mid-Winter Meeting

CONVOCATION ROSE AT 6:05 P.M.

Confirmed in Convocation this 26th day of April, 2001

Treasurer