

## MINUTES OF CONVOCATION

Thursday, 28<sup>th</sup> May, 2009  
9:00 a.m.

## PRESENT:

The Treasurer (W. A. Derry Millar), Aitken (by telephone), Backhouse, Banack (by telephone), Boyd (by telephone), Braithwaite, Bredt, Campion (by telephone), Caskey, Chahbar, Conway, Crowe, Daud (by telephone), Dickson, Dray, Elliott, Epstein, Furlong, Go, Gold, Hainey, Hartman, Heintzman, Henderson, Lawrie, Lewis, Marmur, McGrath, Minor, Murray, Pawlitza, Porter, Potter, Pustina, Rabinovitch, Robins, Ruby, Sandler, Sikand, Silverstein, Simpson, C. Strosberg, Swaye, Symes, Topp, Tough, Wardlaw and Wright.

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Secretary: Katherine Corrick

The Reporter was sworn.

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IN PUBLIC

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ELECTION OF TREASURER

The Secretary announced that after the close of nominations at five p.m. on May 14, 2009, Derry Millar was the only candidate nominated for Treasurer. The Secretary declared Derry Millar elected as Treasurer.

TREASURER'S REMARKS

The Treasurer thanked Malcolm Heins, the senior management team, Deidre Rowe Brown, Sarah Cloutier and all the staff for their help and support.

Condolences were extended to the family of the Honourable David G. Humphrey, Q.C. who passed away on May 17, 2009. A celebration of Mr. Humphrey's life will be held in Convocation Hall on May 29.

The Treasurer announced the following 2009 Honorary Doctor of Laws recipients who will receive their degrees at the June Call to the Bar ceremonies:

Justice Sidney Linden – June 15 (London)  
 George Thomson – June 17 (Ottawa)  
 Justice Harriet Sachs – June 18 (Toronto)  
 Major-General Richard Rohmer – June 18 (Toronto)  
 Justice Frances Kiteley – June 19 (Toronto)

The Treasurer thanked Elise Brunet, the Law Society's Curator, who organized the Toronto Doors Open event and the volunteers who assisted on May 23 and 24.

The Treasurer asked the Professional Development & Competence Committee to consider whether the Law Society should introduce a compulsory professional development requirement and to report to Convocation in September.

#### DRAFT MINUTES OF CONVOCATION

The Draft Minutes of April 30, 2009 were confirmed.

#### MOTION – APPOINTMENTS

It was moved by Mr. Conway, seconded by Ms. Pawlitza, –

THAT Paul Henderson be reappointed and Gerald Swaye be appointed to the LibraryCo Board of Directors commencing May 31, 2009 for a term of one year.

THAT Paul Henderson be appointed a member of the Appeal Panel and the Vice-Chair of the Appeal Panel.

THAT William Simpson be appointed and Susan McGrath be reappointed to the Ontario Bar Association Council commencing June 28, 2009 for a term of two years.

THAT Julian Porter, (Chair), Beth Symes, (Vice-Chair), Glenn Hainey, Brian Lawrie and Alan Silverstein be reappointed to the Proceedings Authorization Committee for a term of one year, commencing June 26, 2009.

Carried

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IN CAMERA

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## IN CAMERA Content Has Been Removed

IN PUBLIC

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The Treasurer announced that Margot Blight, Howard Ungerman, Adriana Doyle, Jacques Ménard and Sarah Walker have been appointed to the Hearing Panel and Kim Bernhardt has been appointed to the Ontario Judicial Council.

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

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

The Director of Professional Development and Competence reports as follows:

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

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

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

All candidates now apply to be called to the bar and to be granted a Certificate of Fitness on  
Thursday, May 28, 2009.

ALL OF WHICH is respectfully submitted

DATED this 28th day of May, 2009

## CANDIDATES FOR CALL TO THE BAR

May 28th, 2009

Ageliki Apostolakos  
Claire Sadaat Ezzeddin  
Meghan Candice Jones  
Shafik Mina  
Julien Henri Laurent Morissette  
John Iltyd Strickland Nicholl  
Veronica Nicole Rita Pagenel  
Amélie Proulx  
Kirkland Gilmour Shannon  
Nadine Sarah Silverman  
Michael Adam Smith

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

Carried

PARALEGAL STANDING COMMITTEE REPORT

Mr. Dray presented the Paralegal Standing Committee Report.

Report to Convocation  
May 28th, 2009

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Paralegal Standing Committee

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

Purpose of Report: Decision  
Information

Prepared by the Policy Secretariat  
Julia Bass 416 947 5228

## TABLE OF CONTENTS

For Decision

Paralegal Oath..... TAB A

For Information

Collection of Demographic Information on the Paralegal Annual Report ..... TAB B

## COMMITTEE PROCESS

1. The Committee met on May 14th, 2009. Committee members present were Paul Dray, Chair, Susan McGrath (Vice-chair), Marion Boyd, James Caskey, Seymour Epstein, Michelle Haigh, Glenn Hainey, Paul Henderson, Brian Lawrie, Doug Lewis, Margaret Louter, Stephen Parker and Cathy Strosberg. Bencher Alan Silverstein joined the meeting for the discussion of the paralegal oath. Staff members in attendance were Terry Knott, Zeynep Onen, Elliot Spears, Katherine Corrick, and Julia Bass.

### FOR DECISION

### PARALEGAL OATH

Motion

2. That Convocation approve the oath for paralegals shown below.

Background

3. The Professional Development & Competence Committee established a Working Group to consider and make recommendations on revised oaths for both lawyers and paralegals. The Working Group reported to the Professional Development & Competence Committee in April. Their report is attached to the report of the Professional Development & Competence Committee, as Appendix 1 to that report (at TAB 7 of this volume).
4. The Professional Development & Competence Committee approved the oaths recommended by the Working Group, which are attached at Appendix 1. The two oaths are the same except for the first sentence.
5. The proposed oath for paralegals was also submitted to the Paralegal Standing Committee for approval.

### The Committee's Deliberations

6. The Paralegal Standing Committee appreciated the work undertaken by the Working Group, and approved the content of the obligations set out in the main body of the oath. However, the Committee regarded the different first sentences as an unnecessary distinction given the important role of paralegals in providing legal services to Ontarians and thus enhancing access to justice.
7. The Committee approved the oath with an amended first sentence (shown in italics) as follows:

*I accept the honour and privilege, duty and responsibility of providing legal services as a paralegal in the Province of Ontario.*

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.

I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.

I shall seek to ensure access to justice and access to legal services.

I shall champion the rule of law and safeguard the rights and freedoms of all persons.

I shall strictly observe and uphold the ethical standards that govern my profession.

All this I do swear to observe and perform to the best of my knowledge and ability.

### APPENDIX 1

#### PROPOSED OATHS APRIL 2009

##### Paralegals

I undertake to perform all of the duties and fulfill all of the obligations required of a Paralegal in the Province of Ontario.

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.  
 I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.  
 I shall seek to ensure access to justice and access to legal services.  
 I shall champion the rule of law and safeguard the rights and freedoms of all persons.  
 I shall strictly observe and uphold the ethical standards that govern my profession.  
 All this I do swear to observe and perform to the best of my knowledge and ability.

#### Barristers and Solicitors

I accept the honour and privilege, duty and responsibility of practicing law as a Barrister and Solicitor in the Province of Ontario.  
 I shall protect and defend the rights and interests of such persons as may employ me.  
 I shall conduct all cases faithfully and to the best of my ability.  
 I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.  
 I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.  
 I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.  
 I shall seek to ensure access to justice and access to legal services.  
 I shall champion the rule of law and safeguard the rights and freedoms of all persons.  
 I shall strictly observe and uphold the ethical standards that govern my profession.  
 All this I do swear to observe and perform to the best of my knowledge and ability.

### FOR INFORMATION

#### DEMOGRAPHIC DATA ON THE PARALEGAL ANNUAL REPORT

8. At the meeting in April, the Committee approved in principle the collection of demographic information on the Paralegal Annual Report ('PAR'), as put forward in the Report of the Equity and Aboriginal Issues Committee.

#### Re: Proposed Paralegal Oath

It was moved by Ms. McGrath, seconded by Mr. Caskey, that Convocation approve the oath for paralegals set out in the Report.

Not Put

It was moved by Mr. Epstein, seconded by Mr. Wright, that the Report be tabled.

Withdrawn

It was moved by Mr. Heintzman, seconded by Ms. McGrath, that the following sentence be added to both the lawyer and paralegal oaths after the sentence "I shall seek to ensure access to justice and access to legal services":

"I shall seek to improve the administration of justice."

Carried

It was moved by Ms. McGrath, seconded by Mr. Caskey, that Convocation approve as amended, the oath for paralegals on page 5 of the Paralegal Standing Committee Report and the oath for lawyers at the bottom of page 6 of the Report.

Carried

#### ROLL-CALL VOTE

Aitken	For	Lawrie	For
Backhouse	For	Lewis	For
Banack	For	McGrath	For
Boyd	for	Marmur	For
Braithwaite	Against	Minor	For
Campion	For	Pawlitza	For
Caskey	For	Porter	For
Chahbar	For	Potter	Against
Conway	For	Pustina	For
Crowe	For	Rabinovitch	For
Daud	For	Robins	For
Dickson	For	Ruby	For
Dray	For	Sandler	For
Elliott	For	Sikand	For
Epstein	For	Silverstein	Against
Go	For	Simpson	For
Gold	For	C. Strosberg	For
Hainey	For	Swaye	Against
Hartman	For	Symes	For
Heintzman	For	Tough	For
Henderson	For	Wright	Against

Vote: 37 For; 5 Against

It was moved by Mr. Wright, seconded by Mr. Silverstein, that the phrase “I shall not refuse causes of complaint reasonably founded...” and the phrase “I shall neglect no one’s interest...” be rewritten together with the use of the word ‘affirm’.

Lost

The Professional Development and Competence Committee Report was not presented as it dealt with the same policy item as in the Paralegal Standing Committee Report.

Report to Convocation  
May 28, 2009

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Professional Development & Competence Committee

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

Purpose of Report: Decision

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

## COMMITTEE PROCESS

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

## DECISION PROPOSED LAWYER AND PARALEGAL OATHS

### MOTION

2. That Convocation approve the following lawyer and paralegal oaths in English and French:

*Barristers and Solicitors*

I accept the honour and privilege, duty and responsibility of practising law as a barrister and solicitor in the province of Ontario.

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.

I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.

I shall seek to ensure access to justice and access to legal services.

I shall champion the rule of law and safeguard the rights and freedoms of all persons.

I shall strictly observe and uphold the ethical standards that govern my profession.

All this I do swear (or affirm) to observe and perform to the best of my knowledge and ability.

*Avocats plaidants et procureurs*

J'accepte l'honneur, le privilège, les devoirs et les responsabilités liés à l'exercice du droit en qualité d'avocat plaidant et de procureur dans la Province de l'Ontario.

Je protégerai et défendrai les droits et les intérêts des personnes qui m'embauchent.

Je conduirai toutes les instances avec fidélité et au mieux de ma compétence.

Je ne négligerai les intérêts de personne, j'assurerai un service fidèle et représenterai avec diligence l'intérêt véritable de mes clients.

Je ne refuserai pas les plaintes dont les fondements sont raisonnables, ni n'intenterai aucune cause frivole.

Je ne détournerai pas la loi pour favoriser ou défavoriser qui que ce soit, mais en toutes choses, j'agirai avec honnêteté, intégrité et politesse.

Je chercherai à assurer l'accès à la justice et aux services juridiques.

Je mettrai de l'avant la primauté du droit et veillerai à respecter les droits et libertés de tous.

Je me soumettrai strictement aux normes de déontologie qui régissent ma profession.

Je jure ou affirme solennellement que je traiterai toutes ces questions au mieux de ma connaissance et de ma compétence.

#### *Paralegals*

I undertake to perform all of the duties and fulfill all of the obligations required of a paralegal in the province of Ontario.

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.

I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.

I shall seek to ensure access to justice and access to legal services.

I shall champion the rule of law and safeguard the rights and freedoms of all persons.

I shall strictly observe and uphold the ethical standards that govern my profession.

All this I do swear (or affirm) to observe and perform to the best of my knowledge and ability.

*Parajuristes*

Je m'engage à exécuter tous les devoirs et les obligations requises d'un parajuriste dans la Province de l'Ontario.

Je protégerai et défendrai les droits et les intérêts des personnes qui m'embauchent.

Je conduirai toutes les instances avec fidélité et au mieux de ma compétence.

Je ne négligerai les intérêts de personne, j'assurerai un service fidèle et représenterai avec diligence l'intérêt véritable de mes clients.

Je ne refuserai pas les plaintes dont les fondements sont raisonnables, ni n'intenterai aucune cause frivole.

Je ne détournerai pas la loi pour favoriser ou défavoriser qui que ce soit, mais en toutes choses, j'agirai avec honnêteté, intégrité et politesse.

Je chercherai à assurer l'accès à la justice et aux services juridiques.

Je mettrai de l'avant la primauté du droit et veillerai à respecter les droits et libertés de tous.

Je me soumettrai strictement aux normes de déontologie qui régissent ma profession.

Je jure ou affirme solennellement que je traiterai toutes ces questions au mieux de ma connaissance et de ma compétence.

**Background**

3. At the Annual General Meeting in May 2008 members brought a motion calling for a change to the oath lawyers take upon call to the bar. The motion passed.
4. The Committee established a working group of Heather Ross (Chair), Susan Hare and Alan Silverstein to consider a new oath. In November 2008 the Committee provided a proposed lawyer oath to Convocation for its consideration. Convocation made a number of suggestions and referred the matter back to the Committee and its working group.
5. Among the issues Convocation discussed was whether lawyers and paralegals should swear or affirm the same oath. The working group, now composed of Alan Silverstein (Chair), Susan Hare and Brian Lawrie met again to consider the issues.
6. The working group provided its report and proposed oaths to the Committee in April. The working group's report is set out at Appendix 1. The Committee approved the working group's recommendation at its April meeting.
7. The Paralegal Standing Committee considered the working group's report at its meeting on May 14, 2009. Its deliberations are set out in its Report to Convocation.

## WORKING GROUP REPORT

## PROPOSED LAWYER AND PARALEGAL OATHS

1. On November 27, 2008 Convocation discussed the Committee's report on the proposed oath for lawyers on their call to the bar.
2. Benchers provided feedback to the working group, including the following comments for the Committee's guidance:
  - Address access to justice and pro bono.
  - Address the role of solicitors – for example addressing the need to improve the administration of justice.
  - Mention "lawyer" or "barrister and solicitor."
  - Refer to integrity and honesty.
  - The oath should be aspirational.
  - The proposed oath is not as solemn, dignified or clear as its predecessor and is not directed to lawyers; rather it is directed to the public at large.
  - Lawyers and paralegals should swear the same oath only difference being "practice of law" and "provision of legal services."
3. The Treasurer also agreed that there should be one oath for both paralegals and lawyers to reflect that lawyers and paralegals have the same professional obligations. The oaths should be identical, other than addressing the point that each profession has different scopes of practice.
4. Comments and concerns were also expressed directly to members of the working group. The Treasurer expressed concern regarding the omission of the "cab rank rule," which refers to the obligations of both lawyers and paralegals to accept any work in a field in which he or she is competent.
5. Improving the administration of justice was also emphasized in the comments made at Convocation and to the working group.
6. Additional matters were raised at the February 12, 2009 Professional Development & Competence committee meeting. Some members disagreed with the view that there should be a single oath for lawyers and paralegals. It was suggested that it might be appropriate to maintain the oath's historic language. It was suggested that the language of the pre-2007 oath could be "cleaned up" or "tweaked," but that it was unnecessary to start anew.
7. The working group, now composed of Alan Silverstein (chair), Susan Hare, and Brian Lawrie, met on Thursday, February 26, 2009 and considered all of the above information, including the pre-2007 oaths, the current oath, and the various proposed oaths. Lisa Mallia also attended the meeting.

#### Additional Context for the Discussion

8. The working group notes that the final stage of the licensing process is different for lawyers and paralegals, also reflecting the historic tradition of barristers and solicitors in the province versus the recent introduction of paralegal regulation. Lawyers have a formal call to the bar ceremony where the oaths are administered before benchers of the Law Society. Paralegals submit licensing documentation, including confirmation from a judge, lawyer or Commissioner for taking Oaths that the paralegal swore or affirmed the oath before him or her.
9. In considering whether there should be one or two oaths a number of people asserted that only doctors take the Hippocratic oath, with other regulated health professionals doing something different. The working group inquired about oaths from the College of Physicians and Surgeons, the College of Nurses of Ontario, The Ontario College of Pharmacists, the Institute of Chartered Accountants of Ontario and the Ontario Association of Architects.
10. With the exception of the Ontario Association of Architects, none of these professionals swears an oath. The medical profession does not take the Hippocratic oath. The Architects sign a declaration that they have access to and knowledge of the documents that govern their profession and agree to comply with the Architects Act. The text of the declaration is set out at TAB 1.

#### Working Group Discussion

11. For assistance and background, the previous and current oaths are set out at TAB 2. The Secretary's Report to Convocation regarding the Annual General Meeting Motion is included at TAB 3.
12. In reviewing the concerns originally expressed in the motion brought to the May 2008 AGM and the comments made at Convocation and the PD&C Committee meeting, the working group agrees that it is appropriate to include some of the historic language of the traditional barristers' and solicitors' oaths, modernized where necessary (e.g. to delete champerty and maintenance).
13. The working group also acknowledges that,
  - a. barristers and solicitors in Ontario are members of a "fused" bar and that maintaining two separate oaths is an artificial divide between lawyers; and
  - b. an oath sworn by an individual ought to be spoken from that individual's perspective. In this way the oath could more appropriately balance positive and negative statements in order to arrive at an aspirational statement.
14. The working group has concluded that lawyers and paralegals owe the same standards of service and duties set out in the Rules, and that such duties are owed to all participants in the justice system: clients, other lawyers/paralegals, the judiciary and other adjudicators, and the public. The purpose of an oath is to remind those taking it of these standards and duties and the commitment they are making. From a regulatory perspective, the oaths should mirror each other so that it is clear that lawyer and paralegal duties are the same, within their respective spheres.

15. The working group is of the view, however, that it would be appropriate to recognize that the practice of law has a long history and a strong sense of tradition that the oath should reflect. Similarly the working group has concluded that the uniqueness of paralegals and their distinction at being the first group to be regulated in Canada ought not to be diminished.
16. For these reasons the opening sentence of each oath reflects the professional and legal distinction between lawyers and paralegals, while the remaining paragraphs reflect the common duties and responsibilities owed to clients, the judiciary, the public and the profession.
17. The working group sets out the following oaths for the Committee's consideration and if appropriate recommendation to Convocation:

*Barristers and Solicitors*

I accept the honour and privilege, duty and responsibility of practicing law as a barrister and solicitor in the province of Ontario.

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.

I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.

I shall seek to ensure access to justice and access to legal services.

I shall champion the rule of law and safeguard the rights and freedoms of all persons.

I shall strictly observe and uphold the ethical standards that govern my profession.

All this I do swear to observe and perform to the best of my knowledge and ability.

*Paralegals*

I undertake to perform all of the duties and fulfill all of the obligations required of a paralegal in the province of Ontario.

I shall protect and defend the rights and interests of such persons as may employ me.

I shall conduct all cases faithfully and to the best of my ability.

I shall neglect no one's interest and shall faithfully serve and diligently represent the best interests of my client.

I shall not refuse causes of complaint reasonably founded, nor shall I promote suits upon frivolous pretences.

I shall not pervert the law to favour or prejudice any one, but in all things I shall conduct myself honestly and with integrity and civility.

I shall seek to ensure access to justice and access to legal services.

I shall champion the rule of law and safeguard the rights and freedoms of all persons.

I shall strictly observe and uphold the ethical standards that govern my profession.

All this I do swear to observe and perform to the best of my knowledge and ability.

TAB 1

Content of declaration required for Architects in Ontario.

Declaration

I DO SOLEMNLY DECLARE:

THAT I am applying for a Licence under the *Architects Act* of the Province of Ontario;

THAT in regard to the documents listed in Appendix "1" of the Guidelines for Completion of an Application for Licence, I have and will continue to maintain:

- (a) the OAA Official Documents
- (b) unrestricted access to all other listed documents
- (c) general knowledge of the contents of the documents identified by the superscript 1
- (d) specific knowledge of the contents of the documents identified by the superscript 2

THAT I agree to comply with the *Architects Act*, the Regulation and By-Laws, all as amended;

THAT I understand that only a holder of a Certificate of Practice is permitted to offer and/or provide to a member of the public a service that is part of the practice of architecture;

THAT the facts set out in this application for License are true and correct in every particular;

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath

---

Signature of applicant

date

## Previous and Current Oaths

### Definition:

1. An oath has been variously defined as follows:

oath (noun) a solemn promise, especially one that calls on a deity as a witness

Source: Oxford English Dictionary

oath (from the Anglo-Saxon *āo*, *also called plight*) is either a promise or statement of fact calling upon something or someone that the oath-maker considers sacred, usually a god, as a witness to the binding of the promise or the truth of the statement of fact. To swear is to take an oath.

Source: Wikipedia

oath of office. An oath taken by a person about to enter into the duties of public office, by which the person promises to perform the duties of that office in good faith.

Source: Black's Law Dictionary (7th ed.)

### Current Oath of Office for Lawyers:

2. The current Oath of Office for Lawyers is as follows:

I swear (or affirm) that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the *practice of law* in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.

3. The current oath for paralegals is as follows:

I swear (or affirm) that I will conduct all matters and proceedings diligently and faithfully and to the best of my knowledge and ability. I will not seek to destroy any person's property. I will not promote suits upon frivolous pretences. I will not pervert the law to favour or prejudice any person. In all things, I will conduct myself truly, honestly and with integrity. I will abide by the standards and rules governing the *provision of legal services* in the Province of Ontario. I will seek to improve the administration of justice. I will uphold the rule of law and I will uphold the interests, rights and freedoms of all persons according to the constitution and the laws of Canada and of the Province of Ontario.)

### Former Oaths:

4. Prior to the revision to the oath creating one lawyers' oath from what historically were two oaths—the Barrister's Oath and the Solicitors' Oath—the oaths read as follows:

### Barrister's Oath

You are called to the Degree of Barrister-at-law to protect and defend the rights and interests of such citizens as may employ you. You shall conduct all cases faithfully and to the best of your ability. You shall neglect no one's interest nor seek to destroy any one's property. You shall not be guilty of champerty or maintenance. You shall not refuse causes of complaint reasonably founded, nor shall you promote suits upon frivolous pretences. You shall not pervert the law to favour or prejudice any one, but in all things shall conduct yourself truly and with integrity. In fine, the Queen's interest and the interests of citizens you shall uphold and maintain according to the constitution and law of this Province. All this you do swear to observe and perform to the best of your knowledge and ability. So help you God. (or you so affirm.)

### Solicitor's Oath

You also do sincerely promise and swear that you will truly and honestly conduct yourself in the practice of a solicitor according to the best of your knowledge and ability. So help you God. (or you so affirm).

TAB 3

Secretary's Report to Convocation  
November 27, 2008

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### Annual General Meeting Motion

Purpose of Report: Information

Prepared by: Katherine Corrick

### INFORMATION

#### MOTION CARRIED AT THE LAW SOCIETY'S ANNUAL GENERAL MEETING

#### Background

1. The Law Society of Upper Canada held its Annual General Meeting on May 7, 2008.
2. The following motion was carried at the meeting.

Whereas By-Laws of the Law Society of Upper Canada (LSUC) have been changed such that the LSUC no longer has members but, instead, licensees,

Whereas it is demeaning to lawyers to be treated as a class of licensee,

Whereas a society by definition must have members,

Whereas it was unnecessary to change the name and content of the barristers' oath or to administer substantially the same or any oath to paralegals, whose qualifications are substantially different from those of lawyers,

Whereas the L1 licensees' oath makes no mention of lawyers' duty to try to ensure access to justice by all or of champerty and maintenance, and whereas the new requirement to "improve the administration of justice" is a vague and incomplete substitution, and

Whereas these changes were made without consultation with the members, let alone their consent,

Be it resolved that the Benchers of the Law Society of Upper Canada (LSUC) immediately take steps to amend the By-Laws of the LSUC such that lawyers are again called "lawyers" or "barristers and solicitors" and not "licensees" and lawyers who are in good standing in Ontario are again called "members."

Be it further resolved that the Benchers of the Law Society of Upper Canada (LSUC)

- (a) immediately take steps to amend By-Law 4, section 21(1) by restoring the traditional barristers' oath and requiring that it be administered only to admittants to the bar and not in any form to paralegals, and
- (b) refrain from changing the traditional barristers' oath once restored unless they consult the CJO and all members of the LSUC (which is to say all lawyers in good standing in Ontario), inform the members of the views presented, and propose and permit members to propose changes at annual general meeting of the LSUC.

- 3. Section 42 of By-Law 2 requires that the motion be communicated to Convocation at its first regular meeting after the annual general meeting and that the motion be considered by Convocation within six months of the meeting.
- 4. Section s. 42(2) of By-Law 2 provides that the motion is not binding on Convocation.

Use of the word "licensee"

- 5. It is incorrect to state, as it does in the motion, that "the Law Society of Upper Canada no longer has members, but instead licensees." It is further incorrect to assert that lawyers are no longer barristers and solicitors. Lawyers remain barristers and solicitors and remain members of the Law Society of Upper Canada pursuant to sections 1.1(2) and 2(2)(c) of the *Law Society Act*. That was not changed by the Law Society's by-laws.

6. The Law Society is bound by the language in the Act when drafting its by-laws as it derives its authority for making its by-laws from section 62(0.1) and (1) of the *Law Society Act*. These sections of the Act follow the language of the rest of the Act and use the word “licensee.”
7. In response to the motion that Convocation amend the Law Society’s by-laws to eliminate the use of the word “licensee” in reference to lawyers, then Treasurer Gavin MacKenzie informed Convocation on May 22, 2008 that despite the fact that the drafters of the *Law Society Act* adopted the word “licensee” as a collective noun to refer to both lawyers and paralegals, Mr. Heins had instructed Law Society staff to use the terms “lawyers” and “paralegals” whenever possible.
8. A great deal of effort was required to change the nomenclature of “licensee” within the operation of the Law Society. The Law Society’s web site, database and regular modes of communication had been changed to accommodate the word “licensee” in preparation for the implementation of paralegal regulation. After May 22, 2008, all public systems, forms and documents, including the Law Society’s web site were amended. This included such forms as the Complaint Form, Lawyer Referral Service invoices, the annual fee billing form, and the Members Annual Report. The Online Lawyer and Paralegal Directory was changed. Online Frequently Asked Questions were amended. The Ontario Lawyers Gazette, the Ontario Reports, and the Annual Report were also changed.

#### The Lawyers’ Oath

9. In April 2008, a working group of the Professional Development and Competence Committee was established to review the oath candidates for call to the bar are required to take.
10. The working group reported to the Professional Development and Competence Committee at its meeting in November. The Committee will be reporting to Convocation on the issue of the lawyers’ oath on November 27, 2008.

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FINANCE COMMITTEE REPORT

Report to Convocation  
May 28, 2009

Finance Committee

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

Purpose of Report: Decision  
Information

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

TABLE OF CONTENTS

For Decision

In Camera Item ..... TAB A

Capital Expenditures - South Wing Perimeter Piping and North Wing

Washrooms..... TAB B

For Information..... TAB C

Capital Expenditures Update on Facilities 2009 Capital Spending

Future of the J.S. Denison Trust Fund

COMMITTEE PROCESS

1. The Finance Committee (“the Committee”) met on May 14, 2009. Committee members in attendance were: Carol Hartman (Chair), Chris Bredt (Vice Chair), Raj Anand, Jack Ground, Janet Minor, Judith Potter, Paul Schabas, Gerald Swaye and Brad Wright (conference).
2. Staff attending were Wendy Tysall, Malcolm Heins, Terry Knott and Fred Grady.

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FOR DECISION  
CAPITAL EXPENDITURES - SOUTH WING PERIMETER PIPING AND  
NORTH WING WASHROOMS

Motion

11. The Finance Committee recommends that Convocation approve the South Wing Perimeter Piping project with funding to be provided from the Capital Allocation Fund balance and the North Wing Washroom project with funding to be provided from within the 2009 capital budget.

South Wing Perimeter Piping Project

12. An investigation has been performed by consulting engineers to determine the condition of the chilled and heating water piping serving the South Wing perimeter fan coil units. Water marks and mould have started to develop on the insulation covering the chilled water piping. In addition, several sections of pipe needed to be replaced because they started to fail due to corrosion.
13. The chilled water pipes are over 30 years old and the heating pipes are over 40 years old. There is approximately 2,130 feet of cold water piping and 1,300 feet of hot water piping that need replacement.
14. The chilled water pipes are wrapped with a vapour barrier which has not prevented condensation on the pipes from occurring during operation. The moisture within the insulation wrap has provided the environment for the growth of mould. Mould can be seen on the exterior of the chilled water insulation in several locations on the basement level. In addition to the mould, this condensation has led to various degrees of corrosion on the pipes.
15. The chilled water pipes need to be replaced immediately. The Consultant has reported that the heating water pipes, although older, are in relatively good condition. Due to the age of the heating water pipes, it is considered worthwhile to replace these at the same time as the chilled water pipes.

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### CAPITAL EXPENDITURES

#### North Wing Washroom Project

19. In planning for our 2009 capital projects, an amount of \$105,000 was initially budgeted, based on preliminary estimates of the work involved, for refurbishment of the lower level washrooms in the north wing. After a detailed inspection and input from a designer, we now find that a number of other considerations (outlined below) also need to be addressed. Fortunately, the savings we have been able to realize in other areas will allow us to undertake this project at a revised cost of \$201,000, while remaining within our allotted 2009 budget.
20. Some particular factors relevant to the project are:
  - This is an area of very heavy traffic. These washrooms are used not only by staff and casual visitors to the Law Society, also by the 7,400 participants in our CLE events at the Lamont Learning Centre as well as by the 33,275 “Lawyers Feed the Hungry” guests in 2008. Apart from the limited-use facilities on the main floor opposite the Learning Centre, these are the only washrooms available to visitors.

This means that the shortened life cycle of fixtures, and damage from graffiti and vandalism, must also be taken into account. The revised project cost includes the purchase and installation of new toilets and sinks, light fixtures and the replacement of the tiles and counters.

- There are only two wheelchair-accessible washrooms readily available to visitors: one opposite the Lamont Learning Centre, and another at the north end of the cafeteria. Although renovating the existing men's washrooms in the basement to accessible standards would be impractical at this time (as users must climb a series of stairs to reach the area), the women's facilities have no such barrier and will be made accessible as part of the project cost quoted above.
- Usage volumes are now at the point where concerns about air quality and circulation are becoming significant priorities. These issues will be addressed as well, with upgraded ventilation in both the men's and women's washrooms.

FOR INFORMATION  
CAPITAL EXPENDITURES  
UPDATE ON FACILITIES 2009 CAPITAL SPENDING

21. An update on Facilities Capital Projects expenditures for 2009 is set out below.
22. 2009 expenditures are well within our allocated capital budget for the year to date. A number of projects have come in significantly below our original estimates, due to changing market conditions and other factors. For example,
  - The amount budgeted for a restoration of the concrete steps leading into the Bencher's area was originally estimated at \$100,000. However, after consultation with our Architect, he thinks that the stairs do not need full replacement – but rather can be repaired at a cost of \$30,000.
  - Another example of cost savings have been with the estimated cost of replacing the carpet in the Lamont Learning Centre. We have negotiated a direct buy with the carpet mill and as a result have saved \$30,000.
  - We also budgeted \$100,000 for renovations associated with the implementation of alternative work strategies. Cost savings were realized in this area as well, due to a strategic decision to implement the program somewhat less aggressively than was originally anticipated.
23. Total projected savings for projects in progress are approximately \$400,000, with a proposal that approximately \$100,000 of these savings be allocated to the north wing washroom refurbishment described above. The balance of the savings, approximately \$300,000 is available to be applied to the emergency repair of water pipes in the south wing described above.
24. The original approved capital budget and the cost savings for 2009 are set out below:

2009 PROJECTS - Approved by Convocation in November 2008					
Project Description	2009 Budget	(Savings)/ Increase	Amended Requirement	Spent / Committed	Spending to Complete
CONTINGENCY	250,000	(150,000)	100,000	50,250	49,750
ALTERNATIVE WORK STRATEGIES	100,000	(50,000)	50,000	-	50,000
CONCRETE RESTORATION-BENCHERS	100,000	(70,000)	30,000	-	30,000
ROOF REPLACEMENT	100,000	(50,000)	50,000	-	50,000
CARPET REPLACEMENT-LAMONT CTR	80,000	(30,000)	50,000	-	50,000
HEAT,WATER & PUMP REPLACEMENT	60,000		60,000	54,990	5,010
CARPET REPLACEMENT-2ND FLOOR	60,000		60,000	36,925	23,075
HANDICAP ELEVATOR UPGRADE	50,000		50,000	3,710	46,290
HISTORIC FENCE RESTORATION	50,000		50,000	3,700	46,300
REPLACE EXTERIOR ENTRANCE DOOR	50,000		50,000	-	50,000
MALE BENCHERS ROBIN ROOM	45,000		45,000	-	45,000
MAIN KITCHEN ELECTRICAL PANEL	35,000		35,000	2,900	32,100
REPLACE MAIN SPRINKLER VALVES	25,000		25,000	-	25,000
UPGRADE CAFETERIA KITCHEN	25,000		25,000	-	25,000
ELECTRICAL UPGRADES-3RD FLOOR	25,000		25,000	-	25,000
PATCHING AND PAINTING	25,000		25,000	3,090	21,910
REPLACE BENCHERS DISHWASHER	20,000		20,000	7,738	12,262
REPLACE MAIN KITCHEN ISLAND	20,000		20,000	20,527	(527)
REPAIR BENCHER DOME	20,000		20,000	-	20,000
CONVOCATION HALL BRIDGE REPAIR	20,000		20,000	-	20,000
HEATING UNIT INSTALLATION	15,000		15,000	9,800	5,200
Total Facilities Capital Budget Approved for Fiscal 2009	1,175,000	(350,000)	825,000	193,630	631,370

2008 PROJECTS TO BE COMPLETED					
Project Description	2008 Carry forward	(Savings)/ Increase	Amended Requirement	Spent / Committed	Spending to Complete
ELECTRONIC SECURITY SYSTEM	24,565		24,565	-	24,565
ROOF REPLACEMENT (Window	94,538	(47,552)	46,986	-	46,986
CONSULTING SERVICES	66,684		66,684	-	66,684
SMALL DINING & MUSEUM RM	212,242		212,242	-	212,242
WASHROOM UPGRADES	105,000	96,178	201,178	-	201,178
HEAT PUMP CONNECTIONS	11,885		11,885	-	11,885
ACCESSIBLE MEMBERSHIP	65,000		65,000	-	65,000
UPGRADE CAFETERIA/DNRM	11,670		11,670	-	11,670
WALKWAY RESTORATION	25,000		25,000	-	25,000
COMPRESSOR/AIR PUMP	5,150		5,150	-	5,150
Total Facilities Capital Budget Carried Forward from 2008	621,734	48,626	670,360	-	670,360
2009 Facilities Capital Available	1,796,734	(301,374)	1,495,360	193,630	1,301,730

FOR INFORMATION  
FUTURE OF THE J.S. DENISON TRUST FUND

25. The Committee received an update and considered options for the future of the Denison Fund. The consensus of the Committee was to allow the fund to continue to pay grants in accordance with the terms of the J.S. Denison will until the fund is exhausted.
26. In February 2009, the Committee reviewed material related to the future of the Denison Fund. The Committee concluded that the Law Society Foundation ("LSF") should be asked whether it would take over the funding and administration of the Denison Fund or a similar version of such a fund.
27. The LSF considered the matter at their Trustees' meeting in April. The Trustees decided the LSF would not take over the Denison Fund as it would need to expand its objects as well as vary Mr. Denison's will, with the later resulting in significant costs especially relative to the size of the fund. In addition, taking on the Denison fund would conflict or distract from the LSF's current core projects.
28. With the transferring of the Denison Fund to the LSF no longer an option, the Denison Fund in its current form, will be exhausted in three to four years based on the present rate of grant applications and a fund balance of \$146,500.

29. A main factor in letting the fund run down is that the need for a Fund as originally envisaged by Mr. Denison may have diminished with the increase, over the years, in social supports available from government and non-government agencies as well as services available through charitable organizations. In addition, for a majority of potential applicants, accepting support payments from the Denison Fund may have a negative impact on their ability to obtain other assistance as it may result in reduced benefits from other available sources due to clawback rules, etc.
30. To be considered as well, is that government and other agencies responsible for assisting impoverished individuals have comprehensive processes and systems in place as well as staff with the appropriate skill sets to allow them to manage providing assistance in an effective and equitable manner. Although Law Society staff applies their best efforts in reviewing and assessing applications, the Law Society does not have a unit staffed by employees with the necessary expertise and training to properly support a program for providing assistance to impoverished individuals.
31. A cap on grants to applicants was previously discussed at the Finance Committee as a means of extending the life of the Fund. However, based on information provided by most grant applicants, relatively small amounts of say \$1,000 or \$2,000 will not be of sufficient assistance to applicants.
32. The consensus of the Committee was to concur with the Finance management recommendation that the Denison Fund continues in its present form until exhausted. The Committee will investigate ways of recognizing Mr. Denison's significant contribution to the Law Society.

Re: Renewal of Lease

It was moved by Ms. Hartman, seconded by Mr. Swaye, that Convocation approve the renewal of the lease at 393 University Avenue commencing May 1, 2010 for a period of ten years.

Carried

Re: Capital Expenditures

It was moved by Ms. Hartman, seconded by Mr. Swaye, that Convocation approve the South Wing Perimeter Piping project with funding to be provided from the Capital Allocation Fund balance and the North Wing Washroom project with funding to be provided from within the 2009 capital budget.

Carried

*Item for Information*

- J. Shirley Denison Fund

EQUITY AND ABORIGINAL ISSUES COMMITTEE/COMITÉ SUR L'ÉQUITÉ ET LES  
AFFAIRES AUTOCHTONES REPORT

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Ms. Minor reported on the activities of the Discrimination and Harassment Counsel for information.

Report to Convocation  
May 28, 2009

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

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

Purposes of Report: Decision and Information

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

## TABLE OF CONTENTS

For Decision

Demographic Data Collection..... TAB A

Human Rights Monitoring Group Report – Request for  
Law Society Intervention (*in Camera*) ..... TAB B

For Information..... TAB C

*Report of the Activities of the Discrimination and Harassment Counsel, July 1 to December 31, 2008 and Summary of Data since January 1, 2003*

Public Education Equality Series Calendar 2009

## COMMITTEE PROCESS

1. The Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones ("the Committee") met on May 14, 2009. Committee members Janet Minor, Chair, Raj Anand, Vice-Chair, Mary Louise Dickson and Beth Symes participated. Nathalie Boutet, representative of the Association des juristes d'expression française de l'Ontario, and Milé Komlen, Chair of the Equity Advisory Group ("EAG"), attended. Chief Executive Officer Malcolm Heins and Equity Advisor Josée Bouchard attended.

## DEMOGRAPHIC DATA COLLECTION

### Motion

2. That Convocation approve the inclusion of the following question in the Member's Annual Report ("MAR") and the Paralegal's Annual Report ("PAR"), beginning in the 2009 MAR and PAR:

*The Law Society is committed to promoting equality and diversity in the legal profession and to enhancing legal services provided by and for Aboriginal, Francophone and equality-seeking communities. The Ontario Human Rights Code and the [insert Rules of Professional Conduct for the MAR and Paralegal Rules of Conduct for the PAR] promote equality on the grounds of race, ancestry, place of origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability. The question is voluntary and the information collected will be kept confidential. The information will only be available in aggregate form and will not be used to identify the demographic identity of individual [insert lawyers for the MAR and insert paralegals for the PAR]. The Law Society is gathering the statistics on the composition of the profession to better understand demographic trends in the profession, to develop programs and initiatives within the mandate of the Law Society and to promote equality and diversity in the profession.*

- Aboriginal (e.g., First Nation, Métis, Inuit)
- First Nations
  - Métis
  - Inuit

- Francophone
- Gay/Lesbian/Bisexual
- Person with Disabilities<sup>1</sup>
- Racialized/Person of Colour /Member of an Ethnic Community
  - African-Canadian, Black Canadian
  - Arab Canadian
  - Chinese Canadian
  - East-Asian Canadian (e.g. Japanese, Korean)
  - Latin American, Hispanic or Latino Canadian
  - South Asian Canadian (e.g. Indo-Canadian, Indian Subcontinent)
  - South-East Asian Canadian (e.g. Vietnamese, Cambodian, Thailand, Philippines)
- Religion or Creed that you believe is subject to unfair treatment
  - o Please specify your religion \_\_\_\_\_
- Transgender/Transsexual
- Other (Please specify) \_\_\_\_\_
- I do not identify with any of these personal characteristics

### Background

3. The Law Society regulates lawyers and paralegals to ensure that every individual who practises law or provides legal services in Ontario meets high standards of learning, competence and professional conduct. The Law Society has a duty to protect the public interest, to maintain and advance the cause of justice, to facilitate access to justice for the people of Ontario, and to act in a timely, efficient manner.<sup>2</sup> Access to justice involves not only how and where one accesses legal services, but from whom legal services are accessed.

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<sup>1</sup> It is suggested that the term “disability” be defined in the explanatory parts of the MAR or PAR. The definition suggested is that of the Ontario *Human Rights Code*, as it applies to the employment context and the provision of services in Ontario. The definition reads as follows:

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997* (“handicap”).

<sup>2</sup> See *Law Society Act*, R.S.O. 1990, c. L.8, ss. 4.1 and 4.2.

4. The Canadian Bar Association in *Touchstones for Change: Equality, Diversity and Accountability* recommended in 1993 that law societies use their membership data and surveys to monitor the access, entry and advancement of law students into the profession.<sup>3</sup>
5. In 1996, the Law Society collected demographic data through the Member's Information Form ("MIF"), the predecessor to the MAR. The MIF included a question about how members describe themselves based on race, religion, disability and other community identities.<sup>4</sup>
6. In 1997, Convocation decided to withdraw the question from the MIF for the following reasons:
  - a. it was considered a "one time" question for the MIF;
  - b. only one-third of the membership answered the question in a form that could be read by the scanning technology used in processing the MIF data, which was not considered a sufficient response to provide meaningful data.<sup>5</sup>

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<sup>3</sup> Report of the Canadian Bar Association Task Force on Gender Equality, *Touchstones for Change: Equality, Diversity and Accountability* (Ottawa: Canadian Bar Association, 1993) ["Touchstones Report"]. The Touchstones Report made the following recommendation with respect to demographic data collection by law societies:

12.8 The Task Force recommends that law societies use their own membership data and additional surveys to monitor the access, entry and advancement of bar admission graduates as well as their professional careers.

<sup>4</sup> The text of the 1996 demographic data collection question was as follows:

**Explanatory Note:** *At present, there is little information, other than anecdotal, by which to measure the progress of minority groups in the profession. Statistical data are necessary in order to fashion solutions or remedies to problems that may arise from discrimination. Accordingly, members are asked to voluntarily answer the following question:*

**How would you describe yourself?** (Note: in addition to one of the categories from 1 through 7, you may additionally note items 8, 9 and/or 10)

1. Caucasian, European Canadian
2. Afro-Canadian, Black Canadian
3. Indo-Canadian, East Indian, South Asian
4. Other Asian Canadian
5. First Nations
6. Blend of races/ethnicities
7. Other race/ethnic origin (please specify) \_\_\_\_\_
8. Disabled
9. Gay/Lesbian

10. Member of a conspicuous religious group

<sup>5</sup> Minutes of Convocation, September 26, 1997, Report of the Professional Regulation Committee.

7. In May 1997, the Law Society unanimously adopted the *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (the “Bicentennial Report”).<sup>6</sup> The Bicentennial Report reviewed the status of women, Francophones, Aboriginal peoples, racialized persons, gays and lesbians and persons with disabilities in the profession and the initiatives the Law Society had taken to address identified barriers. The report made 16 recommendations to promote equality and diversity in areas such as policy development, study and research, licensing, articling and continuing legal education. The Bicentennial Report also made reference to the demographic data collection question in the 1996 MIF as being “necessary to monitor the progress of equality-seeking communities in the legal profession.”<sup>7</sup>
8. Since the initial attempt at demographic data collection more than a decade ago, the Law Society has gathered information from members about their membership in an Aboriginal, Francophone and/or equality-seeking community through various surveys and studies. For example, demographic data is collected of candidates in the Licensing Process, and demographic data has been collected through Law Society studies such as the study of students and lawyers with disabilities<sup>8</sup>, the study of the Sole Practitioner and Small Firm Task Force<sup>9</sup>, the career choices survey<sup>10</sup>, the Aboriginal consultation<sup>11</sup>, the articling consultation<sup>12</sup> and two studies published by professor Fiona Kay entitled, *Diversity and Change: The Contemporary Legal Profession in Ontario*<sup>13</sup> and *Turning Points and Transitions: Women’s Careers in the Legal Profession – A Longitudinal Survey of Ontario Lawyers 1990-2002*<sup>14</sup>. These studies have included questions to participants about their membership in equality-seeking communities.
9. Groups of experts and associations that promote equality and diversity have, in recent months, asked the Law Society to gather demographic data through the MAR and the PAR.

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<sup>6</sup> *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession* (Toronto: Law Society of Upper Canada, May 1997) [“Bicentennial Report”]

<sup>7</sup> *Ibid* at 11.

<sup>8</sup> See *Students and Lawyers with Disabilities – Increasing Access to the Legal Profession* (Toronto: Law Society of Upper Canada, December 2005) at <http://rc.lsuc.on.ca/pdf/equity/studentsandlawyerswithdisabilitiesreport.pdf>.

<sup>9</sup> See the *Final Report of the Sole Practitioner and Small Firm Task Force* (Toronto: Law Society of Upper Canada, March 2005) at <http://www.lsuc.on.ca/media/convmar05solepractitioner.pdf>.

<sup>10</sup> *Career Choice Report* (Toronto: Law Society of Upper Canada, 2008) at <http://rc.lsuc.on.ca/jsp/equity/policies-publications-reports.jsp>.

<sup>11</sup> Results not yet released publicly.

<sup>12</sup> *Articling Consultation* (Toronto: Law Society of Upper Canada, 2007) at <http://rc.lsuc.on.ca/pdf/equity/articlingConsultation.pdf>.

<sup>13</sup> (Toronto: Law Society of Upper Canada, 2004) at <http://rc.lsuc.on.ca/pdf/equity/diversityChange.pdf>

<sup>14</sup> (Toronto: Law Society of Upper Canada, 2004) at <http://rc.lsuc.on.ca/pdf/equity/womenTurningPoints.pdf>.

10. The Equity Advisory Group (the “EAG”) is an example of such a group.<sup>15</sup> The EAG assists the Equity and Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones (the “Equity Committee”) in the development of policy options that promote equality and diversity in the legal profession. As a diverse group of institutional and individual members, the EAG has expressed its belief in demographic data collection as a tool to enhance the development and promotion of relevant equality and diversity initiatives.
11. In May 2008, the then President of the Ontario Bar Association (the “OBA”), Gregory D. Goulin, and the Chair of the OBA’s Equal Opportunity Committee, Arleen Huggins, wrote to then Treasurer Gavin MacKenzie requesting that consideration be given to amending the MAR to include the collection of self-identification demographic data. The letter, presented at Appendix 1, noted in particular that “it is anomalous that members are asked to voluntarily self-identify as to gender on the MAR, but not as to any other significant dimension of identity.” Further, the letter stated that “members of equity-seeking communities leave the profession in disproportionately large numbers. Voluntary data collection would help to provide factual information on differential rates of attrition.”
12. In August 2008, the President of the Canadian Association of Black Lawyers, Frank E. Walwyn, wrote to Treasurer Millar (Appendix 2) to endorse the OBA’s request that the Law Society of Upper Canada amend the MAR to include appropriate voluntary self-identification questions. Mr. Walwyn was of the view that “demographic member data will allow the Law Society to accurately report on trends among its equity seeking members, as well as provide them with support initiatives and assistance to address access to legal education and professional opportunities and the disproportionate rates of attrition among members of these communities.”
13. The Equity Committee is of the view that the collection of demographic data will increase awareness of the changing demographics of the legal professions, which in turn will better enable the Law Society to serve the particular needs of various communities within the professions. Further, demographic data collection will provide useful information for the development of programs and initiatives within the mandate of the Law Society and to promote equality and diversity in the professions.
14. The Paralegal Standing Committee also considered and approved the inclusion of a demographic identity question in the 2009 PAR.
15. This report is divided as follows:
  - a. Rationale;
  - b. Other Law Societies;
  - c. The Canadian Bar Association;
  - d. Diversity within the Public Sector – Ontario and Canada;

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<sup>15</sup> The EAG is comprised of both organizational and individual members that reflect the diversity of the legal profession in Ontario. The organizations that are represented on the EAG include the Advocates’ Society, ARCH Disability Law Centre, Association des jurists d’expression française de l’Ontario, Arab Canadian Lawyers Association, Canadian Association of Black Lawyers, Hispanic Ontario Lawyers Association, Nishnawbe-Aski Legal Services, South Asian Bar Association, and the Women’s Law Association of Ontario.

- e. Other Jurisdictions;
- f. Other Demographic Data Gathering Initiatives by the Law Society;
- g. The MAR and PAR are the Most Appropriate Tools to Collect the Proposed Demographic Data;
- h. Proposed use of the Demographic Data;
- i. Categories for Demographic Data Collection;
- j. Frequently Asked Questions;
- k. Human Rights Obligations;
- l. Privacy Law.

#### Rationale

16. In the course of fulfilling its mandate to govern lawyers and paralegals in the public interest, it is important for the Law Society to be aware of the extent to which the legal professions are reflective of the broader community that they serve. Such awareness is helpful in meeting the needs and interests of the public, and in allowing the Law Society to develop programs to enhance the diversity of the legal professions. The regular collection of demographic data will allow for assessment and analysis of the changing composition of the legal professions, and will better enable the Law Society to meet the needs of its diverse membership.
17. The demographic data currently maintained by the Law Society includes personal characteristics such as age, gender and language. The expansion of this data to include categories such as religion, race and disability will assist in providing a broader picture of the composition of the legal professions. The Law Society also gathers demographic data of candidates in the Licensing Process. However, because the data is not gathered of lawyers or paralegals, the information is of limited use to develop programs and initiatives for the professions.
18. In 1999, the Canadian Bar Association Report on *Racial Equality in the Legal Profession* recognized that “the globalization of the Canadian economy and the changing demographics in Canadian society demand a legal profession that represents our society.”<sup>16</sup> Demographic data collection is a means of measuring the extent to which this demand has been met.

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<sup>16</sup> The Canadian Bar Association report on Racial Equality in the Legal Profession contains two reports, *The Challenge of Racial Equality: Putting Principles into Practice* and *Virtual Justice: Systemic Racism and the Legal Profession* (Ottawa: CBA, 1999). See *The Challenge of Racial Equality: Putting Principles into Practice* at 2.

19. Information as to the composition of the professions would assist in revealing which communities are under-represented in the legal professions and which are now fully represented.<sup>17</sup> The information will also be of assistance to the legal professions, such as law firms, as it will provide a benchmark for comparison. For example, firms that conduct self-identification surveys within their work place will be able to compare their level of representation with the legal professions. To date, in Ontario, the only comparator has been Canada Census data and has been limited to data about gender and about being a member of Aboriginal, racialized and/or Francophone communities. Canada Census data is also only produced every five years.
20. The Law Society of Upper Canada, along with other law societies in Canada, has been a leader in promoting equality and diversity in the legal professions. The issue of demographic data collection of members has been identified by equity advisors of law societies across the country as important in the development of programs and initiatives.

#### Other Law Societies

21. In May 2007 in Toronto, provincial law society equity advisors and harassment and discrimination ombudspersons held their annual meeting to share experiences and discuss strategies for a common approach to promoting equity and diversity in the legal professions.<sup>18</sup> Collecting self-identification data from the membership through annual reporting was identified as a priority.
22. Two provincial law societies already collect annual demographic data from their members: the Nova Scotia Barristers' Society and the Barreau du Québec.

#### *Nova Scotia*

23. The Annual Member Report for the Nova Scotia Barristers' Society includes the following mandatory demographic questions:
  - a. I am a member of the following communities (check all that apply):
    - i. Visible Minority;
    - ii. Aboriginal;
    - iii. Disabled;
    - iv. Gay, Lesbian, Bi-sexual, Transgendered;

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<sup>17</sup> The under-representation of some groups in the legal profession indicates that there is diversity in the legal profession (but that this diversity is noticeably insufficient). Diversity applies to not only *who* is in the profession, but also to the context in which people work and for how long. Consider that

“...the legal profession is not homogenous – there are differences of gender, ethnicity, age and career expectations. Lawyers work full-time, part-time, in the corporate sector, in large, medium, and small firms, in the public sector in governments, and in associations and other non-governmental organizations. Some lawyers work outside “traditional” legal practice, and increasingly, other professionals and paralegals are entering various fields and activities involving law.”

Canadian Bar Association, *Crystal Clear: New Perspectives for the Canadian Bar Association*, (Ottawa: CBA Futures Committee, August 2005) at 9.

<sup>18</sup> There were representatives from the Law Society of Alberta, the Law Society of British Columbia, the Law Society of Manitoba, the Law Society of Saskatchewan, the Law Society of Upper Canada, the Nova Scotia Barristers' Society and the Barreau du Québec.

- b. Do you have primary responsibility for the care of a child or adult dependent?
    - i. Number of Children?
    - ii. Number of Adult Dependents?
24. The questions were asked in the 2007 Annual Member Report on a voluntary basis. Since 2008, the questions are mandatory. All lawyers file their Annual Member Report on-line and the program will not allow them to proceed with the survey unless they answer those questions.
25. In addition, the Category Change Survey of the Nova Scotia Barristers' Society gathers data about why members move from practising status to non-practising status or leave the profession entirely. The information is sought to assist the Nova Scotia Barristers' Society in identifying trends and setting policy priorities for the future of the profession. The survey is anonymous, with all data being reported in aggregate form.

#### *Québec*

26. The Barreau du Québec included demographic data collection questions on its annual membership form for the first time in 2008. The questions were asked on a volunteer basis, and were drafted in French, based on wording used by the Quebec Human Rights Commission. Members were asked to self-identify with the following categories:
- a. Gender;
  - b. Aboriginal;
  - c. Visible Minority;
  - d. Person with a disability.

#### *British Columbia*

27. In September 2008, the Law Society of British Columbia approved a question about whether members are Aboriginal, and if so, whether they are Status or Non-Status Indian, Inuit, Métis, or First Nations Person of North America. The question will be included in the annual practice declaration.

#### The Canadian Bar Association ("CBA")

28. In 1994, the CBA adopted resolution 94-03-A Schedule 4, which states at section 13.9 "That the CBA gather statistics or find other means to track the level of involvement of women in the Association" and at section 13.10 "That the CBA gather statistics or find other means of tracking the level of involvement of minority groups in the Association". Although the CBA has, to date, not implemented the resolution, the Chair of the Ontario Bar Association's Equality Committee has indicated that it is expected to begin implementation in the near future.

#### Diversity within the Public Sector - Ontario and Canada

29. In 2007, the Ontario Public Service ("OPS") asked its employees to voluntarily identify their membership in the "visible minority, disabled, Aboriginal or Francophone" communities, in order to compare these statistics with those of the 2001 Canada Census for the Ontario Labour Force. The results indicated that the Ontario Labour Force was more diverse than the OPS workforce in every category except the representation of Francophones.<sup>19</sup> The next survey of the OPS workforce will be conducted in 2009, and

<sup>19</sup> The full results were as follows:

	Ontario Public Service Workforce	Ontario Labour Force
Members of visible minorities	13%	18.1%

the survey has been expanded to ask for more detailed demographic questions in order to gain more insight into the diversity of the workforce.<sup>20</sup> Additional questions related to service quality, ethics and values, harassment and workplace environment will be asked, along with an expanded dimension of diversity to include age, gender, race, ethnicity, physical and intellectual ability, religion, sexual orientation, education background and expertise.

30. The Department of Justice Canada, along with the Federal Public Service, also conducts self-identification surveys pursuant to its legislative obligations under the *Employment Equity Act*. The purpose of the surveys is to get an accurate profile of the workforce to determine whether it is representative; to identify areas where changes in policies, practices and systems are likely to be most effective in achieving equality; and to bring focus to where there is a need to eliminate barriers. The questions refer to the categories of gender, disability, Aboriginal and/or race.

#### Other Jurisdictions

31. Some jurisdictions outside of Canada have been actively engaged in demographic data collection as part of a strategy to promote equality and diversity in the legal profession. For example, demographic data is collected in the United Kingdom and the United States.

#### *United Kingdom*

32. The Law Society of England and Wales founded in 1925 currently has a membership of 135,000 solicitors. The mandate of the Law Society of England and Wales is to help, protect and promote solicitors from across England and Wales. This is done by negotiating with and lobbying the profession's regulators, government and others, as well as offering training and advice.
33. The Law Society of England and Wales has a Strategic Research Unit that produces research on the population trends of certain equality-seeking communities within the legal profession. The research produced consists of an analysis of trends in the legal profession using data collected via surveys, the Law Society's membership data base as well as from other sources.<sup>21</sup>
34. This research has included various fact sheets which provide insight into certain demographic areas of the solicitor population, such as age, and ethnicity. For example, the 2006 Fact Sheet on Minority Ethnic Solicitors indicates that the long term trend over the past ten years has seen a marked increase in the percentage of practicing solicitors from minority ethnic groups.

Francophones	7%	4.9%
Persons with disabilities	6%	10.7%
Aboriginal persons	2%	1.4%

<sup>20</sup> 2008 *Framework for Action: Diverse Ontario Diverse OPS* (Toronto: Modernization Division, Ministry of Government and Consumer Services, 2008) at 8.

<sup>21</sup> For more information, see <http://www.lawsociety.org.uk/aboutlawsociety/whatwedo/researchandtrends.law>.

### *United States*

35. Although not regulatory bodies, a number of organizations in the United States collect demographic data of the legal profession. For example, the National Association for Legal Career Professionals (“NALP”) has conducted research on racialized communities, women and the gay, lesbian and transgendered communities in the legal profession. Through analysis of data on recent graduates, the NALP Directory on Legal Employers and other sources, NALP is able to provide information on a variety of diversity and demographic topics.<sup>22</sup>
36. In addition to NALP, demographic information is also conducted and assessed by research organizations such as Vault<sup>23</sup> and Catalyst<sup>24</sup>. These activities provide a wealth of information about the diversity of the legal profession, progression and trends.

### *Other Demographic Data Gathering Initiatives by the Law Society*

37. Over the years, the Law Society has supported and/or participated in various initiatives to collect demographic data.
38. Since 1999, the Law Society collects demographic data of candidates in the Licensing Process (and its prior program, the Bar Admission Course) by asking candidates the following voluntary question:
  - a. You have indicated that you consider yourself to be a member of the following communities: Aboriginal, Francophone<sup>25</sup>, Gay/Lesbian /Bisexual, Mature Student, Person with Disabilities, Racialized Community.
39. The stated purpose of the question is as follows: “To help The Law Society of Upper Canada determine whether legal services are provided by and for Francophones, Aboriginal peoples and members of equality-seeking communities, the Professional Development and Competence Committee and the Equity & Aboriginal Issues Committee/Comité sur l’équité et les affaires autochtones are gathering statistics on the candidate composition of the Licensing Process. Although it is not compulsory, the Committees would appreciate your response to this section of the application, if applicable. Identifying information provided is strictly confidential, used for internal Law Society purposes only, and will not be released to anyone without your written consent.”

<sup>22</sup> See [www.nalp.org](http://www.nalp.org). NALP produces a directory of legal employers in both the United States and Canada. The American directory includes demographic information on each firm in the areas of gender, racialized community, persons with disabilities and sexual orientation.

<sup>23</sup> Vault is a career information service that provides detailed information on the professional market place. The services are targeted at students as well as mid-career professionals. The *Vault Guide to the Top 100 Law Firms* is an annual publication ranking law firms in the U.S. in the area of prestige, quality of life, diversity and partner survey. The diversity rankings rate firms in the categories of diversity for women, diversity for minorities and diversity for gays and lesbians. The *Vault Guide* serves as a comparative reference tool for job seekers. See [www.vault.com](http://www.vault.com).

<sup>24</sup> Catalyst is a global organization that works with business and the professions to build inclusive workplaces and expand opportunities for women in business. Catalyst conducts research in the areas of “Women in Leadership,” “Organizational Change and Effectiveness” and “Women of Colour” and “Visible Minorities”. In recent years, Catalyst has published reports relating to the legal profession in Canada in the areas of job flexibility, work-life balance and women in the legal profession. Outside of the legal profession, Catalyst research in Canada has examined the corporate career advancement for visible minorities. See [www.catalyst.org](http://www.catalyst.org).

<sup>25</sup> Francophone was included as a category in 2001.

40. The data has been useful in identifying trends for example of placed and unplaced candidates in articling positions, and whether candidates from equality-seeking communities face more challenges in finding such positions.
41. Gathering demographic data about lawyers and paralegals, will allow the Law Society to gain a fuller understanding of demographic trends in the professions beyond entry into the professions.
42. Beginning in January 2009, the Law Society also conducts surveys of lawyers who change their status categories or their primary business to gather information to better understand trends in the legal professions. Included in the survey is a question about a lawyer's membership in equality-seeking communities. The question is worded to be consistent with the proposed MAR and PAR question, which will allow the Law Society to compare the survey findings with the findings from the MAR.
43. Other examples of demographic data collection by the Law Society through various studies and surveys include the following:
  - a. Fiona Kay, *Turning Points and Transitions: Women's Careers in the Legal Profession* (2004). This report is based on the findings of a 2002 survey of the cohort of lawyers called to the Bar in Ontario between 1975 and 1990 and analyzes the advancements and mobility of women in the legal profession.
  - b. Fiona Kay, *Diversity and Change: The Contemporary Legal Profession in Ontario* (2004). This report is based on a survey of the Ontario legal profession conducted in 2003, which investigates equity and diversity in the legal profession.
  - c. *Students and Lawyers with Disabilities: Increasing Access to the Legal Profession* (2005). This report is based on a study conducted with students and lawyers with disabilities to identify systemic issues faced by persons with disabilities generally and in the legal profession, and to determine what programs and initiatives could be developed to address these issues.
  - d. *Articling Consultation* (2007). This report details the findings of a specific consultation with individuals who had difficulty in securing articling positions within the usual time frame.
  - e. *Career Choices Study* (2008). This report details findings of a 2007 survey of licensing candidates and recently-called lawyers to investigate preferences and experiences of new licensees and those enrolled in the licensing program from their entry into law school to their entry into practice.
  - f. *Aboriginal Consultation* (2006). This consultation project gathered information about the experiences of Aboriginal members of the Law Society during law school, the Bar Admission Course and post-call.
44. Many of the studies referred to above involved random selection of members of the profession. Although they identify demographic trends, regular and systematic collection of data would provide additional insight into various demographic communities within the legal profession.
45. The Law Society also retained Michael Ornstein to conduct demographic analysis in the legal profession based on Canada Census data. Professor Ornstein published two reports for the Law Society. The first, *Lawyers in Ontario: Evidence from the 1996 Census* (1997) relies on data from the 1996 Canada Census to describe the representation of Aboriginal persons, racialized groups, women and Francophones in

the legal profession in Ontario. The report findings “measure the ability of the legal profession to provide effective representation in a society divided by social, cultural, and economic differences, and where the identity of lawyers often matters to clients.”<sup>26</sup>

46. The second report, *The Changing Face of the Ontario Legal Profession, 1971-2001*<sup>27</sup>, is based on 2001 Canada Census data, and discusses the representation of Aboriginal, visible minority and women lawyers in Ontario. Comparisons are made between the 2001 Census data and data from the 1971 to 1996 Censuses.
47. Although the Ornstein reports provide useful information about demographic trends in the legal profession, they differ from the information that would be gathered through the MAR and PAR. The Ornstein reports analyze demographic trends in the legal profession in Ontario and Canada as a whole, based on gender, race, Aboriginal and Francophone communities. The categories in the Canada Census are not as detailed nor as broad as the demographic data collection question that is being proposed. The Ornstein analysis does not extend to, for example, disability and sexual orientation. Also, Canada Census data is collected only every five years and published approximately two years after they are gathered. Finally, Canada Census data does allow for an analysis of the profession based on membership in an equality-seeking community and other information gathered through the MAR and PAR, such as type of work setting, areas of law practice and year of call.

The MAR and PAR are the Most Appropriate Tools to Collect the Proposed Demographic Data

48. As previously mentioned, the rationale for the collection of demographic data is to track the population of members of equality-seeking communities, as well as to identify trends that will inform the development of programs and supports to further diversify the legal professions. Monitoring of these trends is most effective if it is conducted on a regular basis.
49. Currently the Law Society collects information through the MAR and PAR on the practice areas of lawyers and paralegals. The Law Society also maintains information about age, gender and languages spoken. The MAR and the PAR already exist to collect information from the membership on a yearly basis, and the information collected provides insight into the professions. The inclusion of more detailed demographic data collection in the MAR and the PAR would be relatively inexpensive and would be available to the entire professions.
50. In the event that the CBA or the Ontario Bar Association (“OBA”) begins to collect similar demographic information from its members, these results would not be as broad-based as compared to data collected by the Law Society. CBA or OBA members do not comprise the entire pool of legal professionals. The MAR and the PAR on the other hand are distributed to all lawyers and paralegals respectively in the province of Ontario, thus allowing for the possibility of obtaining demographic data from all members of the legal professions. No other legal organization or association has access to the entire pool of legal professionals.

<sup>26</sup> Michael Ornstein, *Lawyers in Ontario: Evidence from the 1996 Census* (Toronto: Law Society of Upper Canada, 1997) at 1 available at <http://rc.lsuc.on.ca/pdf/equity/lawyersInOntario1996.pdf>.

<sup>27</sup> (Toronto: Law Society of Upper Canada, 2004) available at <http://rc.lsuc.on.ca/pdf/equity/ornsteinReport.pdf>

#### Proposed Use of the Demographic Data Information

51. The demographic information collected through the MAR and PAR will be used for purposes related to research, program development and analysis of trends to promote equality and diversity in the legal professions and to enhance legal services provided by and for Aboriginal, Francophone and equality-seeking communities. The information will assist us to better understand demographic trends in the professions, to develop programs and initiatives within the mandate of the Law Society, and to promote equality and diversity in the professions.
52. The question will be voluntary, and the information collected will be kept confidential. The information will only be available in aggregate form and will not be used to identify the demographic identity of individual lawyers or paralegals.
53. The data will be maintained in a secure information system. Access to the information will be restricted to staff members who require access for the purpose of reporting aggregate information and analyzing trends in the professions. Access guidelines will be developed to ensure confidentiality and consistency in access to the data.
54. Information about the demographic composition of the legal professions has been helpful over the years to develop programs such as the following:
  - a. an equity and diversity mentoring program;
  - b. a disability mentoring program;
  - c. public education programs;
  - d. model policies for the profession;
  - e. development of resources for the website; and
  - f. professional development programs for law firms.
55. Adopting a consistent approach to collecting demographic data about the legal professions will increase the Law Society's ability to develop programs based on the composition of the professions. It will also align the Law Society with the work undertaken by other law societies such as Nova Scotia and Quebec.

#### The Categories for Demographic Data Collection

56. The Law Society currently maintains demographic data in the categories of age, gender and languages spoken. The proposed initiative seeks to broaden this to gather further information about individual identity. These identity categories are,
  - a. Aboriginal (e.g., First Nation, Métis, Inuit);
  - b. Francophone;
  - c. Gay/Lesbian/Bisexual;
  - d. Person with Disabilities;
  - e. Racialized/Person of Colour/Member of an Ethnic Community;
  - f. Religion or Creed that you believe is subject to unfair treatment;
  - g. Transgender/Transsexual;
  - h. Other.

57. The categories outlined above were developed and approved by the Equity Committee in consultation with EAG and they have been used, with slight modifications, in various Law Society surveys including the 2007 Bencher Election Survey and the 2006 Career Choices Survey. Further, the Equity Committee and the Access to Justice Committee approved the categories in their Equality and Access to Justice Template.<sup>28</sup>
58. For those who identify as Aboriginal, the category has been further subdivided into categories that are consistent with those in the Canada Census as follows.
- First Nations
  - Métis
  - Inuit
59. For those who identify as Racialized/Person of Colour/Member of an Ethnic Community, the category is further subdivided into categories that are consistent with those in the Canada Census as follows.
- African-Canadian, Black Canadian
  - Arab Canadian
  - Chinese Canadian
  - East-Asian Canadian (e.g. Japanese, Korean)
  - Latin American, Hispanic or Latino Canadian
  - South Asian Canadian (e.g. Indo-Canadian, Indian Subcontinent)
  - South-East Asian Canadian (e.g. Vietnamese, Cambodian, Thailand, Philippines)
60. The proposed subcategories are consistent with subcategories in the Canada Census,<sup>29</sup> but have been reworded slightly.

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<sup>28</sup> Community membership is a consideration that the Law Society applies in its internal policy development through the application of the Equality and Access to Justice Template. The Template assists in identifying the potential impact of initiatives, projects or policies on members of racialized, Aboriginal and Francophone communities.

<sup>29</sup> The Canada Census asks participants to identify their membership in the following racial categories:

- White
- Chinese
- South Asian (e.g. East Indian, Pakistani, Sri Lankan, etc.)
- Black
- Filipino
- Latin American
- Southeast Asian (e.g. Vietnamese, Cambodian, Malaysian, Laotian, etc.)
- Arab
- West Asian (e.g. Iranian, Afghan, etc.)
- Korean
- Japanese

See [www.census2006.ca](http://www.census2006.ca)

### Frequently Asked Questions

61. Most organizations that conduct self-identification questionnaires include frequently asked questions about self-identification to fully inform the respondent of the purpose of the question, the use of the data and other relevant information. Frequently asked questions are presented at Appendix 3 and would be included in the information about the self-identification question.

### Human Rights Obligations

62. The collection, storage and use of demographic data will be in accordance with human rights and privacy legislation.
63. The Ontario Human Rights Commission's *Guidelines for Collecting Data on Enumerated Grounds under the Code*<sup>30</sup> state that data collection and analysis of data based on enumerated grounds is permissible if the data is collected for a legitimate purpose, including ameliorating disadvantage and promoting substantive equality. The Law Society's purpose in collecting data is legitimate in trying to promote equality and diversity in the legal professions and to enhance legal services provided by and for Aboriginal, Francophone and equality-seeking communities.
64. The Commission also states that organizations should set out the sources of the reasonable belief for the necessity of such a program and there should be a rational and objective connection between the nature of the information being collected and its intended use. The Law Society has undertaken numerous research projects over the years that indicate the under-representation of some communities in the legal professions. This has led to the Law Society wishing to take a systemic approach to data collection, one that would not be costly and would allow the Law Society to collect annual and reliable information about the professions. Therefore, there is a rational and objective connection between the nature of the information and its intended use and there is a necessity for the program.
65. The Ontario Human Rights Commission suggests that several measures or safeguards should be taken in order to ensure that the collection and use of demographic data is done in a legitimate and appropriate manner. These measures include,
- a. having a legitimate purpose for the collection;
  - b. having a reasonable belief that collection is necessary;
  - c. informing the public;
  - d. consulting affected communities;
  - e. using the least intrusive method; and
  - f. establishing a rational connection between collection and use.
66. The practical application of these measures to demographic data collection by the Law Society is discussed below.

### *Legitimate purpose for the collection*

67. The Ontario Human Rights Commission states that the collection and analysis of data based on enumerated grounds, such as race, disability or sex is permitted as long as it is for legitimate purposes not contrary to the *Human Rights Code*<sup>31</sup> ("the Code"). Such legitimate purposes include monitoring and evaluating discrimination, identifying and

<sup>30</sup> September 2003, available at <http://www.ohrc.on.ca/en/resources/Guides/data/pdf>.

<sup>31</sup> R.S.O. 1990, c. H.19, s. 14

removing systemic barriers, ameliorating disadvantages and promoting substantive equality.<sup>32</sup> These purposes relate directly to the Law Society's gathering of demographic data as a means of directing the development of policies and initiatives to enhance the diversity of the legal professions. The regular and systemic collection of demographic data through the MAR and the PAR will provide insight into the composition of the professions, which will in turn assist in identifying trends in the attrition and retention rates of members of equality-seeking communities.

68. In addition to providing guidelines for the collection of demographic data, the Ontario Human Rights Commission notes that "data collection based on the grounds of race and disability be undertaken in key public services ... in order to monitor, prevent and ameliorate reported systemic and adverse discrimination."<sup>33</sup>
69. Thus, the collection of demographic data is in keeping with the Law Society's public interest mandate, as the collection of such data would assist in the monitoring, prevention and amelioration of system and adverse discrimination against members of equality-seeking communities.

*Reasonable belief that collection is necessary*

70. The Commission indicates that organizations should have a reasonable belief that collecting the information is necessary. The necessity for a data collection program at the Law Society is underlined by a reasonable belief that some members of equality-seeking communities are under-represented in the legal professions. Demographic data collection will provide insight as to where retention initiatives ought to be focused.

*Inform the public*

71. Human rights legislation requires that the individuals on whom demographic data is being collected, or the broader public in general, be informed as to why such information is being collected and how the collection and use of such data will assist to relieve disadvantage or discrimination and achieve equal opportunity. This information is provided in the proposed MAR and PAR question and will be included in the Frequently Asked Questions.

*Consult affected communities*

72. The Human Rights Commission suggests that where public interest issues are involved consultations should take place with members of the affected communities regarding the need for demographic data collection and the appropriate methodology to be used.<sup>34</sup> The Law Society has consulted with and received feedback from the EAG on the identity categories to be included in the question, as well as identifying the MAR and the PAR as the appropriate places for the collection of demographic data.

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<sup>32</sup> Ontario Human Rights Commission, *Guidelines for Collecting Data on Enumerated Grounds under the Code* (2003) at 2 ["Guidelines for Collecting Data on Enumerated Grounds"].

<sup>33</sup> *Ibid.* at 2.

<sup>34</sup> *Ibid.* at 3.

*Use the least intrusive method*

73. Due to the potential sensitivity of issues that may relate to the collection of demographic data, the Human Rights Commission also suggests that the collection use the least intrusive means. The Committee believes that this proposal is consistent with that requirement. For example, demographic data collection will take place through the MAR and PAR, which are the existing processes for regular reporting by the membership and no additional documentation will be sent to members.
74. Further, demographic data collection through the MAR and the PAR will be voluntary. Although members will be encouraged to provide demographic data, provision of this information will not be a requirement, and failure to provide the requested information will not result in disciplinary action.

*Rational connection between collection and use*

75. The guidelines established by the Ontario Human Rights Commission suggest that there be a rational connection between the collection of demographic data and its intended use. As previously laid out, this rational connection is met through explaining that the collection and analysis of demographic data will assist in the development of programs and policies to not only enhance the diversity of the legal professions, but also to develop informed strategies to increase retention rates of members of equality-seeking communities.

*Privacy Law*

76. Privacy law generally serves to restrict public access to personal information. In doing so, it encompasses the ability to control or influence the collection, use and disclosure of personal identity information.
77. Although neither federal nor provincial laws<sup>35</sup> on the collection and use of demographic data apply directly to a regulatory body such as the Law Society, the initiative to collect demographic data is nevertheless concerned about privacy issues that individuals may have with respect to the collection and use of demographic identity data. The Law Society will take all available precautions to ensure the utmost confidentiality of personal demographic data, and the information collected will not be put to uses beyond the scope of monitoring and developing policies to enhance the diversity of the legal professions.

## APPENDIX 3

## Frequently Asked Questions about Self-Identification

Why is the Law Society of Upper Canada asking members to self-identify?

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<sup>35</sup> Federal Privacy legislation includes the *Privacy Act*, R.S.C. 1985, c. P-21 and the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5. Provincial privacy law in Ontario is based on the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F-31 and the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M-56.

The Law Society of Upper Canada regulates the provision of legal services in the interest of the public. In 1997, the Law Society adopted its *Bicentennial Report and Recommendations on Equity Issues in the Legal Profession*, which included a commitment to promote equality and diversity in the legal professions. In light of its commitment to equality and diversity, the Law Society is gathering statistics on the composition of the professions to better understand demographic trends in the professions, to develop programs and initiatives within the mandate of the Law Society and to promote equality and diversity in the professions.

Is it the first time that the Law Society asks lawyers/paralegals to self-identify?

The Law Society asked lawyers to voluntarily self-identify in its Member's Annual Report in 1996. Although the question has not been included in subsequent Member's Annual Reports, a self-identification question has been included in the Licensing Process (formerly the Bar Admissions Course) application form since 1999. The self-identification question is also included in numerous surveys of the legal professions conducted by the Law Society in the last 10 years.

How will the information be used?

The information will be used to prepare statistics about the legal professions. It will allow the Law Society to assess the representation of the professions, identify and monitor trends and progress, and develop programs and initiatives to increase equality and diversity in the professions. The data will be maintained in a secure information system. Access to the information will be restricted to staff members who require access for the purpose of reporting aggregate information and analyzing trends in the professions. Access guidelines will be developed to ensure consistency in access to the data and confidentiality of the data.

How were the categories of self-identification selected?

The categories were developed and approved by the Law Society of Upper Canada's Equity and Aboriginal Issues Committee in consultation with its Equity Advisory Group and they have been used in various Law Society surveys. Further, the Equity Committee and the Access to Justice Committee approved the categories in their Equality and Access to Justice Template. The proposed categories are consistent with the categories in the Canada Census, but have been reworded slightly.

Do I have to answer the self-identification questions?

No. We encourage you to answer the question, but it is voluntary.

Can I self-identify in more than one group?

Yes. You may self-identify in all the groups that apply to you.

Will my information be kept confidential?

Yes. The information you provide will be kept confidential. The data will be maintained in a secure information system. Access to the information will be restricted to staff members who require access for the purpose of reporting aggregate information and analyzing trends in the professions. Access guidelines will be developed to ensure consistency in access to the data and confidentiality of the data. Any reporting of the information will be done in aggregate form.

Do the questions contravene human rights legislation and other laws?

No. The questions are consistent with the Ontario *Human Rights Code* and other laws.

Who will have access to the information?

Access to the information will be granted only to staff members who require access for the purpose of analysis of trends in the professions. Any reporting of the information will be done in aggregate form.

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FOR INFORMATION

REPORT OF THE ACTIVITIES OF THE  
DISCRIMINATION AND HARASSMENT COUNSEL

JULY 1, 2008 – DECEMBER 31, 2008  
AND  
SUMMARY OF DATA SINCE JANUARY 1, 2003

BACKGROUND

101. Subsection 20 (1) a) of By-Law 11, *Regulation of Conduct, Capacity and Professional Competence* provides that, unless the Equity and Aboriginal Issues Committee/Comité sur l'équité et les affaires autochtones (the "Committee") directs otherwise, the Discrimination and Harassment Counsel (the "DHC") shall make a report to the Committee not later than January 31 in each year, upon the affairs of the Counsel during the period July 1 to December 31 of the immediately preceding year. On June 5, 2008, the Committee directed, under subsection 20(1) a) and b) of By-Law 11, that the DHC submit the first semi-annual report due in 2009 on or before April 15, 2009 and the second semi-annual report on or before September 30, 2009. The request for the delays had been made by the DHC to accommodate her sabbatical at the beginning of 2009 and over the summer 2009. The first semi-annual report was submitted on or before April 15, 2009 and is presented at Appendix 5.
102. Subsection 20(2) of By-Law 11 provides "The Committee shall submit each report received from the Counsel to Convocation on the day following the deadline for the receipt of the report by the Committee on which Convocation holds a regular meeting".
103. The DHC Program presents to the Committee, pursuant to Subsection 20(1)(a) of By-Law 11, the *Report of the Activities of the Discrimination and Harassment Counsel for the Law Society of Upper Canada* for the period July 1, 2008 to December 31, 2008 and a summary of data since January 1, 2003.

PUBLIC EDUCATION EQUALITY SERIES CALENDAR  
2009

104. The following Public Education Equality Series are planned for 2009.

National Access Awareness -Access to Justice for Persons with Disabilities

In partnership with ARCH Disability Law Centre

Reception Keynote Address at 6 p.m.

*His Honour, the Lieutenant Governor, The Honourable David C. Onley, O.Ont.*

Date: May 25, 2009

Time: Panel Discussion from 4 to 6 p.m. and Reception: 6 p.m.

Panel Discussion from 4 to 6 p.m.: Legal professionals will discuss the accessibility of the justice system in Ontario and examine accessibility to legal services and legal representation, accessibility in the courts, access to administrative tribunals, and access to community legal clinics and other resources.

Speakers:

Cynthia Harper, Legal Aid Ontario  
 Katherine Laird, Human Rights Legal Support Centre  
 The Hon. Madam Justice Anne M. Molloy, Superior Court of Justice  
 Ivana Petricone, ARCH Disability Law Centre (discussion moderator)  
 Tess Sheldon, ARCH Disability Law Centre  
 Cara Wilkie, Barrister and Solicitor

*National Aboriginal Day - Perspectives in the Indian Residential Schools Resolution*

*Process*

In partnership with the Toronto Aboriginal City Celebration Committee, Aboriginal Legal Services of Toronto, the Aboriginal Law Section of the Ontario Bar Association and Rotiio> taties Aboriginal Advisory Group

Date: June 11, 2009

Time: Panel Discussion from 4 to 6 p.m. and Reception: 6 p.m.

*Pride Week - The Stonewall Riots – 40 Years Later: Politics and the Future of Equality for Gay, Lesbian, Bisexual, and Trans-identified People*

In partnership with the Sexual Orientation and Gender Identity Section of the Ontario Bar Association

Date: June 23, 2009

Time: Panel Discussion from 4 to 6 p.m. and Reception: 6 p.m.

APPENDIX 5

REPORT OF THE ACTIVITIES OF  
 THE DISCRIMINATION AND HARASSMENT COUNSEL  
 FOR THE LAW SOCIETY OF UPPER CANADA

For the period from July 1, 2008 to December 31, 2008

and

Summary of Data since January 1, 2003

Prepared By Cynthia Petersen  
Discrimination and Harassment Counsel

## TABLE OF CONTENTS

### PART I – ACTIVITIES JULY 1 TO DECEMBER 31, 2008

- Overview of New Contacts with the DHC Program
- Summary of Discrimination and Harassment Complaints
- Complaints from within the Legal Profession
- Public Complaints
- Services Provided to Complainants
- Summary of General Inquiries
- Matters Outside the DHC Mandate
- Promotional Activities
- Educational Activities

### PART II – SIX YEAR SUMMARY 2003-2008

- Overview of Contacts with the DHC Program
  - Number of New Contacts
- Overview of Complaints against Lawyers
  - Number of Complaints
  - Public / Profession Ratio of Complainants
  - Overview of Law Student Complaints
  - Context of Complaints from Members of the Legal Profession
  - Male / Female Ratio of Complainants within the Legal Profession
  - Context of Complaints from Members of the Public
  - Male/Female Ratio of Public Complainants
  - Grounds of Discrimination Raised
  - Breakdown of Sex Discrimination Complaints

## Complaints against Paralegals

### Examples of Complaints

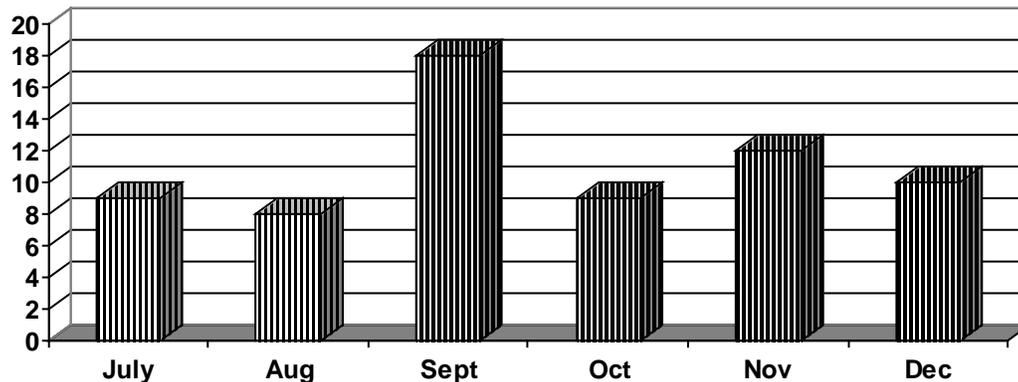
Public Complaints

Complaints from within the Profession

### OVERVIEW OF NEW CONTACTS WITH THE DHC PROGRAM

During this reporting period (July 1 to December 31, 2008), 66 individuals contacted the DHC Program with a new matter.<sup>42</sup>

The volume of new contacts was distributed as follows:



Of the 66 individuals who contacted the DHC, 47 (71%) used the telephone to make their initial contact, 18 (27%) used email, and 1 used a fax communication.

Of the 66 new contacts with the Program, 16 (24%) were made by men and 50 (76%) were made by women.

During this reporting period, the DHC provided services to four callers in French. The remaining clients received Program services in English.

### SUMMARY OF DISCRIMINATION AND HARASSMENT COMPLAINTS

Of the 66 new contacts with the Program, 22 individuals raised specific complaints of discrimination or harassment by a lawyer in Ontario.

The mandate of the Discrimination and Harassment Counsel Program includes complaints against paralegals. There were, however, no complaints against paralegals during this reporting period.

<sup>42</sup> Individuals who had previously contacted the Program and who communicated with the DHC during this reporting period with respect to the same matter are not counted in this number.

Of the 22 new discrimination and harassment complaints against lawyers, 12 were made by members of the public and 10 were made by members of the legal profession.

#### COMPLAINTS FROM WITHIN THE LEGAL PROFESSION

During this reporting period, there were 10 complaints against lawyers from members of the legal profession.

Three (3) of the 10 complaints were made by articling students. The remaining 7 complaints were made by lawyers, one of whom was calling about harassment of an articling student in her firm. There were no complaints by paralegals or paralegal candidates during this reporting period.

Of the 10 complaints from within the legal profession, 9 were made by women (including the 3 student complaints).

Almost all (9 out of 10) of the complaints from within the legal profession arose in the context of the complainant's employment or a job interview. One complaint, made by a woman lawyer on behalf of a group of women lawyers practicing in the same area, related to the conduct of opposing counsel with whom they all had regular dealings.

The following grounds of discrimination were raised in the complaints from within the legal profession: sex, disability, religion, family status, ethnic origin, and record of offences.

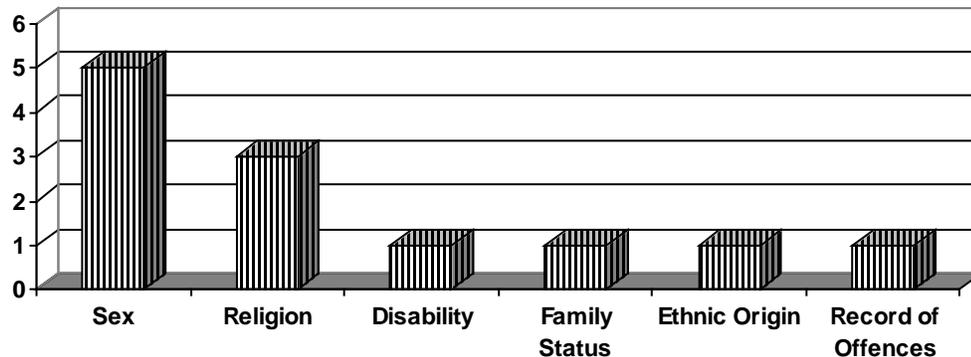
Five (5) complaints were based (in whole or in part) on sex:

- a male lawyer called on behalf of a female lawyer who was experiencing sexual harassment by a male colleague at her work;
- a female lawyer complained on behalf of a group of women lawyers in her area about the sexist conduct of a male opposing counsel with whom they all had regular dealings; the complaint included (among other things) alleged incidents of sexual harassment of their female clients;
- a female associate complained about how the partners in her firm were failing to address serious incidents of sexual harassment of a female articling student by a male associate in their office;
- a female associate complained about sexual harassment by a male partner in her firm; and
- a female Muslim lawyer complained about discriminatory barriers to equity partnership in her firm, based on sex and religion.

Three (3) complaints were based (in whole or in part) on religion:

- a Jewish lawyer complained about her employer's refusal to provide leave for religious observance of holy days, as well as anti-semitic comments by a lawyer in her workplace;
- the aforementioned female Muslim lawyer complained about discriminatory barriers to equity partnership in her firm, based on both sex and religion; and

- a Christian Palestinian articling student complained about discrimination and harassment by her principal, based on her religion and ethnic origin.



### PUBLIC COMPLAINTS

During this reporting period, there were 12 complaints against lawyers by members of the public.

Eight (8) of the 12 public complaints were made by women and 4 were made by men.

Of the 12 public complaints:

- 5 involved litigants complaining about the conduct of opposing counsel;<sup>43</sup>
- 4 arose in the context of the complainant's employment; and
- 3 involved clients complaining about the conduct of their own lawyer.

The following grounds of discrimination were raised in one or more of the public complaints: sex, disability, religion, race and age.

Five (5) of the public complaints were based (in whole or in part) on sex as a ground of discrimination:

- 2 legal assistants (from different firms) complained about demeaning sexist remarks made by their bosses (male lawyers) regarding their appearance;<sup>44</sup>
- an office manager called on behalf of 3 female legal assistants in her firm, who complained that they had been subjected to derogatory sexist comments by a male lawyer in their office, including comments about their weight and appearance;
- a man called on behalf of his son, who was acquitted of criminal assault charges in a domestic situation; the caller complained that the Crown Attorney who prosecuted the case discriminated against men; and

<sup>43</sup> This figure includes a complaint about the conduct of a Crown Attorney in a criminal prosecution. The complainant was the accused person's father.

<sup>44</sup> One of these women also complained about derogatory ageist remarks made by her boss.

- a Muslim woman involved in family law litigation complained about discriminatory comments made by opposing counsel based on her sex (relating to her manner of dress).<sup>45</sup>

Five (5) of the public complaints were based (in whole or in part) on disability:

- a female litigant complained that her own (former) lawyer failed to accommodate her psychiatric disability and engaged in demeaning name-calling;
- another female litigant complained that her lawyer was failing to accommodate her anxiety disorder;
- a woman called on behalf of her blind mother, complaining that her mother's lawyer was refusing to accommodate her mother's vision impairment;
- a male litigant complained about offensive comments made by opposing counsel regarding his disability; and
- a female legal assistant complained that her female boss was refusing to accommodate her disability and was engaging in harassing conduct based on her disability.

Two (2) complaints were based on religion:

- a Christian man involved in child custody litigation complained that opposing counsel made derogatory and discriminatory remarks about his religion; and
- a Muslim woman involved in family law litigation complained that opposing counsel made derogatory remarks about her manner of dress, which she found discriminatory based on both her religion and sex.

One (1) complaint was based on race:

- a male litigant complained that opposing counsel made derogatory remarks about him based on his race.

One (1) complaint was based on age:

- a female legal assistant complained that her male boss was harassing her based on her age and sex, by making derogatory ageist and sexist remarks about her abilities.

In summary, the number of complaints<sup>46</sup> in which each of the following grounds of discrimination was raised are as follows:

sex	5
disability	5

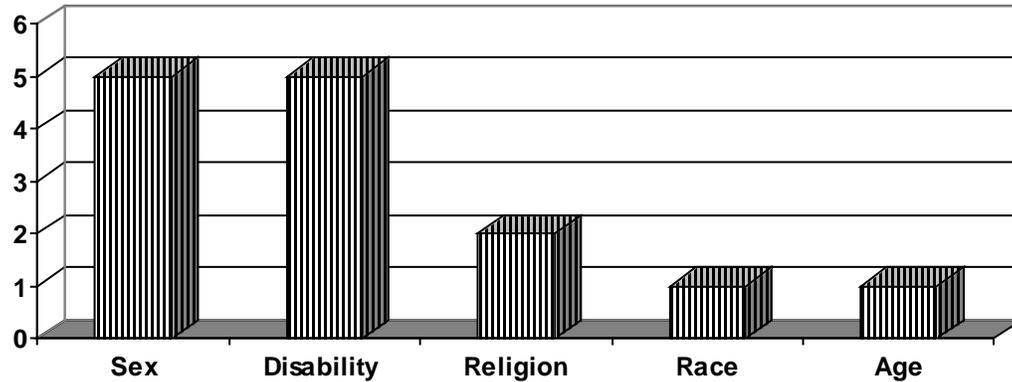
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<sup>45</sup> This woman's complaint was based on intersecting grounds of sex and religion.

<sup>46</sup> The total exceeds 12 because some complaints were based on multiple grounds of discrimination.

religion	2
race	1
age	1

### Grounds raised in Public Complaints



### SERVICES PROVIDED TO COMPLAINANTS

Complainants who contacted the DHC were advised of various avenues of redress open to them, including:

- filing an internal complaint within their workplace;
- filing an application with the Ontario Human Rights Tribunal;
- filing a complaint with the Law Society; and
- contacting a lawyer for advice regarding other possible legal actions.

Complainants were also provided with information about each of these options, including:

- what (if any) costs might be involved in pursuing an option;
- whether legal representation is required in order to pursue an option;
- how to file a complaint or make a report (eg. whether it can be done electronically, whether particular forms are required, etc.)
- the processes involved in each option (eg. investigation, conciliation, hearing, etc.)
- what remedies might be available in different fora (eg. compensatory remedies in contrast to disciplinary penalties, reinstatement to employment versus monetary damages, etc.); and
- the existence of time limits for each avenue of redress.

Complainants were told that the options available to them are not mutually exclusive.

Complainants were given information about who to contact in the event that they decided to pursue any of their options.

In some cases, upon request, strategic tips were provided to complainants about how to handle a situation without resort to a formal complaints process (eg. confronting the offender, documenting incidents, speaking to a mentor).

Some complainants were directed to relevant resource materials available from the Law Society, the Ontario Human Rights commission, or other organizations.

In addition to being advised about the above-noted options, where appropriate, complainants were offered the mediation services of the DHC Program. Where mediation was offered, the nature and purpose of mediation were explained, including that it is a confidential and voluntary process, that it does not involve any investigation or fact finding, and that the DHC acts as a neutral facilitator to attempt to assist the parties in reaching a mutually satisfactory resolution of the complaint.

The DHC mediation services sometimes involve formal mediation sessions, including a meeting of the parties (with or without their respective counsel) and the execution of a mediation agreement prior to the meeting. In other instances, the DHC assists parties in attempting to reach a resolution to their dispute through informal intervention (eg. by shuttle diplomacy, telephone discussions and/or email exchanges with the parties, etc.).

During this reporting period, the DHC's mediation/intervention services were requested and provided on six different matters.

#### SUMMARY OF GENERAL INQUIRIES

Of the 66 new contacts with the DHC during this reporting period, 14 involved general inquiries relating to issues within the Program's mandate. These inquiries included:

- questions about the scope of the DHC Program's mandate;
- questions about the services offered by the DHC;
- requests from the public for promotional materials about the DHC Program;
- requests for education seminars or training workshops on anti-harassment in legal workplaces; and
- inquiries about the data collected by the DHC.

#### MATTERS OUTSIDE THE DHC MANDATE

During this reporting period, the DHC received a number of calls and emails relating to matters outside the Program's mandate. These contacts included complaints about workplace harassment or discrimination that did not involve lawyers or paralegals and complaints against lawyers that did not involve any human rights issues (eg. allegations of breach of confidentiality, client billing disputes, etc.) In addition, several individuals called the DHC to seek legal representation and/or a referral to a lawyer for a human rights case.

All of these individuals were referred to other agencies, including the LSUC's Lawyer Referral Service. An explanation of the scope of the DHC Program's mandate was provided to each person.

Although there is a relatively high volume of these "outside mandate" contacts, they typically do not consume much of the DHC's time or resources, since we do not assist these individuals beyond their first contact with the Program.

#### PROMOTIONAL ACTIVITIES

The LSUC maintains a bilingual website for the DHC Program.

Periodic advertisements are placed (in English and French) in the Ontario Reports to promote the Program.

French, English, Chinese and Braille brochures for the Program continue to be circulated to legal clinics, community centres, libraries, law firms, government legal departments, and faculties of law.

Contact information about the Program is provided to multiple community organizations across the province, so that referrals to the Program can be made.

#### EDUCATIONAL ACTIVITIES

Throughout this reporting period, the DHC worked closely with the Director of the Equity Initiatives Department at the LSUC to develop and deliver anti-discrimination and anti-harassment training workshops in law firms across the province.

### PART II

#### SUMMARY OF DATA FOR SIX YEAR PERIOD

JANUARY 1, 2003 TO DECEMBER 31, 2008

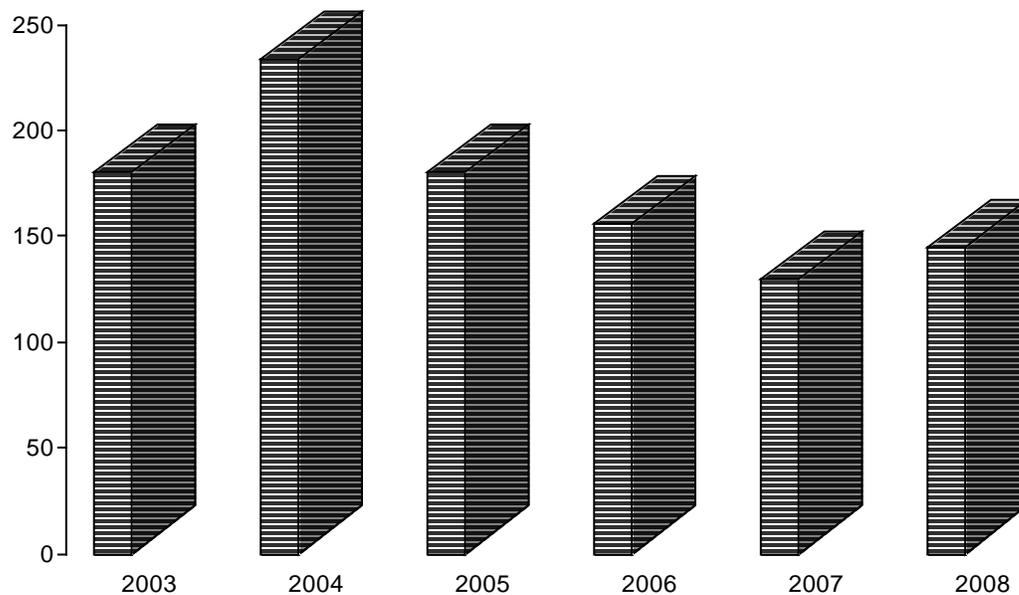
#### OVERVIEW OF CONTACTS WITH THE DHC PROGRAM

##### *Number of New Contacts*

There has been a total of 1,025 contacts with the DHC Program during the six year period since January 1, 2003.

There were 180 new contacts in 2003, 234 in 2004, 180 in 2005, 156 in 2006, 130 in 2007, and 145 in 2008.

### Number of New Contacts Annually



Thus the Program has received an average of 14.3 new contacts per month over the past 6 years.

The DHC services are offered in French and English. Since January 1, 2003, 39 individuals have communicated with the DHC in French: 10 in 2003, 6 in 2004, 8 in 2006, 5 in 2007, and 4 in 2008.

### OVERVIEW OF COMPLAINTS AGAINST LAWYERS

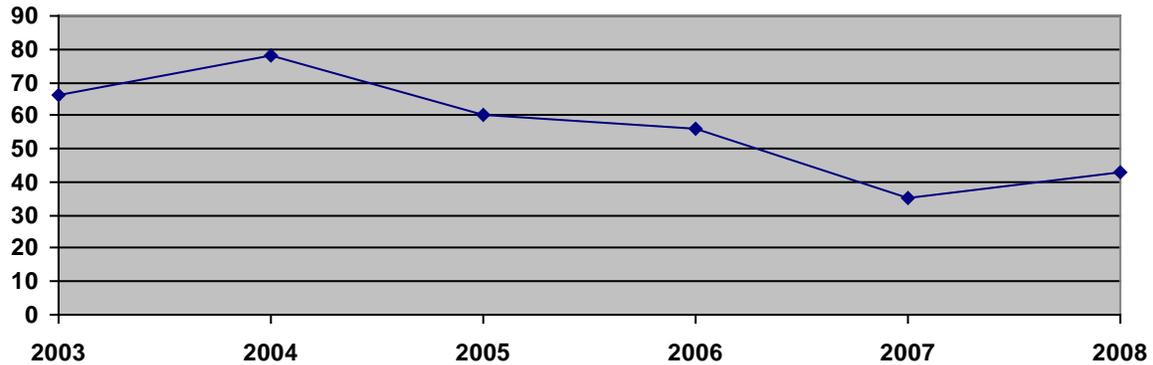
#### *Number of Complaints*

Of the 1,025 new contacts with the Program over the past six years, there were a total of 338 discrimination and harassment complaints against Ontario lawyers.<sup>47</sup> (The remaining contacts with the Program involved general inquiries, complaints against paralegals, or matters outside the Program mandate.)

In terms of complaints against lawyers, there were a total of 66 in 2003, 78 in 2004, 60 in 2005, 56 in 2006, 35 in 2007, and 43 in 2008.

<sup>47</sup> One of the complaints was against an articling student.

### Volume of Complaints

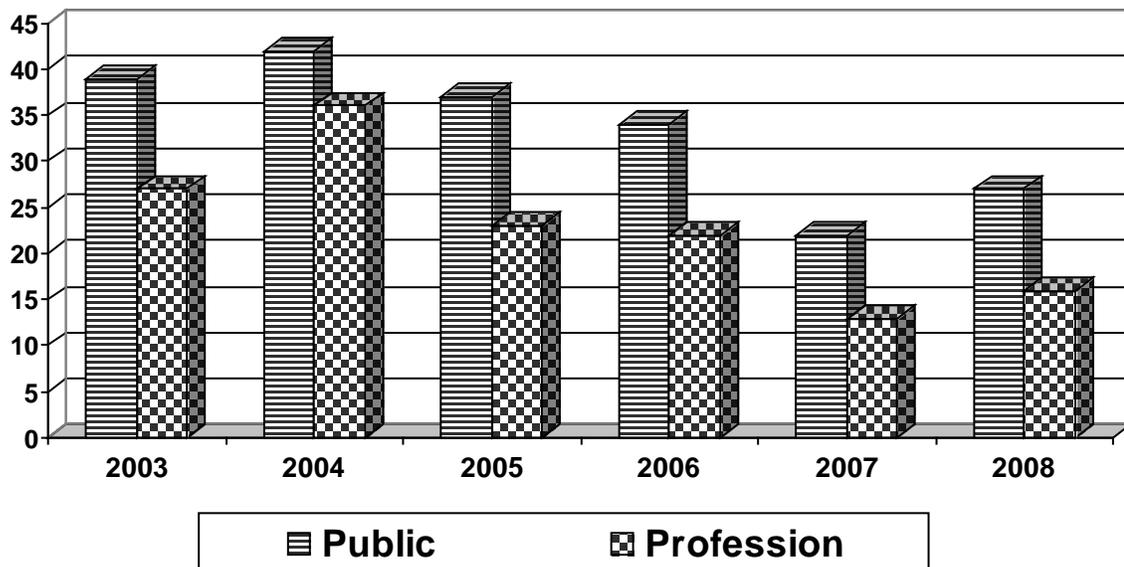


### *Public / Profession Ratio of Complainants*

Out of the 338 discrimination and harassment complaints against lawyers since January 1, 2003, there have been 201 complaints from the public and 137 complaints from lawyers or law students.<sup>48</sup>

Thus over the past 6 years, complaints from the public have constituted on average 59% of all discrimination and harassment complaints against lawyers.

The ratio of public / profession complaints against lawyers has been as follows over the past 6 years:



<sup>48</sup> Prior to 2008, any complaints by paralegals would have been considered as complaints by members of the public. Data regarding such complaints were not recorded separately. Since 2008, there have been no complaints by paralegals against lawyers.

### *Overview of Law Student Complaints*

A total of 36 law students<sup>49</sup> have made discrimination and harassment complaints to the DHC Program in the six years since January 1, 2003 (out of a total of 138 complaints from within the profession):

8 complaints were made by students in 2003, out of a total of 27 complaints from within the legal profession;

6 complaints were made by students in 2004, out of 37 complaints from within the legal profession;

6 complaints were made by students in 2005, out of 23 complaints from within the legal profession;

6 complaints were made by students in 2006, out of 22 complaints from within the legal profession;

5 complaints were made by students in 2007, out of 13 complaints from within the legal profession; and

5 complaints were made by students in 2008, out of 16 complaints from within the legal profession.

Student complaints therefore constitute 26% of the discrimination and harassment complaints received from members of the profession over the past 6 years.

### *Context of Complaints from Members of the Legal Profession*

The overwhelming majority (84%) of complaints by lawyers and law students arise in the context of the complainant's employment or in the context of a job interview:

- in 2003, 23 out of 27 (85%) complaints from within the profession were employment related;
- in 2004, 27 out of 36 (75%) complaints from within the profession were employment related;
- in 2005, 21 out of 23 (91%) complaints from within the profession were employment related;
- in 2006, 17 out of 22 (77%) complaints from within the profession were employment related;
- in 2007, all of the 13 (100%) complaints from within the profession were employment related; and

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<sup>49</sup> Either articling students, summer students, or university law students.

- in 2008, 14 out of 16 (87%) complaints from within the professional were employment related.

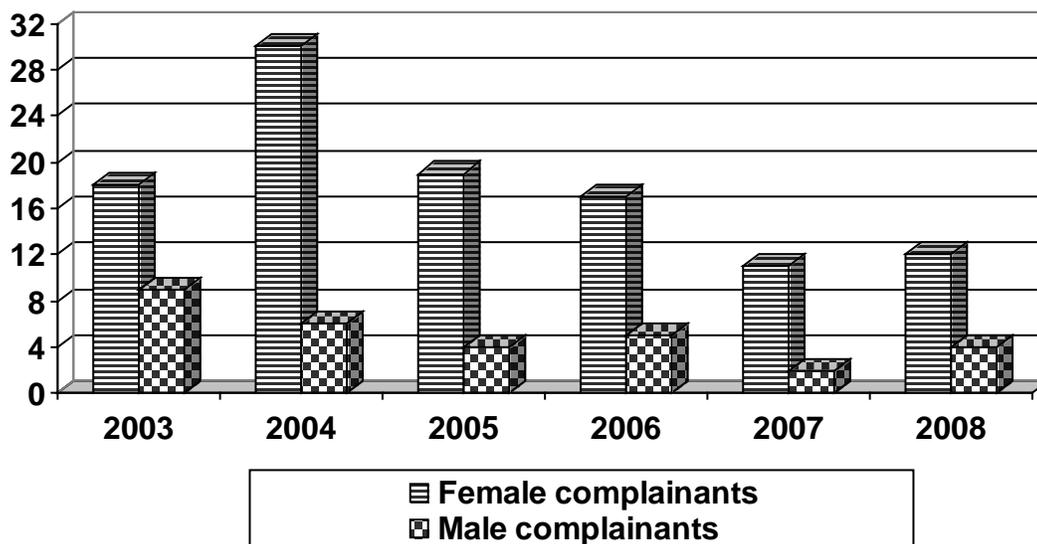
There have been some discrimination and harassment complaints from lawyers in non-employment contexts, such as complaints about the conduct of opposing counsel, mediators or investigators.

*Male / Female Ratio of Complainants within the Legal Profession*

Of the 137 lawyers and law students who reported discrimination and harassment to the DHC since January 1, 2003, 107 (78%) were women.

Complaints from women within the legal profession have consistently been disproportionately higher than complaints from men within the profession:

- in 2003, 18 out of 27 (67%) complaints from within the profession were made by women;
- in 2004, 30 out of 37 (81%) complaints from within the profession were made by women;
- in 2005, 19 out of 23 (83%) complaints from within the profession were made by women;
- in 2006, 17 out of 22 (77%) complaints from within the profession were made by women;
- in 2007, 11 out of 13 (85%) complaints from within the profession were made by women; and
- in 2008, 12 out of 16 (75%) complaints from within the professional were made by women.



Discrimination and harassment complaints from law students are also predominantly made by women:

- in 2003, 5 of the 8 student complainants were women;
- in 2004, 5 of the 6 student complainants were women;
- in 2005, 4 of the 6 student complainants were women;
- in 2006, all of the 6 student complainants were women;
- in 2007, all of the 5 student complainants were women; and
- in 2008, all of the 5 student complainants were women.

There have been a total of 36 students complaints against lawyers, only 6 from men. Thus over the past 6 years, 83% of the discrimination and harassment complaints against lawyers by students have been made by women.

*Context of Complaints from Members of the Public* A significant proportion (49%) of public complaints involve clients complaining about their own lawyer or a lawyer that they attempted to retain:

- in 2003, 25 out of 39 (64%) public complaints involved clients;
- in 2004, 21 out of 42 (50%) public complaints involved clients;
- in 2005, 13 out of 37 (35%) public complaints involved clients;
- in 2006, 17 out of 34 (50%) public complaints involved clients;
- in 2007, 8 out of 22 (36%) public complaints involved clients; and
- in 2008, 14 out of 27 (52%) public complaints involved clients.

Many of the public complaints (27%) arose in the context of the complainant's employment:

- in 2003, 6 out of 39 (15%) public complaints were employment related;
- in 2004, 14 out of 42 (32%) public complaints were employment related;
- in 2005, 16 out of 37 (44%) public complaints were employment related;
- in 2006, 8 out of 34 (23%) public complaints were employment related;
- in 2007, 5 out of 22 (23%) public complaints were employment related; and
- in 2008, 5 out of 27 (19%) public complaints were employment related.

A number of public complaints (17%) have been made by litigants against opposing counsel:<sup>50</sup>

- in 2003, 6 of the 39 public complaints involved litigants;
- in 2004, 7 of the 42 public complaints involved litigants;
- in 2005, 2 of the 37 public complaints involved litigants;
- in 2006, 7 of the 34 public complaints involved litigants;
- in 2007, 5 of the 22 public complaints involved litigants; and
- in 2008, 7 of the 27 public complaints involved litigants.

Approximately 7% of public complaints arose in other contexts, such as litigants complaining about discriminatory conduct by a Tribunal member or mediator, an individual complaining about a government lawyer who was providing a public service, and witnesses and victims in criminal proceedings complaining about Crown Attorneys.

In summary, the total number of public complaints against lawyers that has arisen in each of the different contexts is as follows:



#### *Male / Female Ratio of Public Complainants*

Since January 1, 2003, there has consistently been a higher proportion of public complaints from women than men:

- in 2003, 25 of the 39 (64%) public complaints were from women;
- in 2004, 26 of the 42 (62%) public complaints were from women;
- in 2005, 27 of the 37 (73%) public complaints were from women;

<sup>50</sup> These include complaints by criminal defendants against Crown Attorneys.

- in 2006, 24 of the 34 (71%) public complaints were from women;
- in 2007, 11 of the 22 (50%) public complaints were from women; and
- in 2008, 19 of the 27 (70%) public complaints were from women.

Thus of the 201 members of the public who have made discrimination and harassment complaints against lawyers to the DHC over the past 6 years, 132 (66%) were women.

#### *Grounds of Discrimination Raised*

There was a total of 338 discrimination and harassment complaints against lawyers between January 1, 2003 and December 31, 2008.

Of these,<sup>51</sup>

- sex was raised as a ground of discrimination in 175 complaints (52%);
- disability was raised as a ground of discrimination in 73 complaints (22%);
- race was raised as a ground of discrimination in 54 complaints (16%);
- sexual orientation was raised as a ground of discrimination in 20 complaints (6%);
- religion was raised as a ground of discrimination in 14 complaints (4%);
- age was raised as a ground of discrimination in 13 complaints (4%);
- family status was raised as a ground of discrimination in 11 complaints (3%);
- national/ethnic origin was raised as a ground of discrimination in 11 complaints (3%);
- ancestry was raised as a ground of discrimination in 3 complaints;
- place of origin was raised as a ground of discrimination in 3 complaints;
- record of offences was raised as a ground of discrimination in 2 complaints and
- marital status was raised as a ground of discrimination in 1 complaint.

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<sup>51</sup> The sum of the numbers in this paragraph exceeds 338 and the sum of the percentages exceeds 100% because many of the complaints involved multiple grounds of discrimination.

*Breakdown of Sex Discrimination Complaints 2003-2008*

Of the 175 complaints that were based (in whole or in part) on sex as a ground of discrimination:

- pregnancy was specifically raised in 24 complaints;
- gender identity was raised in 2 complaints; and
- sexual harassment was reported in 93 complaints.<sup>52</sup>

The overwhelming majority (139) of the 175 sex discrimination complaints were made by women (79%), including one transsexual woman.

Of the 139 female complainants who raised concerns about discrimination or harassment based on sex:

- 55 were lawyers
- 16 were law students; and
- 68 were members of the public.

In almost every instance, the women who contacted the DHC were reporting that they themselves had been the victim of sex discrimination or sexual harassment by a male lawyer, that they had suffered employment reprisals after making a complaint of sexual harassment against a male colleague, supervisor or client, or that they had suffered discrimination in their employment due to the fact that they were pregnant and/or had taken a maternity leave. The only exceptions were as follows: One woman lawyer called on behalf of a female articling student in her firm and a female office manager called on behalf of 3 female legal assistants in her firm.

In contrast, 12 of the 25 men who complained about discrimination or harassment based on sex raised concerns about the inappropriate conduct of other male lawyers toward women that they knew (or, in one instance, toward a gay man that he knew).

Only 11 men complained about sex discrimination or harassment that they themselves had experienced. Five (5) of these complainants self-identified as gay men and one self-identified as a trans-man.

Of the 25 male complainants who raised concerns about sex discrimination or harassment:

- 10 were lawyers;
- 1 was an articling student; and
- 14 were members of the public.

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<sup>52</sup> Thus 28% of all complaints received over the past 6 years involved sexual harassment.

Of the 25 complaints of sex discrimination or harassment made by men, only 4 involved female respondents.

Of the 11 sex discrimination or harassment complaints from men within the legal profession:

- a lawyer complained about a colleague (another male lawyer) who was sexually harassing a female lawyer in his firm;
- a lawyer complained about a male lawyer in another firm who was sexually harassing a female lawyer in that other firm;
- a lawyer complained about a colleague (another male lawyer) who was sexually harassing a secretary in his firm;
- a lawyer complained about sexist remarks made by opposing counsel (another male lawyer) during discovery proceedings involving a female client;
- a lawyer complained about sexist remarks made by opposing counsel (another male lawyer) directed toward a female junior associate in his firm;
- a lawyer complained about sexist remarks posted by another male lawyer on an internet website;
- a trans-identified articling student in a government office complained about sex discrimination to which he was subjected at his workplace;
- a gay male lawyer complained about sexual harassment by a supervising female lawyer in a government office;
- two gay male lawyers complained about sexual harassment by male partners in their respective firms; and
- a lawyer complained that his client, a female lawyer, suffered employment discrimination when she was terminated just prior to commencing a maternity leave.

Of the 14 public complaints of sex discrimination or harassment made by men:

- a police officer complained about sexist remarks made by a male Crown Attorney regarding a female police officer and female defence counsel;
- 3 men called on behalf of female friends or relatives who had been sexually harassed or assaulted by their male lawyers;
- 2 litigants in family law matters complained about anti-male sexist remarks made by their ex-wives' female lawyers;
- a process server and a law clerk each complained about sexual harassment by male lawyers in their workplaces;

- a physician reported that one of his gay male patients had been sexually abused by a court-appointed male lawyer as a youth;
- a psychiatrist reported that one of his female patients had been sexually assaulted by her male lawyer;
- two gay male clients complained that their respective male lawyers were sexually harassing them;
- a heterosexual paralegal student complained about sexual harassment by a female lawyer who was his instructor; and
- a man complained that a male Crown Attorney discriminated against his son in the course of a prosecution for domestic assault.

### COMPLAINTS AGAINST PARALEGALS

The DHC Program's mandate was expanded to include complaints against paralegals in 2008. Prior to 2008, complaints against paralegals would have been considered outside the mandate of the DHC program and data about such complaints were not recorded separately.

In 2008, there was only one complaint against a paralegal. The complainant was an Asian female paralegal who felt that her (white female) boss, who was also a paralegal, was discriminating against her on the basis of race.

It should also be noted that, prior to 2008, complaints about lawyers by paralegals would have been recorded as "public complaints" in the DHC data. As of January 1, 2008, data regarding such complaints is being recorded separately.

### EXAMPLES OF COMPLAINTS

#### *Public Complaints*

The following are detailed examples of discrimination and harassment complaints received from members of the public over the past six years:

A woman with a brain injury reported that her male lawyer arranged for them to meet privately on the pretext of preparing for a discovery, then sexually assaulted her.

A law clerk with a speech impediment complained that her boss (a male lawyer) would get drunk and then mock her publicly by imitating her stutter.

A transsexual woman involved in a family dispute with her ex-wife complained about her ex-wife's lawyer who, among other things, continued to refer to her in correspondence, pleadings and submissions as "he" and "him" despite repeated requests to cease doing so.

A self-represented litigant who was blind complained about a letter he received from opposing counsel, which stated: "I wish I could see things from your perspective, but I can't get my head that far up my ass."

A Chinese man complained that his lawyer treated him in a dismissive and demeaning manner (eg. ordering him to “sit down” in front of other parties, interrupting him when he spoke, patronizing him, etc.) that was different from how the man observed the lawyer interacting with other white clients.

A secretary in a legal clinic complained that she was pressured not to take a year of pregnancy/parental leave and then was demoted on the day that she returned to work from her shortened leave.

A woman called on behalf of her visually impaired mother, whose lawyer refused to permit her to bring a reader (a friend who would read documents aloud) with her to review documents in the lawyer’s office before signing them.

A female client complained that her male lawyer always insisted on meeting her outside his office, constantly told her how attractive she was, and put his hands around her waist while alone in an elevator.

A secretary in a legal clinic complained that a male lawyer tried to “grope” her and pull her toward him when they were working alone.

A secretary in a law firm complained that one of the male lawyers in her office repeatedly tried to hold her hand, stroked her hair, and frequently commented on her appearance.

A Filipino woman complained that her lawyer made a racially derogatory remark by referring to her as a “monkey”.

A receptionist at a law firm complained that she was terminated when she advised her new employer that she would be taking a maternity leave. The employer told her that he would not have hired her if he had known she was pregnant.

A secretary in a law firm, who has fibromyalgia, complained that her boss (a lawyer) was refusing to accommodate her disability and was violating confidentiality with respect to her medical condition in the workplace.

A man complained on behalf of a female friend, an impoverished woman with a drug addiction, who was charged with drug-related offences and whose male defence lawyer agreed to act for her pro bono if she performed sexual acts on him.

A secretary in a law firm complained that lawyers in the office began harassing her after she announced that she intended to marry her same-sex partner.

A woman complained that her lawyer repeatedly commented on her appearance and always insisted on hugging her after their meetings, even though she had advised him that it made her uncomfortable.

A female law clerk asked her boss (a male lawyer) for an increase in her salary and he responded, “if you want a raise, bend over”. This same male lawyer also threatened to fire her if she did not persuade another female law clerk in their office to have sex with him.

A male police officer reported a male defence counsel's remark that his (male) client's conviction was based on fabricated allegations and that "that's what happens when you have a female officer and female prosecutor on the same case."

A Pakistani man complained that he was being verbally abused by a white lawyer whose office was on the same floor in his building. The lawyer was often aggressive and rude, regularly used profane language, and made offensive comments like "you fucking Muslims". The lawyer once referred to the man as a "mother fucking Paki" in front of a client.

A female law clerk complained that a male lawyer in her office commented on her breasts and asked her to join him in a hotel room.

A female criminal defendant complained that her (male) defence counsel was condescending and patronizing, called her "silly" and "stupid", and frequently cut her off when she was speaking. In contrast, the lawyer spoke to her boyfriend in a respectful manner.

An administrative assistant in a law firm complained that she was transferred and demoted after the termination of a brief consensual affair with her boss (a male partner).

A female client with a cognitive impairment complained that her lawyer refused to accommodate her (eg. he spoke quickly despite her requests for him to slow down, he became impatient and shouted at her when she asked him to repeat things, he refused to communicate his advice in writing).

A lesbian woman reported that a female lawyer refused to represent her because of her sexual orientation.

A legal secretary complained that a male lawyer at her workplace regularly made sexual advances toward her. Before leaving the office one night he asked, "how about a quick blow job before you go?" He displayed a violent temper when she rejected his advances. Later he would apologize for his behaviour and say he was "just kidding".

A physically disabled legal secretary with modified employment duties and modified hours of work reported that she was called a "princess" by a woman lawyer in her office because of her accommodations.

A Chinese woman complained that a male lawyer with whom she was acquainted licked his lips suggestively and told her that he could "have" any Chinese woman and has "had" many Chinese women because he is white.

A woman of middle-Eastern descent complained that a female lawyer she had retained questioned her about her inter-racial relationship, implying disapproval.

A woman involved in family law litigation complained that her male lawyer asked her to have sex with him and said that he could not continue representing her if she rejected him.

A male paralegal student complained that his female instructor (who is a lawyer) touched him affectionately and asked him if he was married and whether he was happily married.

A male process server employed by a law firm complained that a male lawyer in his office called him “pussy” and “faggot” and made lewd jokes ending with the lawyer touching his (the complainant’s) penis through his pants.

A South Asian man complained that a corporate lawyer called him a “petty ethnic” and criticized him for operating his business “like a Third World idiot” (the respondent was also South Asian but from a different ethnic background).

A gay male police officer reported that a male Crown Attorney called him “faggot” and “homo” in front of other lawyers at a social gathering in a public place.

A woman attended a job interview for a legal assistant’s position with a sole practitioner. The interview was conducted in the (male) lawyer’s home. She reported that the lawyer touched her arm suggestively during the interview and asked her for her bra size during a subsequent phone conversation.

A legal assistant, who was a recent Russian immigrant, reported that she was fired from her job after she refused to have sex with her male boss. She suspected that her boss exploited her status as a newcomer to Canada, believing that she would have few other employment opportunities available to her. The lawyer had frequently asked her out for drinks, had photographed her at firm events, had put his arm around her shoulders, and had ultimately told her that he wanted to have sex with her and to be her “boyfriend”.

A gay male client, who was accused of committing a criminal act of indecency, reported that his male defence counsel always insisted on meeting in his (the lawyer’s) home, despite the client’s objection and expressed preference to meet in the lawyer’s office. The lawyer’s overly “friendly” demeanour made the client uncomfortable.

#### *Complaints from Within the Profession*

A Black woman lawyer complained about the conduct of a white male lawyer who snapped at her in anger, called her a “fucking bitch” in front of other parties, told her that she was an example why “women shouldn’t practice law” and called her “an Afro ethnic”.

A female articling student complained that a male articling student in her office had sexually assaulted her.

A female Filipino articling student reported that a female partner in her law firm swore at her, verbally abused her, criticized her legal skills and sarcastically suggested that she work as a “nanny” for one of the other partners in the firm.

A female associate complained about a male partner in her firm who yelled “fuck you bitch” at her during a disagreement in front of articling students employed by the firm.

A lesbian articling student in a law firm complained that associates in the firm started asking her unwelcome and intrusive personal questions about her sexual practices after she came out to them. When she expressed her discomfort regarding their inquiries, they began to criticize her work and indicated to partners that she should not be hired back.

A Jewish lawyer complained that she was routinely loaded down with a high volume of work by a partner in her firm just prior to the Jewish holidays, so that she would not be able to take leave for religious observance.

A senior female associate in a law firm complained that male associates were given better work and had more advancement opportunities within her firm. She also complained about differential partnership structures within her firm that disadvantaged women partners.

A Black female litigator working in a government office complained about systemic racial discrimination in her workplace, consisting of preferential treatment of white lawyers in her office (who were given better files and more advancement opportunities).

A female lawyer working in a government office complained that she was given substandard work after her return from pregnancy/parental leave. She felt she was being put on a “mommy track” that would stifle her advancement opportunities within her department.

A female lawyer complained about a male opposing counsel who, in front of their respective clients, called her “uppity” and said that the “women’s liberation movement” had made life difficult for men like him.

A female associate in a law firm returned from maternity leave and was told that she would not be receiving a salary increase. Other male associates in the office all received increases.

A female lawyer complained about harassment by a male lawyer in her office with whom she had had a consensual sexual relationship. After she ended the relationship, he repeatedly insulted and embarrassed her in front of clients and physically shoved her while in the office.

A Black female lawyer complained about a white female lawyer who called her a “nigger” in the presence of other parties.

A female associate in a law firm complained that a male partner always hugged her when they parted after work-related social events. On the last occasion before she contacted the DHC, the partner had attempted to kiss her on the lips after a client dinner.

An articling student in a mid-size law firm reported that a male partner had put his arm around her shoulder at a client dinner and had suggested that they share a hotel room and sleep together while out of town on a business trip.

A woman with two young children, who had been out of the paid workforce for two years since the completion of her articles, complained that she was repeatedly asked inappropriate questions in job interviews regarding her childcare obligations. She felt that her status as the mother of two young children was negatively influencing her employment opportunities.

A female associate in a small law firm was given a good performance review and was told that she would be assigned a full-time secretary to assist her with her growing practice. After she announced that she was pregnant, her employer advised her that she would not be assigned a secretary.

A female associate complained about a male partner who regularly shouted at her, shook his fist in anger, called her “lazy” and “stupid” and said she must have “slept her way to getting hired” at the firm.

A number of lawyers with various disabilities (eg. hearing impairment, diabetes, depression, anxiety) complained that their employers were failing to accommodate them.

A number of lawyers with child care obligations, including some with seriously ill children, complained that their employers were refusing to accommodate their family status by making flexible work arrangements for them.

A Black lawyer working within government complained about systemic barriers to advancement for lawyers of colour in her department. She was given less responsibility than other (white) lawyers, less trial work, more routine and mundane cases, etc. She was also demeaned by being assigned to work at a secretarial station rather than in a lawyer’s office.

A female associate in a large law firm complained that one of the male partners referred to her as “sweetie” and “darling” and called other women in the office “babe”.

A Black female articling student complained that, although she received excellent performance appraisals throughout her articling year, she was not hired back to work at her firm. All of the students who were hired back were white males. There were no female associates and no associates of colour in her firm. The only reason provided for the hire-back decision was that she was not a “good fit” with the firm.

A female associate hired to work in a small law office with two male partners complained that one of the partners called her “blondie” and frequently made “dumb blond” jokes.

A single mother working as a lawyer in a firm requested reduced work hours to allow her to spend more time with her son, who was hospitalized with a serious illness. The firm refused to accommodate her request and suggested instead that she take an unpaid leave of absence. A female associate in a large law firm complained to the partnership about unwelcome sexual advances and unwanted touching by a male partner. The firm cautioned the partner about his

inappropriate behaviour, but refused to assign the complainant to a different practice group or separate her from the harasser. The offending partner stopped giving her work, she became ostracized in the office, and eventually took a stress-related sick leave. Soon after she returned to work, she was terminated from her employment for failing to meet the firm’s productivity / billing targets.

A female associate complained that, after an office social function, one of the male associates in her office “joked” about going back to a hotel with other male lawyers to “gangbang” her. When she confronted him about the inappropriate comment the next day, he attributed it to the fact that he was drunk.

A female articling student complained that a male partner in her firm got angry with her at an office social function and shouted at her, “I’ll fuck you, you little bitch”, “your career is over” and “you’re dead!”

A female articling student with a chronic pain condition became very ill during her articling year and took a month off work. She initially returned to work on reduced hours. She complained that lawyers in her office were hostile toward her after her sick leave. She was advised by a partner that her prospects of hire-back at the firm were adversely affected by the time she took off work. She was also advised to pursue a different career (other than law) because of her chronic illness, which interfered with her ability to work long hours.

A female associate in a small firm was advised by a male partner that the firm was reluctant to train her because she had recently become engaged (to marry a man) and the firm assumed that she would soon have children and quit the practice of law.

A senior associate who had met all of her law firm's partnership criteria was told that she would not be made an offer of partnership this year because she was pregnant.

A gay male lawyer complained that one of the female lawyers in his office asked him intrusive questions about his sexual experiences and then tried to kiss him, saying that she would "turn him straight".

A lesbian articling student complained that she was outed at work by her female principal, to whom she had confidentially confided her sexual orientation.

A pregnant lawyer working in a government office reported that, when she expressed interest in a promotion, she was asked how many children she planned to have, and when she requested pay for duties that she had assumed on an acting basis, she was denied the higher rate of pay on the basis that she was going on maternity leave and therefore would not be doing the acting job for long.

A female associate in a law firm complained that she was pulled off files and was denied advancement opportunities after she reported to the partnership that a male client had been sexually harassing her.

A disabled government lawyer complained that his male manager (also a lawyer) was refusing to modify his job duties and to purchase adaptive devices to accommodate his medical restrictions.

A trans-identified articling student in a government office complained about gender-based employee appearance expectations in his workplace that required him to conform to conventional masculine appearance at work.

Two male lawyers and a female articling student reported that they were asked "how old are you?" in job interviews. (All self-identified as older than their peers.)

A female lawyer reported that she was asked whether she had any children in a job interview.

A male lawyer reported that he was asked whether he was married in a job interview.

A man reported that an immigration lawyer made offensive remarks to him, equating Muslims with terrorists. The man had consulted the lawyer with the intention of retaining his services.

An female articling student reported that she was asked to accompany a male partner on an overnight trip to attend an out-of-town hearing. During the trip, the male partner insisted on socializing together (eg. eating meals, drinking wine), stood and sat very close to her, gave her leering looks, and used “double entendres” to flirt with her. The student was warned by other women in the firm that this partner had a history of “hitting on” young female lawyers and articling students.

A woman complained that her male lawyer was pressuring her to have sex with him. She reported that he told her she could not change lawyers because she had retained him on a Legal Aid certificate.

A woman lawyer complained that her law firm was refusing to accommodate her with flexible hours of work upon her return from a maternity leave. She also complained that she was getting “substandard” files to work on since her return to the office. She attributed this discriminatory treatment to her family status as a new mother.

A female client reported that her male lawyer asked her whether she was a virgin. He also called her at home, very late at night, and asked “are you alone?”

A woman complained that her former lawyer sent her pornographic images by email, with sexually explicit messages indicating that he was interested in pursuing a sexual relationship with her.

A disabled male litigant reported that opposing counsel called him a “psycho” .

A disabled woman reported that her own male lawyer refused to accommodate her disabilities (multiple chemical sensitivities and environmental allergies), spoke to her condescendingly about her disabilities, and called her “sweetie”.

A woman lawyer with a psychiatric disability reported that another female lawyer at her former firm, who agreed to provide her with an employment reference, disclosed the fact of her disability to a prospective employer, thereby violating her privacy and jeopardizing her job prospects.

A Black woman lawyer working in a government office reported that her manager was refusing to intervene to protect her from ongoing workplace harassment by a member of her staff. Although she did not believe that the harassment was racially motivated, she felt that the manager would not have ignored the situation if she were white (“no white lawyer would have to put up with this”).

A male lawyer complained that opposing counsel in one of his cases (another male lawyer) had made derogatory remarks about his clients’ Dutch ancestry (including, “wooden shoes, wooden heads”).

A 52 year old male lawyer, recently called to the bar, complained that he was not given a job interview for a position for which he was highly qualified. He had previous work experience related to the position and high grades in law school. He felt that his age was the reason why he was not considered for the job.

A woman reported that she was sexually assaulted by a male lawyer in a bar (who touched her buttocks and grabbed her breasts). The lawyer gave her his business card after the assault.

A woman lawyer working in a legal clinic reported that she was harassed and discriminated against at work because she took two maternity leaves in rapid succession.

A woman lawyer working in a legal clinic reported that her employer was refusing to accommodate her psychiatric disability and was threatening to terminate her employment if she could not complete her duties without accommodation.

A South Asian junior female associate reported that a senior white male partner in her firm sexually harassed her.

A male lawyer complained that his employer refused to accommodate his disability, saying “we are not a rehab clinic”, and terminated his employment shortly after he requested the accommodation.

A woman litigator reported that a male mediator suggested that she might “achieve better outcomes” for her clients if she engaged in a sexual relationship with him.

A female associate complained that a male partner in her law firm repeatedly suggested to her that she should wear make-up and shoes with stiletto heels to attract male clients.

A female client complained that her own (male) family law lawyer, who knew she had been a victim of domestic abuse in her marriage, repeatedly told her to “shut up” and said that he “understood why her husband had left her” because she was “difficult”.

A disabled law student was asked in an articling job interview at a litigation boutique how she thought her hearing impairment would hurt her in the courtroom.

A female client of mixed race complained that her own female lawyer was repeatedly rude to her and made sexist and racist remarks, including a comment about how she “didn’t look like a normal human being”.

A female associate who had a consensual sexual relationship with a senior male partner in her law firm complained about employment reprisals (eg. unwarranted poor performance appraisals, ostracization, poor quality of work) after the affair ended. She left the firm claiming that it had become a poisoned work environment.

A female law clerk reported that her male boss repeatedly made uninvited sexual advances toward her (“I can see you’re interested in me”, “if you sleep with me I’ll take you away on vacation”, “I like your short skirt”, etc.) She rejected his advances and he subsequently gave her unwarranted negative job references when she sought employment elsewhere.

A male associate complained that his employment was terminated by a law firm because he suffered from depression and anxiety.

A female associate who is a single mother of two young children reported that she was refused flexible hours and flexible working arrangements to accommodate her child care responsibilities, and complained that she was discriminated against at her firm (in terms of compensation and quality of work) because she requested this accommodation.

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

- (1) A copy of a letter from Arleen Huggins, Chair, Equal Opportunity, Ontario Bar Association to Gavin MacKenzie, former Treasurer dated May 22, 2008.  
(Appendix 1, pages 27 – 28)
- (2) A copy of a letter from Frank E. Walwyn, President, Canadian Association of Black Lawyers to Derry Millar, Treasurer dated August 31, 2008 re: The Law Society of Upper Canada – Statistics Gathering.  
(Appendix 2, pages 29 – 30)

Re: Demographic Data Collection through the Member's Annual Report and Paralegal's Annual Report

It was moved by Ms. Minor, seconded by Ms. Symes, that Convocation approve the inclusion of the question set out at paragraph 2 of the Report in the Member's Annual Report and the Paralegal's Annual Report beginning in the 2009 MAR and PAR.

Carried

The mover and seconder accepted as a friendly amendment the addition to the preamble of words encouraging members to answer the question to increase the reliability of the data.

*Item for Information*

- Public Education Equality Services and Rule of Law Series Calendar 2009

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PROFESSIONAL REGULATION COMMITTEE REPORT

Ms. Tough presented for information the Report of the Complaints Resolution Commissioner and the Report on the Call for Input on Proposed Amendments to Rule 6.03(9) of the *Rules of Professional Conduct*.

Report to Convocation  
May 28, 2009

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

Purpose of Report: Information

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

## TABLE OF CONTENTS

For Information

Report of the Complaints Resolution Commissioner ..... TAB A

Report on the Call for Input on Proposed Amendments to Rule 6.03(9) of the  
*Rules of Professional Conduct* ..... TAB B

## COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on May 14, 2009. In attendance were Bonnie Tough (Vice-Chair and Acting Chair), Julian Porter (Vice-Chair) (by telephone), Melanie Aitken (by telephone), Christopher Bredt, Patrick Furlong, Glenn Hainey, Brian Lawrie and Ross Murray. Staff attending were Naomi Bussin, Katherine Corrick, Sara Hickling, Terry Knott, Zeynep Onen, Jim Varro and Miriam Weinfeld.

## REPORT OF THE COMPLAINTS RESOLUTION COMMISSIONER

1. Part I of By-Law 11 (Regulation of Conduct, Capacity and Professional Competence) governs the office of the Complaints Resolution Commissioner and requires that the Commissioner submit an annual report to the Committee. The Committee must then provide the report to Convocation. The relevant section of the By-Law reads:

## Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.
2. The 2008 report of the Commissioner, Clare Lewis, was submitted to the Committee at its February 2009 meeting. Mr. Lewis attended the Committee's May 2009 meeting to present the report and discuss it with the Committee.
3. Mr. Lewis's report appears on the following pages for the information of Convocation.

## TABLE OF CONTENTS

A. Introduction	6
Appointment and Role of the Complaints Resolution Commissioner	6
Standard of Review	6
Annual Report	7
Composition of the Office	7
B. The Review Function	7
Reviewable Complaints	9
The Review Meeting	10
C. Disposition of Complaints	11
D. Review Meeting Statistics	11
(i) Requests for Review	11
(ii) Reviews Conducted	14
(iii) Review Meeting Results	17
(iv) Status of Files Referred Back for Further Action	20
E. Schedule of Review Meetings	22
F. Systemic Issues	22
G. The Resolution Function	23
H. The Commissioner's Observations	24

## APPENDICES

<i>Law Society Act</i>	1
By-Law 11	2
By-Law 20	3
Information Sheet	4

## Annual Report 2008

### A. Introduction

#### Appointment and Role of the Complaints Resolution Commissioner

Clare Lewis was appointed by Convocation as the first Complaints Resolution Commissioner on April 1, 2005, pursuant to sections 49.14 through 49.19 of the *Law Society Act* (the *Act*).<sup>1</sup> The first appointment was for a two-year period and was subsequently renewed for a further three-year term. Mr. Lewis will enter his third year of his second appointment on April 1, 2009.

The role of the Complaints Resolution Commissioner is to provide an independent review of the Law Society's consideration of a complaint and its decision to take no further action in respect of the complaint. The provisions of the *Act* that apply to the Complaints Resolution Commissioner are attached as Appendix 1.

Under the *Act*, Part I of By-Law 11<sup>2</sup> describes the permissible functions of the Complaints Resolution Commissioner with respect to the review and resolution of complaints. It also sets out the administrative responsibilities of the office of the Complaints Resolution Commissioner. Part I of By-Law 11 is attached as Appendix 2.

#### Standard of Review

Prior to the creation of the position of Complaints Resolution Commissioner, reviews were performed by Lay Benchers functioning as Complaints Review Commissioners, in accordance with By-Law 20<sup>3</sup>. The review function performed by the previous Commissioners was very similar to the review function performed by the current Commissioner, with one notable exception.

In the old regime, the standard of review used by the Commissioners was one of "appropriateness" while By-Law 11<sup>4</sup> imposes a standard of "reasonableness". A copy of the revoked By-Law 20 is attached as Appendix 3, for comparison purposes. The "reasonableness" standard of review requires the Commissioner to determine whether the Society's consideration of a complaint and its resulting decision to take no further action with respect to the complaint, was reasonable.

The Commissioner's role is similar to that of an ombudsman in that typically a degree of deference is given to the body which is being overseen. Accordingly, the legislation requires that the Complaints Resolution Commissioner apply a reasonableness standard of review which accords such deference to the decision made by Law Society staff. Applying this standard of review, if the Commissioner is satisfied that the decision to close a complaint file is reasonable, no further action is taken. However, if the Commissioner is respectfully of the view that the decision arrived at by the Law Society was unreasonable, the complaint will be referred back to the Law Society with a recommendation that further action be taken.

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<sup>1</sup> In accordance with O.Reg.31/99

<sup>2</sup> By-Law 11 was made May 1, 2007, and amended June 28, 2007

<sup>3</sup> By-Law 20 was revoked on December 9, 2005 and replaced with a new unrelated By-Law.

<sup>4</sup> The standard of review is set out in By-Law 11, section 7

## Annual Report

By-Law 11 requires that the Complaints Resolution Commissioner prepare an annual report. In particular, section 3 provides as follows:

### Annual Report

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

The Commissioner submitted his first annual report to the Standing Committee of Convocation (Professional Regulation Committee) in March 2006. The Report provided a comparison of the statistical data gathered during the last quarter of the Lay Benchers' activities and the statistical information compiled by the office of the Complaints Resolution Commissioner for the period April 1, 2005 through December 31, 2005. The 2006 and 2007 Annual Reports were submitted to the Standing Committee in February of 2007 and in March of 2008, respectively and the Committee laid these Reports before Convocation in June of the year in which they were submitted.

This is the Annual Report for 2008. Included in this report is statistical information collected during the 2006, 2007 and 2008 calendar years, and in certain instances, data collected in 2005 will also be reflected, for comparison purposes.

### Composition of the Office

In 2008, the Commissioner's office was comprised of the Complaints Resolution Commissioner who performs his duties on a part-time basis, two part-time Counsel and a Complaints Resolution Coordinator. Although the office was initially established with one part-time Counsel, in order to meet the growing demand for reviews, approval for the hiring of an additional part-time Counsel was obtained in late 2007 and a second Counsel was hired in early 2008.

### B. The Review Function

By-Law 11 provides the Complaints Resolution Commissioner with two distinct functions. In addition to the review role, the Commissioner has the authority to perform a formal complaint resolution function. To date, the Commissioner has only exercised his review function.

A request for review by the Complaints Resolution Commissioner is initiated when staff of either the Complaints Resolution or Investigation departments closes a complaint file without taking any disciplinary action. The closure by staff from either of these two departments triggers the complainant's automatic right to request a review of the Law Society's decision. Accordingly, every Law Society closing letter, sent out at the conclusion of the Society's investigation, contains an Information Sheet explaining both the role of the Complaints Resolution Commissioner and the process to be followed when seeking a review. The Information Sheet is attached as Appendix 4.

On receipt of a request for review, the Coordinator of the Commissioner's office sends the complainant a letter of confirmation. The Coordinator notifies the investigator of the request and the Professional Regulation Division then provides written notice of the request for review to the subject lawyer.

The investigator, on being advised of the request, is responsible for preparing the materials for the review. Although the Commissioner is provided with the entire Law Society file, the investigator prepares a bound copy of all relevant materials, referred to as the Complaints Review Index, for use at the review meeting. The Complaints Review Index includes the Law Society's closing letter or report, copies of all materials submitted by the complainant and either the lawyer's written response or a synopsis of the response.

When the Complaints Review Index is completed, it is reviewed by Counsel to the Director, Professional Regulation and then delivered to the Coordinator for distribution. The Coordinator, in consultation with the complainant, schedules the date for the review meeting, sends a letter to the complainant confirming the date and encloses a copy of the Complaints Review Index for the complainant's use at the meeting. The Commissioner and Counsel also receive a copy of the bound materials, in advance of the meeting.

Documents that fall within the confidentiality provisions of s. 49.12<sup>5</sup> of the Law Society Act are also bound and provided to the Complaints Resolution Commissioner and Counsel. The type of information considered confidential includes:

1. Personal information about the Lawyer
2. Evidence from third parties which is protected by confidentiality or solicitor-client privilege
3. Solicitor-client information, when the Complainant is not the client or the information is in respect of other clients

#### Reviewable Complaints

Section 4(1) of By-Law 11 identifies which complaints the Complaints Resolution Commissioner may review. A review is only available when,

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

Section 4 (2) provides that a complaint may not be reviewed by the Complaints Resolution Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, a licensee's filing requirements, the handling of money and other property or negligence of a licensee.

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<sup>5</sup> 49.12 (1) A benchler ,officer, employee ,agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part

Since Section 4 of By-Law 11, provides that a review is only available when the merits of a complaint have been considered by the Society, section 4(1) has been interpreted to mean that the Commissioner can only review those files that have been investigated under the investigation authority set out in section 49.3 of the Act. This means that generally complaints referred to the Complaints Resolution or Investigations departments are reviewable by the Commissioner, but the Commissioner does not have the authority to review those cases closed earlier in the process, for example, cases closed by Complaints Services or the Intake department because of the Law Society's lack of jurisdiction to act on the complaint.

In late 2005, when it became apparent that a process for reviewing complaints closed by the Intake department was needed, an alternate process for reviewing complaints closed without an investigation was established.

When the Commissioner receives a request for review of a complaint closed by the Intake department, the complainant is advised that the Commissioner does not have the jurisdiction to review the matter and the complaint is referred back to the Intake department for a further response. The Intake Manager reviews the file. If the Manager believes that the file should remain closed and the Complainant remains dissatisfied, the Director, Professional Regulation, reviews the file. A similar review process is used for complaints closed by Complaints Services in the Client Service Centre.

In 2007, on the recommendation of the Director, Professional Regulation, the Complaints Resolution Commissioner conducted a review of a file closed by the Intake department. The Commissioner agreed to proceed with the review after satisfying himself that the complaint had been investigated on its merits.

#### The Review Meeting

Most reviews are in-person meetings between the Commissioner and the complainant. Counsel to the Commissioner also attends to advise the Commissioner and to take notes of the proceedings. The complainant is occasionally accompanied by legal counsel, a friend or a family member. Pursuant to Section 8(4) of By-Law 11, the lawyer who is the subject of the complaint is not entitled to participate in the process. The Coordinator does not attend the meeting but is available to provide any necessary administrative support.

Complaint review meetings, unless conducted out of town, are held at Osgoode Hall. Although consideration has been given to moving the venue of the meetings off-site, it was decided that the cost of doing so would outweigh the benefits. During a review meeting, the Commissioner may require access to a variety of administrative services, including a photocopier or facsimile machine. Law Society security officers are also used at the meetings.

When the complainant is unable to attend a meeting in person, the review meeting may be conducted by teleconference. There were 24 review meetings conducted by telephone in 2008. There were 10 reviews conducted by telephone in 2007 and 15 in each of 2005 and 2006.

In some circumstances, for example when the complainant fails to attend without a request for an adjournment, or if the complainant is unwilling or unable to participate, the review may proceed based on the written material alone. Sixteen reviews proceeded in this manner in 2008, nine in 2007, six in 2006 and only one such review was conducted in 2005.

Although most of the meetings are held in Toronto, in December 1997, to provide greater accessibility to the process for those complainants who reside outside of the Toronto area, Convocation approved the holding of complaint review meetings in centres outside of Toronto. The Commissioner has conducted review meetings in Cambridge, Kitchener, London and Ottawa. In 2008, 19 complaint files were reviewed in Ottawa and 9 in London. In 2007, 12 review meetings were conducted in Ottawa and in 2006, only 5 review meetings were held in Ottawa. It is anticipated that the demand for reviews from areas outside of Toronto, particularly in the Ottawa region, will continue to increase.

Although 3 reviews were scheduled to proceed in London during 2007, only 1 personal meeting took place. The second London file was returned to the investigator for further work in advance of the meeting; the third complainant failed to attend the meeting and the review proceeded on the written material. There were no meetings held in either Cambridge or Kitchener during 2008 but 3 reviews were performed in Cambridge in 2007.

### C. Disposition of Complaints

After reviewing the Law Society's consideration of a complaint and the Society's resulting decision to take no further action in respect of the complaint, if the Complaints Resolution Commissioner is satisfied that the Law Society's consideration and decision was reasonable, the Commissioner will so notify the complainant and the Society. The Act provides that the Commissioner's decision is final and not subject to appeal. If the Commissioner is not satisfied that the Law Society's decision to close the file was reasonable, the Commissioner is required to refer the complaint back to the Law Society with a recommendation that further action be taken. The Complainant is notified of the Commissioner's decision, in writing, within several weeks of the review meeting.

Although the Director, Professional Regulation is not required to accept the Commissioner's recommendation, if the recommendation is not accepted, the Director is required to notify the Commissioner and the Complainant of the reasons for declining it.

The subject lawyer is notified of the Commissioner's decision by the Law Society's investigating department.

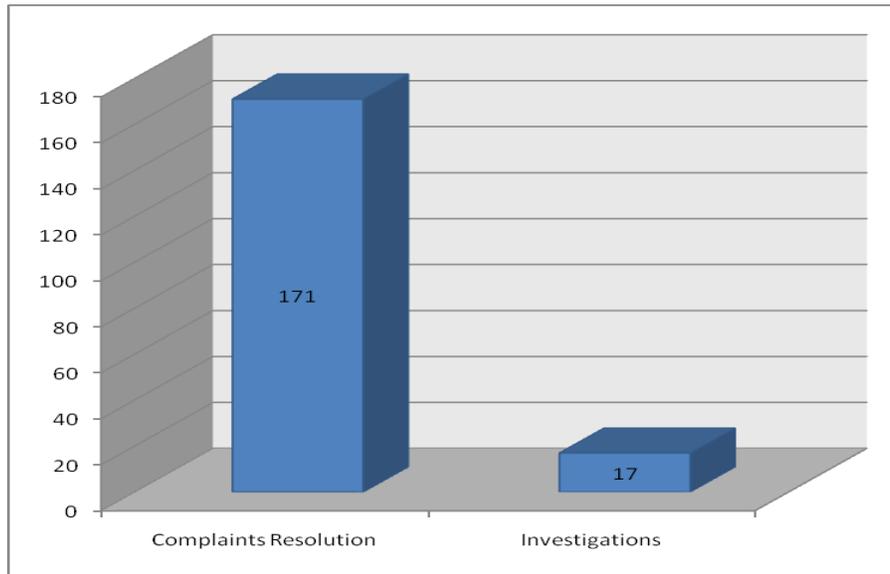
### D. Review Meeting Statistics

#### (i) Requests for Review

In 2008, 188 requests for review were received. The following Table 1 provides a breakdown of the department that conducted the investigation from which the review was requested.

Table 1

CRC Requests Received by Department 2008



There were 154 requests for review received in 2007 and 109 in 2006. Table 2 provides a comparison of the department breakdown for 2007; Table 3 provides the 2006 breakdown.

Table 2

CRC Requests Received by Department 2007

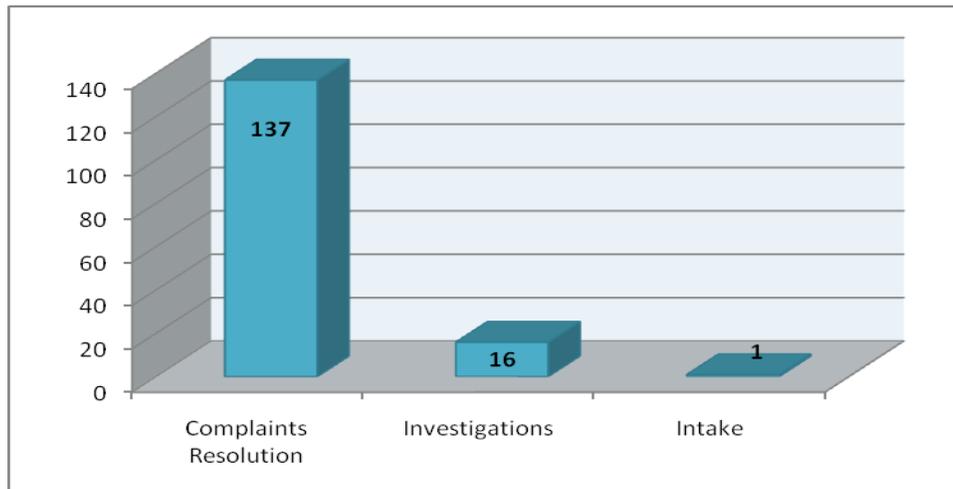
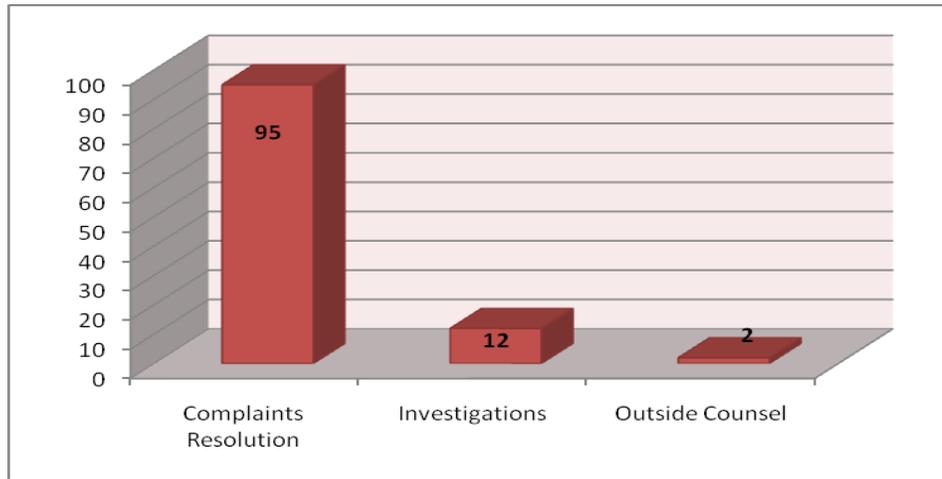


Table 3

CRC Requests Received by Department 2006



Two of the investigations were conducted by outside counsel pursuant to s. 49.5(2) of the Law Society Act.

Table 4 below provides a three year departmental comparison.

Table 4

Comparison of Requests Received by Department 2006, 2007 & 2008

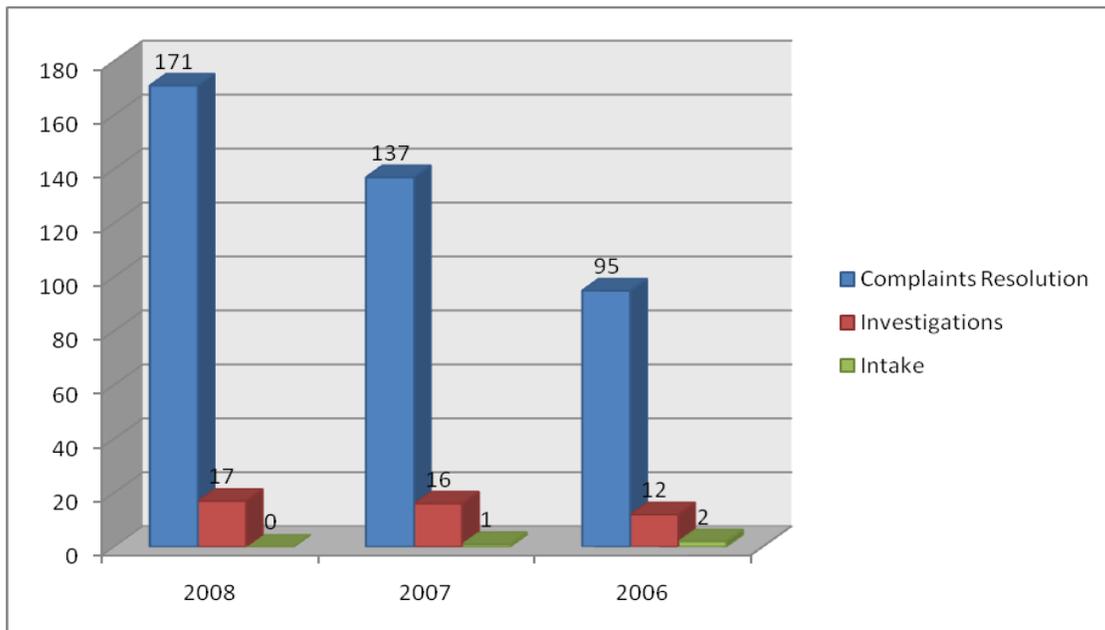
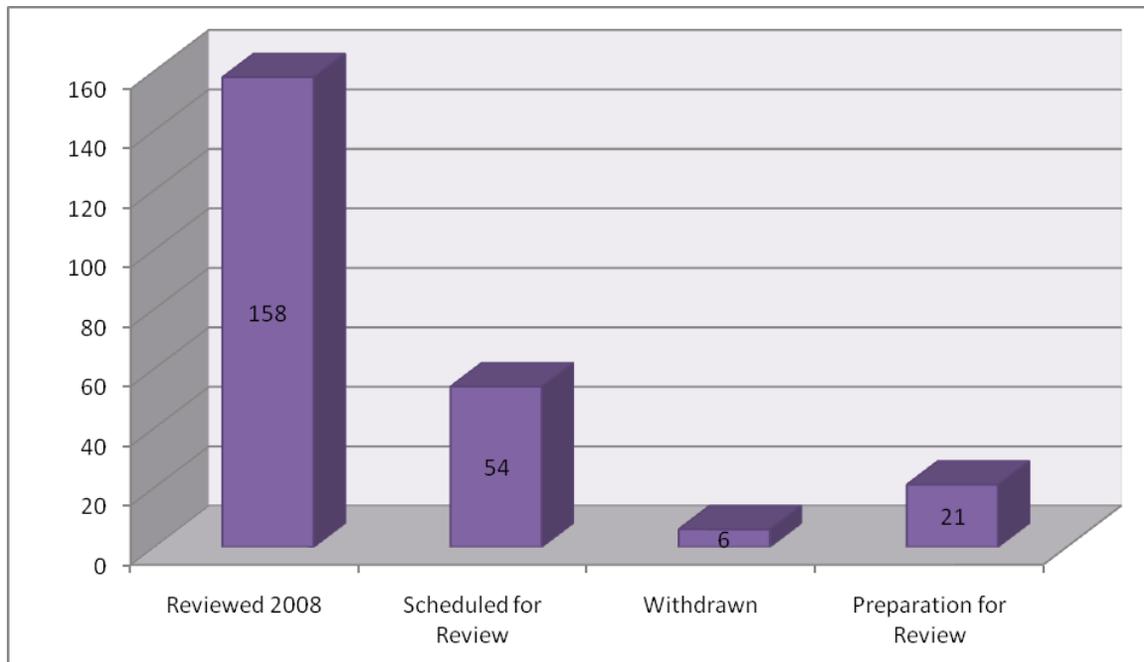


Table 5 that follows provides a summary of the work flow status of all complaint files in the Commissioner's Office, as at December 31, 2008. It reflects the status of the 188 files for which a request for review was received in 2008 and those requests received in 2007 but not reviewed until 2008. There were 51 files in which the request was made in 2007 but the review was conducted in 2008.

Table 5

Status of Requests 2008



Following receipt of the requests for review during 2008, 9 files, in total, were withdrawn to allow further investigation to be performed prior to the review. The Department Manager or Counsel to the Director identified the need for further investigation during a managerial review for readiness to proceed. Of the 9 files 3 files were returned for review because on completion of the further investigation by Complaints Resolution the complainant resubmitted a request for review. Therefore, a total of 6 requests were withdrawn.

There were 10 such withdrawals in 2007. Eight were withdrawn by the department Manager. Counsel to the Complaints Resolution Commissioner identified the need for further investigation on 2 of the files. Following discussions with the department Manager, the Manager agreed to have further work performed in advance of the review meeting. An eleventh file was withdrawn prior to the review meeting at the request of the complainant.

(ii) Reviews Conducted

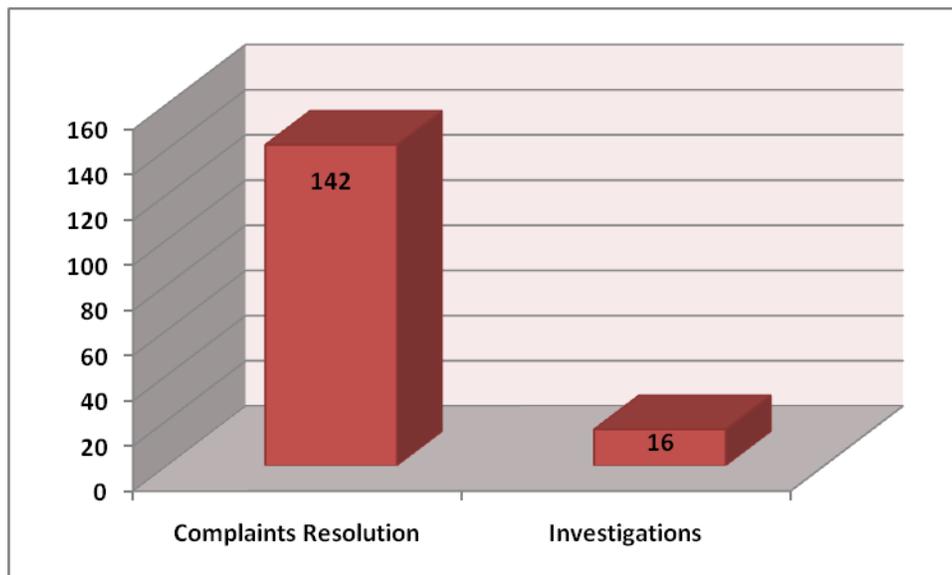
From January 1, 2008 through December 31, 2008, 158 file reviews were conducted. The Complaints Resolution Commissioner reviewed 156 of the files and Counsel to the Commissioner, as the Commissioner's Delegate, pursuant to Section 49.16 of the Act, performed 2 of the reviews. Section 49.16 provides, in part, that the Commissioner may in writing delegate any of his powers or duties to members of his staff. The Commissioner, identifying a potential conflict, delegated his functions in relation to these two files, to the Commissioner's Counsel.

There has been a significant increase in the number of files reviewed over the past several years. This is illustrated by the following statistics. In 2008 158 files were reviewed, in 2007 108 files were reviewed and in 2006 79. The increase of 50 files reviewed from 2007 to 2008 represents an increase in work-load of approximately 46% in only one year. In contrast, there was an increase of 37% between 2006 to 2007. In 2005, a total of 69 reviews were performed, 17 under the old regime and 15 by the Complaints Resolution Commissioner.

Table 6 below identifies the department that conducted the investigation of the files reviewed in 2008.

Table 6

CRC Reviews Conducted in 2008 - By Department

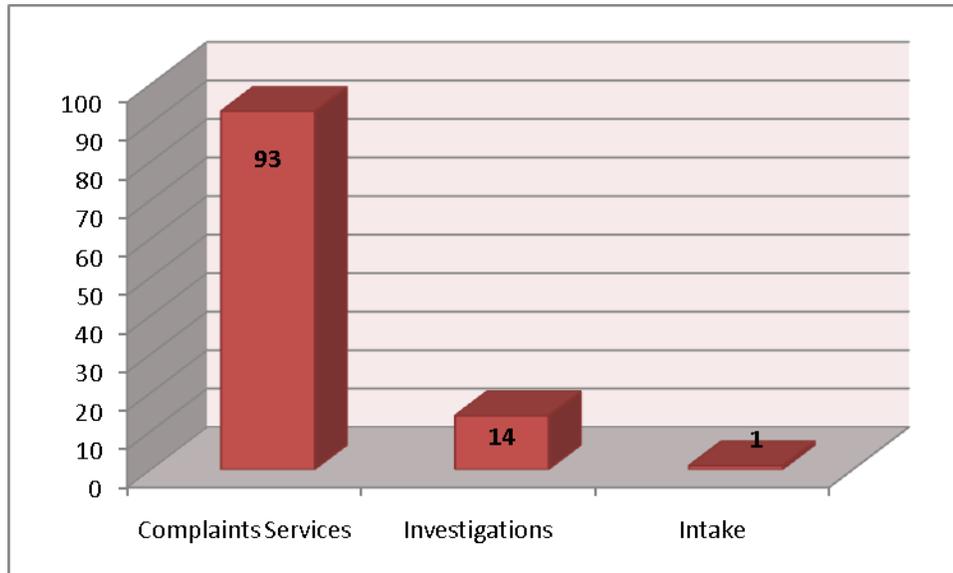


As Table 6 indicates, of the 158 files reviewed in 2008, 143 (90.51%) were investigated by the Complaints Resolution department and 15 (9.49%) of the files were investigated by the Investigations department.

For Comparison purposes, Table 7 below identifies the department that conducted the investigation of the files reviewed in 2007.

Table 7

CRC Reviews Conducted 2007 - By Department

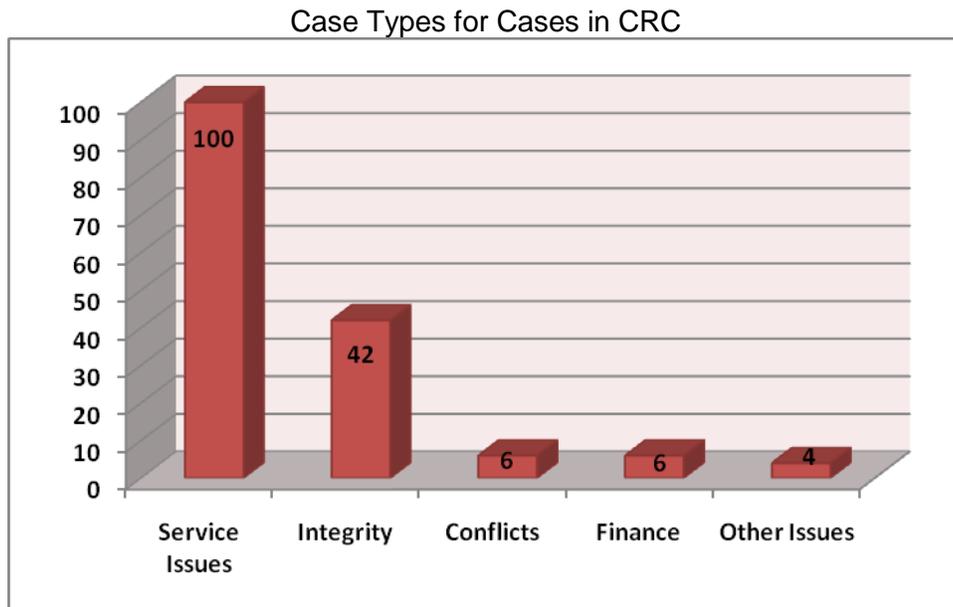


In 2007 93 of the files (86%) reviewed by the Commissioner were investigated by the Complaints Resolution department, 14 (approximately 13%) were from the Investigations department and 1 (less than 1%) were investigated by the Intake department.

In 2006, of the 79 files reviewed, 67 (approximately 85%) were from the Complaints Resolution department, 10 (approximately 13%) were from Investigations and 2 (less than 2%) had been investigated by outside counsel.

Table 8 that follows identifies the types of cases or nature of the issues that were reviewed by the Commissioner during 2008.

Table 8



In many of the cases there were multiple types of issues identified, but Table 8 reflects the principal issue. Tables 9 and 10 were prepared in the same format.

Table 9 identifies the types of cases that were reviewed by the Commissioner in 2007.

Table 9

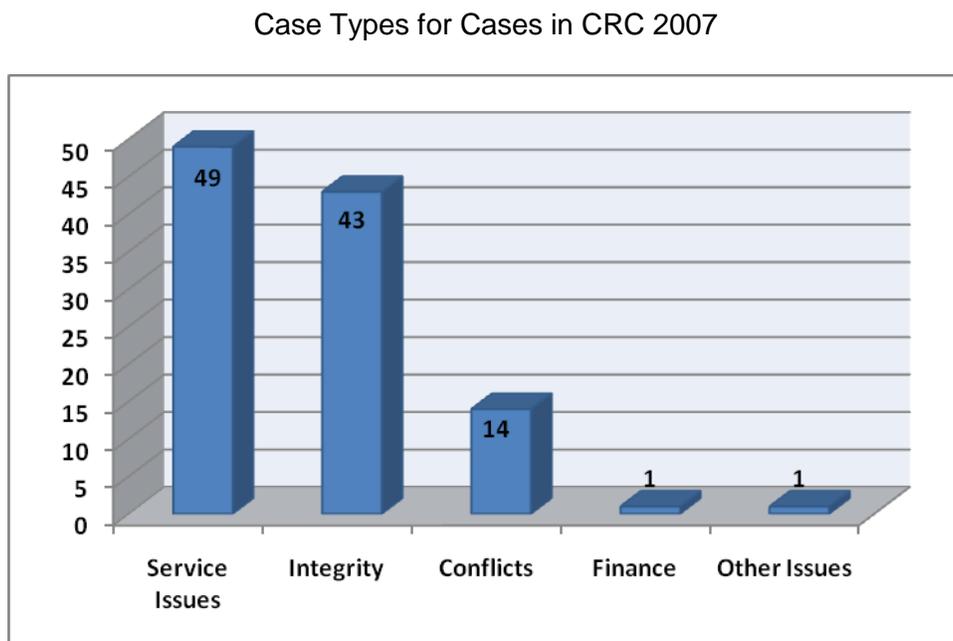
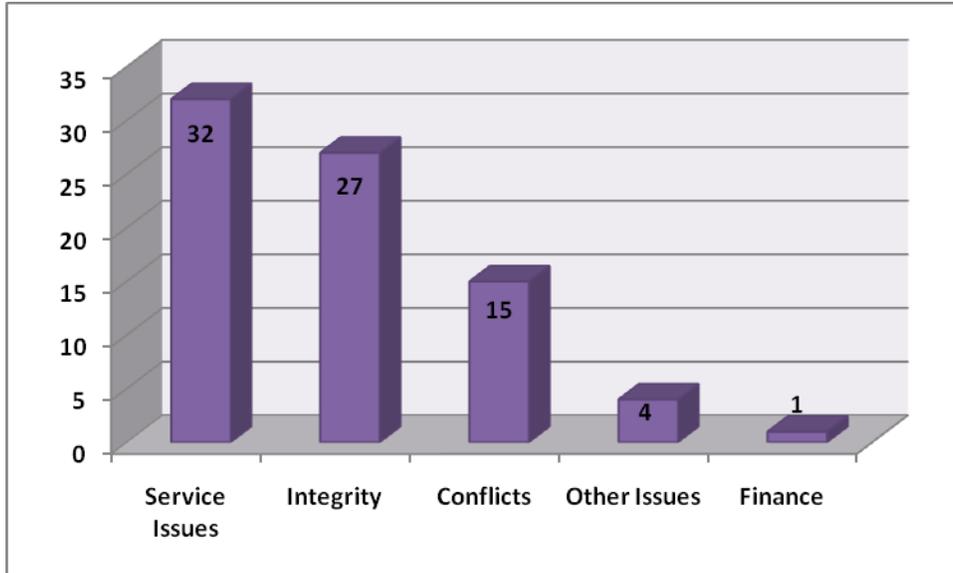


Table 10 that follows below provides the same information for the data collected in 2006.

Table 10

Case Types for Cases in CRC 2006

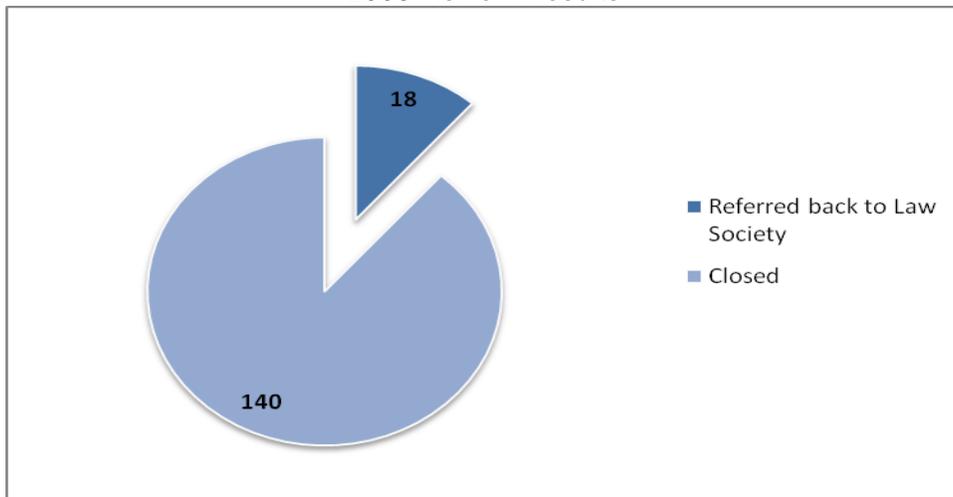


(iii) Review Meeting Results

Figure 1(1), set out below, depicts the dispositions rendered following all reviews conducted in 2008.

Figure 1(1)

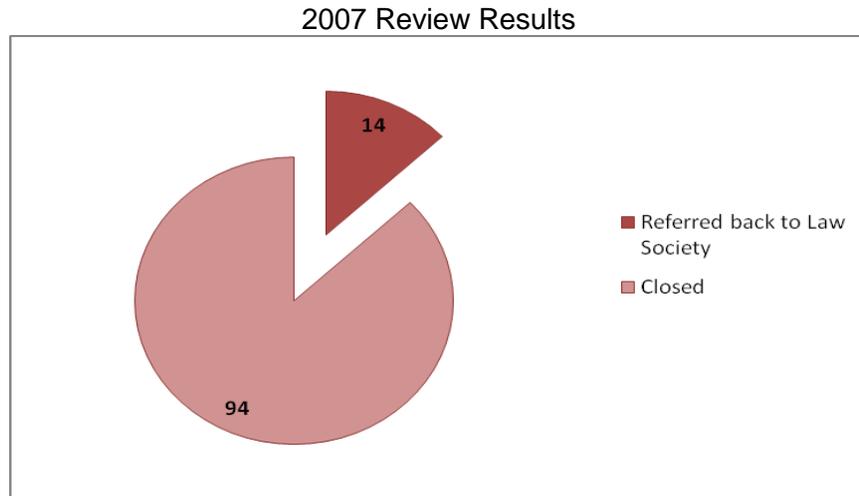
2008 Review Results



The 2008 review results, depicted in figure 1(1) above, indicate that in 2008 a total of 18 complaint files, representing approximately 11% of the files reviewed, were sent back to the Law Society with a recommendation for further action. Fourteen of the 18 files were from the Complaints Resolution department and 4 cases were from the Investigations department.

Figure 1(2) that follows depicts the file dispositions, following the 2007 reviews.

Figure 1(2)

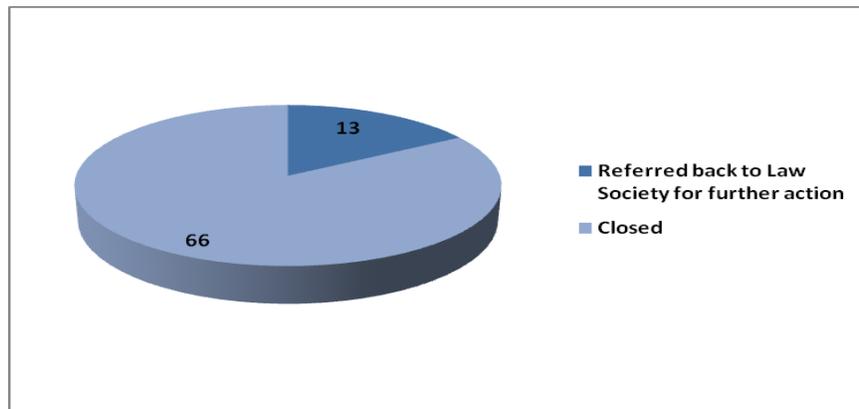


The 2007 review results, depicted in figure 1(2) above, indicate that in 2007 a total of 14 complaints, representing 12.96% of the files reviewed, required further action. Twelve of the 14 files were from the Complaints Resolution department and 2 cases were from the Investigations department. This statistical data does not include the 2 files that were taken back by the investigating department at the suggestion of Counsel to the Complaints Resolution Commissioner prior to the review meeting.

The following figures 1(3), 1(4) and 1(5) depict the dispositions achieved in 2006, 2005, and 2004. This information is provided for comparison purposes only.

Figure 1(3)

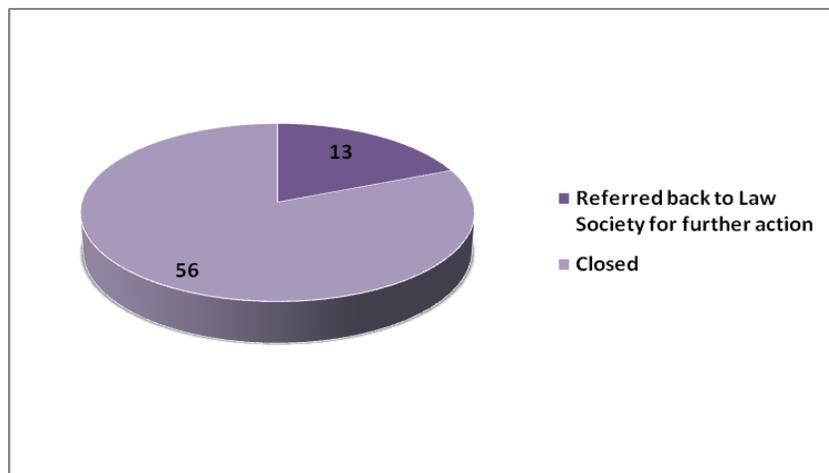
## 2006 Review Results



The 2006 review results, depicted in figure 1(3) above, indicate that in 2006 a total of 13 complaints, representing 16.45% of the files reviewed required further action. Nine of the 13 files were from the Complaints Resolution department, 3 cases were from the Investigations department and Outside Counsel investigated 1 of the files.

Figure 1(4)

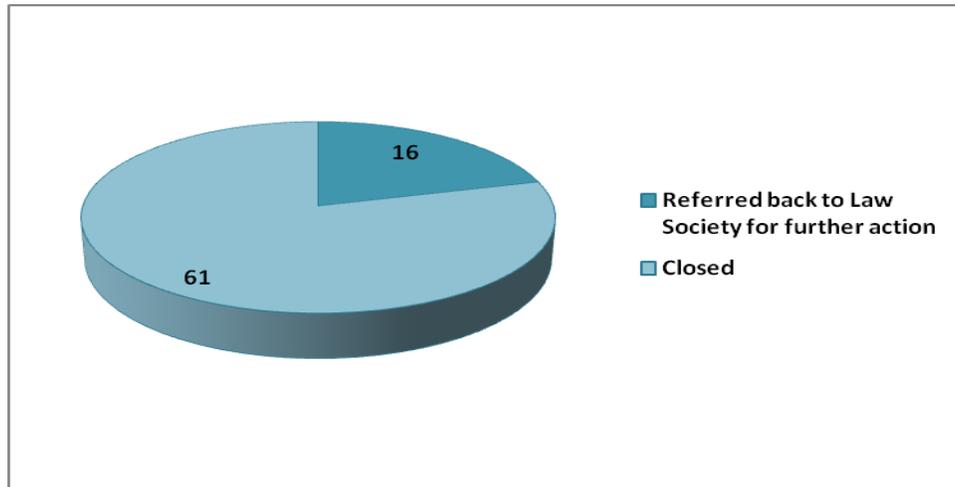
## 2005 Review Results



In 2005, 13 or 18.84% of the files reviewed were referred back for further action. Of the 13 files referred back in 2005, the former Complaints Review Commissioners made 5 of the referrals and 8 were made by Clare Lewis as the Complaints Resolution Commissioner. The Complaints Review Commissioners' standard of review was, as indicated earlier, "appropriateness" as opposed to the current standard, which is "reasonableness".

Figure 1(5)

## 2004 Review Results



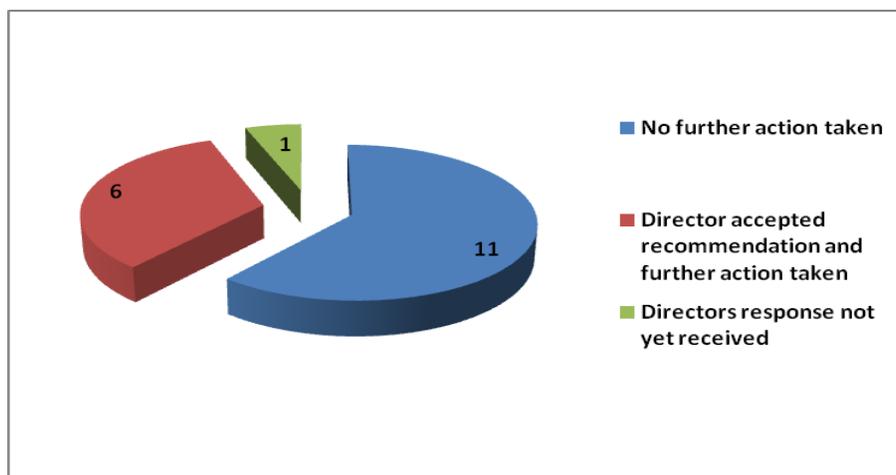
In 2004, using the “appropriateness” standard of review, 20.77% of the files reviewed by the Complaints Review Commissioners were referred back for further action.

(iv) Status of Files Referred Back for Further Action

Figure 2(1) below, sets out the Law Society’s response to the 18 files that the Complaints Resolution Commissioner referred back to the Law Society for further action in 2008, in accordance with By-Law 11 section 7.

Figure 2(1)

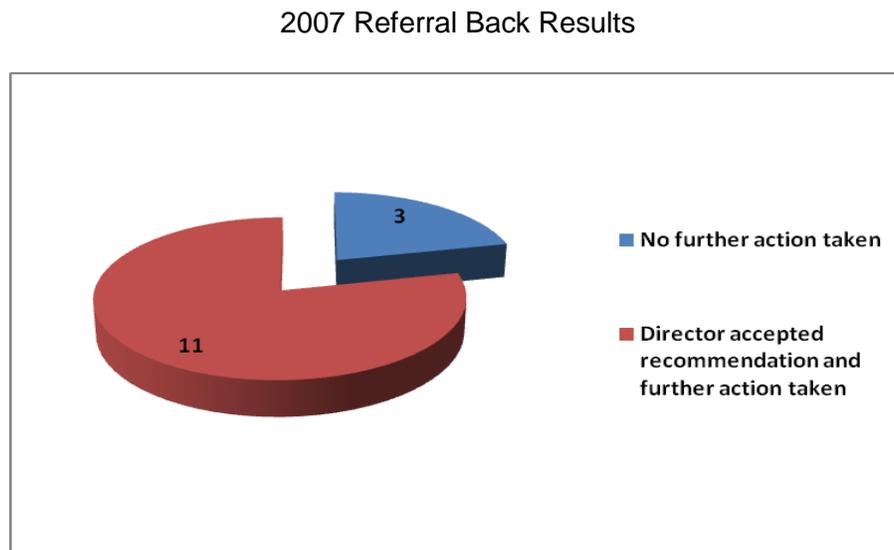
## 2008 Referral Back Results



Although the Director did not take any further regulatory action on 6 of the files referred back, on two of the files the Director addressed a concern identified by the Commissioner in a manner which differed from the specific recommendation. For example, rather than take further regulatory steps, the Director recommended a referral to Practice Review on one file and on another file the lawyer was referred to Practice Audits to consider the appropriateness of a spot audit.

Figure 2(2) below sets out the Law Society's response to the 14 files that the Commissioner referred back to the Law Society in 2007.

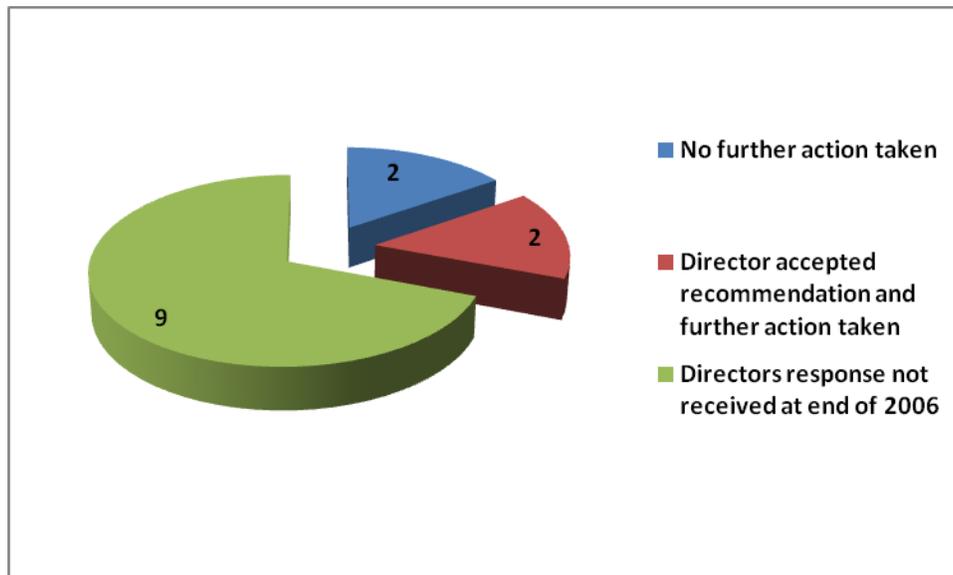
Figure 2(2)



For comparison purposes, Figure 2(3) that follows sets out the status of the files that were referred back to the Law Society for further action in 2006.

Figure 2(3)

## 2006 Referral Back Results

E. Schedule of Review Meetings

Over the past three years, the number of requests for review has increased dramatically. In order to meet this growing demand, the frequency of the review days has increased. During 2006, a review day was scheduled for every 2 weeks with 3 files being reviewed on each of these days. However, because of the growing number of requests for review, during 2007, the number of files reviewed on each review day was increased from 3 to 4. On occasion, telephone meetings were also held on separate dates and 9 files were reviewed in the absence of the complainant.

Beginning in May 2008, to meet the increasing demand for reviews and in order to manage the waiting time between the receipt of the request for review and the meeting day, two consecutive days of meetings were held every two weeks. Meetings with 4 different complainants were frequently scheduled each day. Many of the meetings involved complaints against multiple lawyers. In addition, a number of reviews were conducted on days not otherwise scheduled as review days.

Furthermore, during the two day trips to Ottawa and London, the number of reviews scheduled for each of the meeting days also increased. The increase in both the number of review days and the number of files reviewed on each review day, resulting in the Complaints Resolution Commissioner reviewing a total of 158 files in 2008. However, it is clear that the number of requests for review will continue to increase, and further steps will have to be taken to accommodate the growing demand.

#### F. Systemic Issues

In addition to referring matters back to the Law Society with a recommendation for further regulatory action, the Commissioner has continued to identify systemic issues during the review meetings. For example, the statistical data captured in Figure 1(1) does not include those files in which the Commissioner, although concluding that the investigation and resulting decision to close the complaint file was reasonable, identified issues and concerns which were brought to the attention of the Director, Professional Regulation.

Such issues have occurred in 7 review files during 2008, and the Commissioner addressed each of these matters in a written Memorandum to the Director. For example, in one of the files, the Commissioner suggested that the Law Society assist the complainant in retrieving his file from the lawyer. The Law Society was able to retrieve and return the file to the complainant. In another matter, the Commissioner suggested that the Director recommend the lawyer for practice review. The Director followed the Commissioner's suggestion and made the recommendation. The Commissioner had also identified general concerns about a particular lawyer's practice. There have also been discussions between the Commissioner, Counsel and the Director, regarding the content of closing letters. The Commissioner has raised these issues and expressed his concerns in an effort to support and improve the Society's commitment to serve to the public and protect the public interest.

Counsel to the Commissioner has continued to work on an informal basis with Counsel to the Director, Professional Regulation, and Management to clarify issues and address concerns, in advance of the review meetings. For example, when additional material has been received by the Commissioner's office, in advance of a scheduled review meeting, the documents have been provided to the department manager and/or the investigator for consideration before the meeting. When possible, if outstanding issues have been identified prior to the review meeting, the issues have been addressed by the investigator before the meeting. These mutually supportive practices and procedures have promoted a more efficient and effective transfer of files and have allowed for greater consistency in the practices and procedures within the review process.

The Commissioner and his Counsel and the Director, Professional Regulation, and her Counsel, have also continued to work towards addressing and improving practices and procedures between the Professional Regulation departments and the Office of the Complaints Resolution Commissioner.

#### G. The Resolution Function

In addition to the review function performed by the Complaints Resolution Commissioner, section 9 of By-Law 11 also provides that the Society may refer a complaint to the Commissioner for resolution. This function is intended to be a more formal resolution process for addressing complaints.

By-Law 11 states that the Society will determine whether a matter is referred to the Commissioner for resolution, prior to the file being closed or a referral to the Proceedings Authorization Committee has been made. The Society can only refer a complaint to the Commissioner for resolution with the consent of the complainant, the lawyer and the Society. The Complaints Resolution Commissioner has the broad discretion to determine the process for the resolution function.

During 2006, Counsel to the Commissioner, in consultation with the Director, Professional Regulation and her counsel, drafted a proposal for identifying and streaming files for resolution. Counsel to the Director created the necessary policies to implement the process.

The resolution process was ready for implementation in 2007. Although one file was identified as appropriate for the process during 2007, the complainant did not wish to participate in the process. The complaint file was, therefore, investigated in the ordinary course.

During 2008, although a second file was considered suitable for the resolution process and the parties expressed an interest in participating in the process on reviewing the nature of the complaint, it became apparent that because of an ongoing investigation involving the lawyer, the file was not in fact suitable.

#### H. The Commissioner's Observations

The following are Mr. Lewis's general observations on the Complaints Review process in 2008.

Over the past two years I have seen a marked increase in the number of requests for review. I believe that this significant increase is attributable, in part, to the overall rise in the number of complaints to the Law Society. I also believe that there has been an increase in public awareness of the process.

The change in practice by the Director of Professional Regulation requiring that a copy of the Complaints Review Process Information Sheet be enclosed with every closing letter from the Complaints Resolution and Investigations departments has resulted in a substantial increase in the number of requests.

The Office of the Complaints Resolution Commissioner is also receiving requests for review from complainants whose files were closed several years ago. Until the current Office was established, review by the Commissioner was not routinely offered to complainants. Having recently become aware of the Office's existence, more complainants are now requesting a review.

I also receive many review requests from complainants, prior to the conclusion of the investigation or on complaints that have not been investigated by the Law Society. When the complaint is still under investigation, the complainant is advised that a review cannot be conducted until the conclusion of the investigation. If the complaint file was closed by either Client Services or the Intake department, often because the complaint does not raise a regulatory issue or is outside of the Society's jurisdiction to investigate, the complainant is advised of the Commissioner's lack of authority to conduct a review and the letter of request is sent to the department's Manager, for further consideration.

Despite the increased demands on this office, I am confident that I continue to provide the public with an independent and impartial forum for review. I have made every effort to ensure that public complaints are dealt with in a fair, effective and efficient manner. I have also provided complainants with comprehensive reasons for my decisions and in doing so, trust that I have encouraged greater transparency in the complaints process.

I believe that the review process and its attendant meetings with me have provided dissatisfied complainants, requesting a review, with a crucial forum to voice their comments and concerns. In most cases, the review meetings have provided the complainants with an opportunity to participate in their first in-person discussion, adding a valuable personal component to the process of resolution of complaints.

It appears that the Law Society's increased efforts to achieve performance excellence through reorganization of the complaints processes and the establishment of the Office of the Complaints Resolution Commissioner, have significantly increased complainant satisfaction.

As the final year of my second appointment soon begins, I look forward to continuing my engagement in assisting the Law Society in its mandate to regulate the profession in the public interest.

Appendix 1

#### Law Society Act

#### R.S.O. 1990, CHAPTER L.8

#### COMPLAINTS RESOLUTION COMMISSIONER

##### Appointment

49.14 (1) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

##### Restriction

(2) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

##### Term of office

(3) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

##### Removal from office

(4) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

##### Restriction on practice of law

(5) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

## Functions of Commissioner

49.15 (1) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

## Investigation by Commissioner

(2) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

## Access to information

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

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

## Delegation

49.16 (1) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

## Terms and conditions

(2) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

## Identification

49.17 On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

## Confidentiality

49.18 (1) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

### Exceptions

- (2) Subsection (1) does not prohibit,
- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
  - (b) disclosure required in connection with a proceeding under this Act;
  - (c) disclosure of information that is a matter of public record;
  - (d) disclosure by a person to his or her counsel; or
  - (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

### Testimony

(3) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

### Decisions final

49.19 A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

Appendix 2

BY-LAW 11  
 Made: May 1, 2007  
 Amended: June 28, 2007  
 September 20, 2007 (editorial changes)  
 October 25, 2007 (editorial changes)  
 February 21, 2008  
 April 24, 2008  
 October 30, 2008

## REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

### PART I COMPLAINTS RESOLUTION COMMISSIONER

#### GENERAL

### Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

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

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

#### Provision of funds by Society

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

#### Restrictions on spending

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

#### Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

### REVIEW OF COMPLAINTS

#### Reviewable complaints

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

#### Same

- (2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:
1. Quantum of fees or disbursements charged by a licensee to a complainant.
  2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
  3. Negligence of a licensee.

#### Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

#### Right to request referral

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

#### Request in writing

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

#### Time for making request

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

#### When notice given

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

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

#### Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

#### Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

#### Fresh evidence

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

#### Disposition of complaint referred for review

- (2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,
- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
  - (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

#### Disposition of complaint referred for review: notice

- (3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

#### Referral back to Society: notice

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

#### Same

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

#### Procedure

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

#### Meeting

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

Participation in review: Society

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

Participation in review: licensee

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

Description of consideration, etc.

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

Requirement to answer questions

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

## RESOLUTION

Discretionary referral of complaints

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

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

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

#### No resolution

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

#### Enforcement of resolution

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

#### Confidentiality: Commissioner

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

#### Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

#### Without prejudice

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

#### Procedure

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

Appendix 3

#### BY-LAW 20

Made: January 28, 1999

Amended:

May 28, 1999

April 26, 2001

January 24, 2002

Revoked and Replaced: December 9, 2005

#### REVIEW OF COMPLAINTS

#### Complaints Review Commissioners

Each lay bench member is a Complaints Review Commissioner.

#### Function

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

Same

- (2) A Complaints Review Commissioner shall not review the disposition of a complaint against a member by,
- (a) the chair and vice-chairs of the Discipline Committee as it was constituted before February 1, 1999;
  - (b) a committee of benchers acting under section 33 of the Act as that section read before February 1, 1999;
  - (c) Convocation acting under section 33 of the Act as that section read before February 1, 1999;
  - (d) The Proceedings Authorization Committee;
  - (e) The Hearing Panel; or
  - (f) The Appeal Panel.

Request to review disposition of complaint

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

Referral of disposition of complaint to Commissioner

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

Review by Commissioner of disposition of complaint

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

Referral to Society for further investigation

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

Procedure on review

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

Independent counsel

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

Two or more Commissioners may review disposition of complaint

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

Commencement

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

#### REPORT ON THE CALL FOR INPUT ON PROPOSED AMENDMENTS TO RULE 6.03(9) OF THE RULES OF PROFESSIONAL CONDUCT

1. In October 2008, at the Committee's request, Convocation approved a call for input on proposed amendments to rule 6.03(9), which deals with communication by a lawyer with a represented organization.<sup>6</sup>
2. The call for input was published in late 2008 in the Ontario Reports and on the Law Society's website, and was also included in Law Society e-mails to lawyers. The Chair also wrote to three legal organizations (the Advocates Society, the OBA and the Ontario Trial Lawyers Association) requesting their comments on the proposal. The deadline for responses was February 16, 2009 but some responses continued to arrive towards the end of February and into early March 2009.
3. The Law Society received over 50 written responses from lawyers who represent individual clients, corporations or organizations and municipalities, lawyers working for the federal and provincial governments, in-house counsel and from the legal organizations. Most of the responses were received via e-mail, including letters attached to e-mail messages.
4. The responses represent a wide and somewhat divergent range of views. Several respondents were opposed to the amendments. Some thought that the current rule was not restrictive enough and would expand the scope of those within organizations who could not be contacted by a lawyer without consent of the organization's lawyer. The remaining respondents either agreed with the changes or agreed generally with the changes but suggested clarifying amendments or additions.
5. All responses have been acknowledged, and where required, clarification was provided on the purpose of the rule and the proposed amendments.
6. At its May meeting, the Committee reviewed the responses and discussed the issues they raised.
7. For its June meeting, the Committee has requested that staff prepare a draft of the rule that incorporates options based on the responses, with a suggestion that the Society's Rules drafter also assist in framing the options. Thereafter, the Committee intends to

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<sup>6</sup> Paralegals are subject to a similar rule in the *Paralegal Rules of Conduct*, and input on the proposed rule amendments was requested and received from the Paralegal Society of Ontario and the Licensed Paralegal Association of Ontario.

strike a small working group of the Committee to review the draft and conduct further research and dialogue with interested parties on the issue, as may be appropriate.

- 8. The Committee plans to prepare a report to Convocation on this subject for the fall of 2009.

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

- (1) Copy of an Information Sheet re: Office of the Complaints Resolution Commissioner.  
(Appendix 4, pages 38 – 39)

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

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*REPORTS FOR INFORMATION ONLY*  
Access to Justice Committee Report  
Audit Committee Report

Report to Convocation  
May 28, 2009

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

Purpose of Report: Information

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

#### COMMITTEE PROCESS

1. The Access to Justice Committee ("the Committee") met on May 13, 2009. Committee members Marion Boyd, Co-Chair, Paul Schabas, Co-Chair, Paul Dray, Susan Elliott, Glenn Hainey, Susan McGrath, William Simpson, Catherine Strosberg and Bonnie Tough participated. Staff member Marisha Roman attended.

#### FOR INFORMATION ONTARIO CIVIL LEGAL NEEDS PROJECT

2. On June 26, 2008, Convocation approved the Law Society's participation in the Ontario Civil Legal Needs Project, as well as the contribution of funds and staff resources to manage the project. The Law Society is providing support totaling \$150,000, with \$120,000 in financial support and \$30,000 in in-kind support. The financial support was confirmed at the November 27, 2008 meeting of Convocation.
3. Pro Bono Law Ontario is contributing \$75,000 to the Project.
4. On July 31, 2008, Legal Aid Ontario sent a letter of support and intention to partner with the Law Society and Pro Bono Law Ontario for the Project. The Board of Legal Aid Ontario approved a financial contribution of \$50,000 at its October 3, 2008 meeting.
5. Further project funding was sought through the Law Foundation of Ontario and the Foundation's Major Grants Committee approved the Law Society's application for a grant of \$60,000.
6. The total budget for the Project is \$305,000.

7. Following the approval of Legal Aid Ontario as a partner, the Project Steering Committee was struck. Its members include Marion Boyd as representative of The Law Society, Lorne Sossin as representative of Pro Bono Law Ontario, and John McCamus as representative for Legal Aid Ontario. The Honourable Roy McMurtry is the chair.
8. A request for proposals (RFP) was issued on December 30, 2008 for Phases I and II of the Project. Phase I is a telephone survey of 2,000 low- and middle-income Ontarians in French and English. Phase II is a series of focus groups with legal service and information providers throughout Ontario. Submissions were received on January 30, 2009.
9. Environics Research Group was selected as the research consulting firm for Phases I and II of the Project.
10. The telephone survey (Phase I) is expected to be launched by the end of May 2009 and completion of Phases I and II is anticipated for the end of June 2009.

Report to Convocation  
May 28, 2009

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Audit Committee

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

Purpose of Report: Information

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

## COMMITTEE PROCESS

1. The Audit Committee (“the Committee”) met on May 13, 2009. Committee members in attendance were Beth Symes(c), Ab Chahbar(v-c), Seymour Epstein, Glenn Hainey and Doug Lewis.
2. Staff in attendance were Malcolm Heins, Wendy Tysall, Zeynep Onen, and Fred Grady.

## FOR INFORMATION

### GENERAL FUND - FINANCIAL STATEMENTS FOR THE THREE MONTHS ENDED MARCH 31, 2009

3. The Audit Committee recommends the financial statements of the General Fund for the first quarter of 2009 be received by Convocation for information.

Law Society of Upper Canada  
General Fund  
Financial Statement Highlights  
For the three months ended March 31, 2009

## Background

4. The Society’s General Fund is composed of a number of funds included in these financial statements.
  - The Unrestricted Fund is the Society’s operating fund representing the bulk of its revenues and expenses relating to the licensing and regulation of lawyers and paralegals.
  - There are a number of special purpose funds restricted by Convocation. These are the Capital Allocation, Invested in Capital Assets, County Libraries, Parental Leave Assistance Plan, Repayable Allowance, Endowment, Special Projects and the Working Capital Reserve funds.
  - The Capital Allocation Fund is the source of funding for the Society’s acquisition of major capital assets and the repair and upgrade of Osgoode Hall. The fund is replenished by a dedicated annual levy, currently \$45, on all lawyers and paralegals.
  - The Invested in Capital Assets Fund represents the net book value of the Society’s physical assets. Additions to the fund are made by the capitalization of assets acquired through the capital allocation fund. Additions are recorded annually by means of an inter-fund transfer on the Statement of Changes in Fund Balances. Amortization is reported as an expense of the fund.
  - The County Libraries Fund reports the transactions between LibraryCo Inc. and the Law Society. The Law Society levies an amount on lawyers as approved by Convocation in the annual budget, currently \$220 per lawyer. This levy is reported as income of the fund and transfers to LibraryCo Inc. are reported as an expense of the fund.

- The Parental Leave Assistance Plan has been established with \$540,000 in the first quarter, representing the entire annual fee allocation for the fiscal year. Under the Program, which commenced on March 12, 2009, the Law Society will provide a fixed sum of \$750 per week for up to twelve weeks to cover, among other things, expenses associated with maintaining practice expenses during a maternity, parental or adoption leave. At the beginning of May, we have approved one application and have five applications being processed.
  - Other Restricted Funds:
    - o The Repayable Allowance Fund is used to provide financial assistance to those enrolled in the Society's Licensing Process. The fund is replenished annually through the budget process by a \$100,000 annual contribution.
    - o The Society's Endowment Fund is the J. Shirley Denison Fund, administered under the terms of the will by Convocation for the relief of poverty for lawyers and licensing process lawyer candidates.
    - o The Special Projects Fund is used to carry forward funding to a future fiscal period for a program or activity for which funding is not provided in the current year budget. For 2009 the fund is comprised of funding for the Governance Task Force, the maintenance of Law Society lawns, gardens and trees, the Task Force on Accreditation and Women in Private Practice.
  - The Working Capital Reserve is maintained by policy of Convocation to ensure cash is available to meet the operating needs of the Society. By policy, the fund is maintained at a balance of up two months operating expenses.
5. In addition to the General Fund, separate financial statements are prepared for the Compensation Fund, LibraryCo Inc., LawPro, the Combined Errors and Omissions Insurance (E&O) Fund and the stand alone E&O Fund. The last four financial statements will be presented to the Audit Committee in June.

#### Financial Statements

6. The General Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
7. Unless specifically related to a particular restricted fund, all revenue, including investment income, is recognized as revenue of the Unrestricted Fund.
8. The General Fund Financial Statements for the three months ended March 31, 2009 comprise the following statements with comparative numbers for March 31, 2008:
- Balance Sheet
  - Statement of Revenues and Expenses
  - Statement of Changes in Fund Balances
9. Supplemental schedules include Schedules of Revenues and Expenses for both the Lawyers and Paralegal Unrestricted Funds, comparing the results of operations for the three months to the year-to-date budget for these funds.

## Balance Sheet

- Short-term investments have increased from \$20.2 million to \$24.2 million mainly due to increased cash flow resulting from higher annual fees and the surplus brought forward from 2008. Accounts receivable are mainly comprised of annual fees owing. Accounts payable and accrued liabilities have increased to \$4.1 million from \$3.0 million largely related to the reclassification of \$734,000 in credit amounts due to members, which were previously netted through accounts receivable. Additional factors include an increase in amounts due to vendors and accrued payroll charges.
- Portfolio investments are shown at fair value of \$11.8 million compared to \$11.5 million in 2008.
- The decrease in capital assets from \$20.8 million to \$18.8 million reflects the accumulated amortization for the period offset by \$1.1 million in additions, recorded in December 2008, for projects such as upgrading the barristers' lounge area, various mechanical and electrical upgrades, as well as software upgrades.
- Unclaimed trust funds continue to increase, now totaling \$1.8 million compared to \$1.7 million at March 31, 2008.
- Fund Balances have increased from \$37.8 million to \$40.5 million mainly as a result of the increase to the working capital reserve, the addition of the Parental Leave Assistance Plan, offset by the reduction in the Invested in Capital Assets, noted above.

## Revenues and Expenses

- The general fund showed a deficit of \$12,000 in the first quarter of 2009, compared with a surplus of \$1.2 million in 2008. This is due to an increase in revenues of \$1.5 million offset by an increase in expenses of \$2.7 million. First quarter performance has outperformed budget. In the budget, it was proposed that an unrestricted fund deficit estimated for the year at \$2.75 million be funded through working capital reserves and the unrestricted fund surplus. The budgeted transfer of these funds, amounting to approximately \$688,000, was not required in the first quarter. Future use of these funds depends on financial performance for the remainder of the fiscal year.
- Annual fee revenue is recognized on a monthly basis. Annual fees have increased from \$11.1 million in 2008 to \$14 million in 2009, with an increase of 879 lawyers and a fee increase of \$50 per lawyer. The current quarter also reflects paralegal billings for which there is no prior year comparator as the paralegal licensing process had not commenced during the first quarter of 2008.
- Professional development and competence revenues have decreased to \$2.7 million from \$3.7 million in 2008. This is due to an expected decrease in the number of paralegal applicants for the licensing program as the 2008 year was the first in which paralegal licensing occurred, resulting in a high initial volume of candidates. In addition, there has been a reduction in continuing education course registration revenue as fewer programs are being offered. Continuing education staff have been deployed to support 2009 priorities which include changes to the licensing process and provision of support to the working groups for sole and small firms and retention of women. Finally, there has been a budgeted decrease in lawyer licensing process fees from \$2,940 in 2008 to \$2,400 per candidate.

- Investment income has decreased from \$1.4 million to \$671,000 reflecting market conditions which have resulted in lower returns on investment. Included in this reduction is the allocation of the E&O investment surplus which will be \$2.0 million for the year, a significant decrease from \$3.75 million for the 2008 year. Subsequent to the first quarter, markets appear to have stabilized and investment returns are improving.
- Professional development and competence expenses are \$400,000 more than for the same period in 2008 (\$3.9 million versus \$3.5 million) primarily as a result of budgeted spending increases for the licensing process for lawyers and in spot audit and practice review staff. This is partly offset by reduced spending on paralegal licensing. Licensing process expenses will occur in the first half of the year, and are expected to approximate budget by year end.
- Regulatory expenses of \$4.6 million are higher than the same period in 2008 by just over \$800,000. The increase is mainly due to increased provisions for settlement and legal costs and counsel fees. Estimates are based on open matters, as evaluated by Professional Regulation.
- Administrative expenses are \$200,000 more than the same period in 2008, consistent with budgeted increases.
- Capital allocation fund expenses have increased from \$196,000 in 2009 to \$414,000 in 2008, reflecting the timing of information technology projects, including hardware and software upgrades.
- County libraries fund expenses are \$800,000 more than for the same period in 2008 (\$3.4 million versus \$2.6 million) primarily due to the timing of transfers.

#### Changes in Fund Balances

- The increased balance for the unrestricted fund is offset by the transfer of \$100,000 to the repayable allowance fund approved in the 2009 annual budget.
- The Parental Leave Assistance Plan has been established with \$540,000 in the first quarter, representing the entire annual fee allocation for the fiscal year.
- The repayable allowance fund has made loans to students based on need, in the total amount of \$26,000 to 15 candidates (2007: \$5,000 to 5 candidates).
- The endowment fund reflects interest earned on the fund's cash reserves and payments of \$34,000 made from the J. Shirley Denison Fund.

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund**  
**Balance Sheet**

*Unaudited*

*Stated in thousands of dollars*

For the three months ending March 31		2009	2008
<b>ASSETS</b>			
<b>Current Assets</b>			
1	Cash	5,166	5,452
2	Short-term Investments	24,243	20,165
3	Cash and short-term investments	29,409	25,617
4	Accounts receivable	25,453	26,040
5	Prepaid expenses	380	160
6	<b>Total current assets</b>	<b>55,242</b>	<b>51,817</b>
7	<b>Portfolio investments</b>	<b>11,795</b>	<b>11,512</b>
8	<b>Capital assets</b>	<b>18,805</b>	<b>20,764</b>
9	<b>Total Assets</b>	<b>85,842</b>	<b>84,093</b>
<b>LIABILITIES AND FUND BALANCES</b>			
<b>Current Liabilities</b>			
10	Accounts payable and accrued liabilities	4,132	3,083
11	Deferred revenue	39,363	41,498
12	<b>Total current liabilities</b>	<b>43,495</b>	<b>44,581</b>
13	<b>Unclaimed trust funds</b>	<b>1,811</b>	<b>1,713</b>
14	<b>Total Liabilities</b>	<b>45,306</b>	<b>46,294</b>
<b>FUND BALANCES</b>			
15	Unrestricted fund	5,292	4,961
Restricted funds			
16	Capital allocation	4,773	4,348
17	Invested in capital assets	18,805	20,764
18	County libraries	-	(732)
20	Parental leave assistance plan	540	-
21	Other	451	483
22	Working capital reserve	10,675	7,975
23	<b>Total Fund Balances</b>	<b>40,536</b>	<b>37,799</b>
24	<b>Total Liabilities and Fund Balances</b>	<b>85,842</b>	<b>84,093</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund**

**Statement of Revenues and Expenses**

*Unaudited*

*Stated in thousands of dollars*

*For the three months ending March 31*

	2009			2008		
	Unrestricted Fund	Restricted Funds	Total	Unrestricted Fund	Restricted Funds	Total
<b>REVENUES</b>						
1 Annual fees	9,663	4,364	14,027	8,611	2,514	11,125
2 Professional development and competence	2,712	-	2,712	3,671	-	3,671
3 Investment income	670	1	671	1,409	-	1,409
4 Other	1,626	18	1,644	1,334	18	1,352
5 <b>Total revenues</b>	<b>14,671</b>	<b>4,383</b>	<b>19,054</b>	<b>15,025</b>	<b>2,532</b>	<b>17,557</b>
<b>EXPENSES</b>						
6 Professional development and competence	3,906	-	3,906	3,545	-	3,545
7 Professional regulation	4,581	-	4,581	3,763	-	3,763
8 Administrative	2,175	-	2,175	1,983	-	1,983
9 Other	1,630	-	1,630	1,436	-	1,436
10 Client service centre	1,268	-	1,268	1,190	-	1,190
11 Facilities	1,023	-	1,023	873	-	873
12 Policy and legal services	511	-	511	476	-	476
13 Communications	299	-	299	276	-	276
14 Equity	230	-	230	206	-	206
15 Tribunals	217	-	217	178	-	178
16 Capital allocation fund	-	414	414	-	196	196
17 Invested in capital assets - amortization	-	687	687	-	742	742
18 County libraries fund	-	3,427	3,427	-	2,637	2,637
19 Parental Leave Assistance Plan	-	-	-	-	-	-
20 Repayable allowance fund	-	26	26	-	5	5
21 Endowment	-	34	34	-	6	6
22 Special projects fund	-	-	-	-	-	-
23 <b>Total expenses</b>	<b>15,840</b>	<b>4,588</b>	<b>20,428</b>	<b>13,926</b>	<b>3,586</b>	<b>17,512</b>
Less: Expenses allocated to Compensation						
24 Fund	(1,362)		(1,362)	(1,143)	-	(1,143)
25 <b>Net expenses</b>	<b>14,478</b>	<b>4,588</b>	<b>19,066</b>	<b>12,783</b>	<b>3,586</b>	<b>16,369</b>
26 <b>(Deficit) / Surplus</b>	<b>193</b>	<b>(205)</b>	<b>(12)</b>	<b>2,242</b>	<b>(1,054)</b>	<b>1,188</b>

**THE LAW SOCIETY OF UPPER CANADA**  
**General Fund**

**Statement of Changes in Fund Balances**

*Unaudited*

*Stated in thousands of dollars*

*For the three months ending March 31*

	2009										2008	
	Unrestricted Fund		Total unrestricted fund	Capital Allocation	Invested in Capital Assets	County Libraries	Parental Leave	Other restricted	Working Capital Reserve	Total Restricted Funds	Total	Total
	Lawyers	Paralegals										
<b>Fund balances, beginning of year</b>	<b>3,950</b>	<b>1,249</b>	<b>5,199</b>	<b>4,772</b>	<b>19,492</b>	-	-	<b>410</b>	<b>10,675</b>	<b>35,349</b>	<b>40,548</b>	<b>36,611</b>
2 Revenues	13,902	769	14,671	415	-	3,427	540	1	-	<b>4,383</b>	<b>19,054</b>	17,557
3 Expenses	13,792	686	14,478	414	687	3,427	-	60	-	<b>4,588</b>	<b>19,066</b>	16,369
4 <b>(Deficit) surplus</b>	<b>110</b>	<b>83</b>	<b>193</b>	<b>1</b>	<b>(687)</b>	-	<b>540</b>	<b>(59)</b>	-	<b>(205)</b>	<b>(12)</b>	<b>1,188</b>
<b>Interfund transfers</b>												
5 Transfer to repayable allowance fund	(100)	-	(100)	-	-	-	-	100	-	100	-	-
6 <b>Total interfund transfers</b>	<b>(100)</b>	<b>-</b>	<b>(100)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>100</b>	<b>-</b>	<b>100</b>	<b>-</b>	<b>-</b>
7 <b>Fund balances, end of period</b>	<b>3,960</b>	<b>1,332</b>	<b>5,292</b>	<b>4,773</b>	<b>18,805</b>	-	<b>540</b>	<b>451</b>	<b>10,675</b>	<b>35,244</b>	<b>40,536</b>	<b>37,799</b>

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## FOR INFORMATION

COMPENSATION FUND - FINANCIAL STATEMENTS FOR THE THREE MONTHS  
ENDED MARCH 31, 2009

10. The Audit Committee recommends that Convocation receive the financial statements for the Compensation Fund for the first quarter of 2009 for information.

Law Society of Upper Canada  
Compensation Fund  
Financial Statement Highlights  
For the three months ended March 31, 2009

## Background

11. By statute, the Law Society maintains a compensation fund to mitigate losses sustained by clients as a result of the dishonesty of a member of the Law Society of Upper Canada. Prior to 2008, the fund was known as the Lawyers Fund for Client Compensation. With paralegal regulation added to the Society's mandate, the fund was renamed the Compensation Fund and now permits members of the public to seek compensation from the Society as a result of dishonesty by paralegals licensed by the Law Society of Upper Canada, as well as by lawyers.
12. The annual Compensation Fund levy for the 2009 fiscal year was set at \$226 for lawyers and \$145 for paralegals with the adoption of the annual budget for lawyers and paralegals in November 2008.

## One Compensation Fund, Two Pools

13. Revenues and expenses related to paralegals are segregated from those of lawyers in order to maintain separate funding pools to satisfy claims arising from each group without using the funds provided by each to satisfy claims and expenses of the other.
14. This is accomplished by segregating the Fund Balance between lawyers and paralegals on the Balance Sheet and by segregating revenues and expenses on the Statement of Revenues and Expenses and Change in Fund Balances.

### Sources of Funding

15. The fund is financed by annual levies on lawyers and paralegals approved on an annual basis by Convocation. The second primary source of revenue for the fund is income earned on the investment of cash reserves surplus to the operating needs of the fund. A third, and far less significant funding component, is the collection of recoveries from members as a part of the disciplinary process.

### Expenses of the Fund

16. In addition to claims paid to clients (currently with limits of \$150,000 for lawyers and \$10,000 for paralegals), the fund has direct administrative expenses for staff, etc. and allocated administrative expenses charged to it similar to all Law Society operating departments. The fund pays 100% of the cost of the spot audit program (including its allocated administration costs), 25% of the costs of the investigations department and 6% of the cost of the discipline department.
17. The allocation of spot audit costs was approved by Convocation with the introduction of the program in 1998. The program is considered a significant factor in the mitigation of claims against the fund.

### Financial Statements

18. The Compensation Fund Financial Statements are prepared under Generally Accepted Accounting Principles for Canadian not-for-profit corporations using the restricted fund method of accounting. Revenues are recognized when earned and expenses are recognized when incurred.
19. The Compensation Fund Financial Statements for the three months ended March 31, 2009 comprise the following statements with comparative numbers for March 31, 2008:
  - o Balance Sheet
  - o Statement of Revenues and Expenses and Change in Fund Balances

### The Paralegal Pool

20. The Fund's financial statements do not reflect the inclusion of paralegals until the second quarter of 2008. As a result, no comparative numbers for March 31, 2008 are available. The first quarter of 2009 has been completed and the Paralegal Pool has a balance of \$30,000. To date, minimal claims have been made against the Fund regarding the actions of licensed paralegals.

### The Lawyer Pool

21. The first quarter of 2009 has been completed and the financial position of the Lawyer Pool remains strong.
22. The balance of \$20.2 million has decreased from the amount of \$22.3 million reported in March 2008. The Fund's Financial Statements for the three months ended March 31, 2009 identify a surplus of \$309,000 compared to a surplus of \$886,000 for the first quarter of 2008.

23. Based on the number of claims and the settlement values experienced during the first quarter, there is nothing to suggest that a significant actuarial adjustment to the reserve is required. The estimated claims liability is reflected in the reserve on the Balance Sheet and the increase in reserve for unpaid grants on the Statement of Revenues and Expenses and Change in Fund Balances.

#### First Quarter Balance Sheet

- Short-term investments have decreased from \$3.0 million to \$2.5 million due to the transfer of funds to cash and declining investment returns.
- Interest and other receivables have increased \$1.3 million reflecting the expected transfer of annual fee revenues from the lawyer and paralegal funds. Fee transfers are completed monthly. The higher receivable is consistent with the overall increase in annual fee revenues to the organization.
- Deferred Revenue has increased from \$4.9 million to \$5.9 million due to increased annual fee revenue.

#### First Quarter Revenues and Expenses and Change in Fund Balances

- Annual fee revenues of \$2.0 million have increased by \$330,000 from the first quarter of 2008. The increase is attributable to the inclusion of paralegals and the increased levy for lawyers.
- Investment income has decreased from \$705,000 to \$145,000 reflecting market conditions which have resulted in lower returns on investment.
- Reserves for unpaid grants have increased to \$408,000 based on estimated liabilities for new inquiries and opened cases, less actual claims paid. The settlement of 20 claims has resulted in grant payments of \$913,000 for which sufficient reserves existed. The prior year figure of \$174,000 in claims paid reflects payments only, with no provision for inquiries or cases in progress.
- Recoveries of claims paid have increased from \$5,000 in the first quarter of 2008 to \$124,000 this year.
- Audit costs allocated from the general fund are up \$92,000 as budgeted costs have increased over 2008, partly due to the creation of a paralegal audit team.
- Investigations and discipline costs allocated from the general fund are up \$69,000 as budgeted costs for investigations have increased over 2008.

**THE LAW SOCIETY OF UPPER CANADA**  
**Compensation Fund**  
**Balance Sheet**

*Unaudited*

*Stated in thousands of dollars*

*As at March 31*

**2009**                      **2008**

**Assets**

**Current assets**

1 Cash	<b>3,311</b>	3,082
2 Short-term investments	<b>2,495</b>	2,992
3 Cash and short-term investments	<b>5,806</b>	6,074
4 Interest and other receivables	<b>6,344</b>	5,050
5 <b>Total current assets</b>	<b>12,150</b>	11,124
6 <b>Portfolio investments</b>	<b>25,314</b>	25,962
7 <b>Total Assets</b>	<b>37,464</b>	37,086

**Liabilities and Fund Balances**

**Current Liabilities**

8 Accounts payable and accrued liabilities	<b>92</b>	71
9 Deferred revenue	<b>5,856</b>	4,864
10 <b>Reserve for unpaid grants</b>	<b>11,316</b>	9,835
11 <b>Total Liabilities</b>	<b>17,264</b>	14,770

**Fund Balances**

12 Lawyers	<b>20,170</b>	22,316
13 Paralegals	<b>30</b>	-
14 <b>Total Fund Balances</b>	<b>20,200</b>	<b>22,316</b>
15 <b>Total Liabilities and Fund Balances</b>	<b>37,464</b>	37,086

**THE LAW SOCIETY OF UPPER CANADA**  
**Compensation Fund**  
**Statement of Revenues and Expenses and Change in Fund Balances**

**Unaudited**

*Stated in thousands of dollars*

<i>For the three months ending March 31</i>	2009			2008
	Lawyers	Paralegals	Total	Total
<b>Revenues</b>				
1 Annual fees	1,876	76	1,952	1,622
2 Investment income	145	-	145	705
<b>3 Total Revenues</b>	<b>2,021</b>	<b>76</b>	<b>2,097</b>	<b>2,327</b>
<b>Expenses</b>				
4 Increase in reserve for unpaid grants	408	4	412	174
5 Recoveries	(124)	-	(124)	(5)
6 Net grants expense	284	4	288	169
7 Spot audit	586	35	621	529
8 Share of investigation and discipline	385	11	396	327
9 Administrative	360	3	363	302
10 Salaries and benefits	97	-	97	114
<b>11 Total Expenses</b>	<b>1,712</b>	<b>53</b>	<b>1,765</b>	<b>1,441</b>
<b>12 Surplus</b>	<b>309</b>	<b>23</b>	<b>332</b>	<b>886</b>
13 Fund balances, beginning of period	19,861	7	19,868	21,430
<b>14 Fund Balances, end of period</b>	<b>20,170</b>	<b>30</b>	<b>20,200</b>	<b>22,316</b>

FOR INFORMATION  
INVESTMENT COMPLIANCE REPORTING

24. Compliance Statements for the General Fund and Compensation Fund long and short-term portfolios as at March 31, 2009 are attached for information.

FOR INFORMATION  
OTHER COMMITTEE WORK

25. The Committee reviewed a schedule of bencher expenses and remuneration paid in the first quarter of 2009.
26. The Committee reviewed options on additional internal control certifications from the auditors.
27. The Committee reviewed trends in regulatory expenses and tribunal activity and requested more information for the next meeting.
28. The Committee reviewed a report on the Law Society's processes for management of counsel retainers and expenditures.
29. The Committee reviewed a report on the retention of our auditors for a security review of the Law Society telecommuting procedures.

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

- (1) Copies of the Statements of Investment Compliance (short term and long term) as at December 31, 2008. (pages 24 – 25)
- (2) Copies of the Compliance Statements for the General Fund and Compensation Fund. (pages 26 – 27)

CONVOCATION ROSE AT 12:20 P.M.

Confirmed in Convocation this 25<sup>th</sup> day of June, 2009

Treasurer